

(2004) 08 PAT CK 0051
In the Patna High Court
Case No : Crl. W.J.C. No. 19 of 2004

Ravi Shankar Pandey alias Nata Pandey	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:

Citation : (2004) 08 PAT CK 0051

Final Decision : Allowed

Judgement

Mridula Mishra, J.—This writ application under Article 226 of the Constitution of India has been filed for quashing the order of detention dated 15-11-2003 passed by the District Magistrate, Bhojpur at Arrah (Annexure-1) in exercise of the powers conferred u/s 12(2) of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as the Act) as well as the order dated 24-11-2003 (Annexure 2) passed by the State Government approving the said order of detention in exercise of power u/s 12(3) of the Act and also the order dated 30-12-2003 (Annexure 6) passed by the State Government confirming the aforesaid order of detention u/s 21(1) read with Section 22 of the Act.

2. Section 12(1) of the Act lays down that the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social element cannot be prevented otherwise than, by the immediate arrest of such person, make an order directing that such anti-social element be detained.

3. Sub-section (2) of Section 12 of the Act states if having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in Sub-section (1) exercise the powers conferred upon by the said sub-section.

4. In the instant case the District Magistrate on being satisfied that the petitioner is an anti-social element and his activity cannot be prevented otherwise than by his immediate arrest made the order dated 15-11-2003 that he be detained immediately with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The grounds of detention (Annexure-3) showing pendency of Tarari P.S. Case Nos. 47, 58 and 76 of 2002 and Tarari P.S. Case No. 14 of 2001 against the petitioner were served upon the petitioner along with the detention order on 17-11-2003. The order of detention was approved by the State Government u/s 12(3) of the Act within the stipulated period of time. On 13-12-2003 the petitioner filed a representation after receipt of grounds of detention asserting therein that he is a social and political figure and has been serving the people of the area in the capacity of Mukhia of Bhakura Gram Panchayat and he is not an anti-social element as defined in Section 2(d) of the Act and the order of his detention has been made by the District Magistrate at the instance of his political opponent for ruining his political and social career. As regards pendency of two cases, namely, Tarari P.S. Case No. 47/2002 and Tarari P.S. Case No. 58/2002 it has been contended that in both the cases giving rise to Sessions Trial Nos. 228 of 2003 and 184 of 2003 the petitioner was acquitted vide judgment and order dated 15-9-2003 and 20-11-2003 respectively. The petitioner further stated that he was never made an accused in Tarari P.S. Case No. 6/ 2002 and his acquittal in the aforesaid two cases was suppressed by the sponsoring authority and it was not considered by the detaining authority. It was also contended that the documents as also the Hindi version of the grounds served on the petitioner were not legible and decipherable and as such he could not make the representation properly. It was pleaded that his detention is impermissible in law.

5. The District Magistrate, respondent No. 4, filed counter-affidavit contending, inter alia, that from the grounds of detention itself it would be crystal clear that the petitioner is an anti-social element and habitual offender causing great threat and danger to maintenance of public order and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, his detention is absolutely essential and the District Magistrate passed the order of his detention only after being fully satisfied that the petitioner is an antisocial element on consideration of his criminal antecedent and the recent activities and his representation (Annexure-4 to the writ application) was duly considered by the State Government in accordance with law and after considering the entire facts and circumstances it was rejected and communicated to the petitioner on 22-12-2003 vide Annexure-5 to the writ petition.

6. The case further set up in the counter-affidavit is that the entire matter and the relevant documents including the representation of the petitioner with comments thereon of the detaining authority was on 17-12-2003 placed before the Advisory Board which held the order of detention to be valid. It has been asserted that the petitioner is a veteran and habitual offender involved in several cases out of which four are mentioned in the grounds of detention. The aforesaid

four cases forming the grounds of detention are under Sections 307, 353, 376, 385, 435 and certain other sections of the Indian Penal Code as well as u/s 27 of the Arms Act. It has been stated that Tarari P.S. Case No. 47/2002 ended in acquittal of the petitioner on 15-9-2003, a little before passing of the order of detention but the order of acquittal was recorded in Tarari P.S. Case No. 58/2002 after the detention order was made. It is further stated that the judgment and order of acquittal was recorded as the witnesses did not turn up to support the prosecution version owing to his constant fear, threat and danger of life hurled by the petitioner who was a terror in the locality and, moreover, acquittal or conviction has no meaning in such proceedings.

7. It has been asserted that Tarari P.S. Case No. 76/2002 was wrongly typed as Tarari P.S. Case No. 6/2002 in English version of the grounds of detention served upon the petitioner but Tarari P.S. Case No. 76/ 2002 was clearly mentioned in Hindi version of the grounds of detention and both were served upon the petitioner but he did not deliberately furnish explanation in respect of Tarari P.S. Case No. 76 of 2002 and Tarari P.S. Case No. 14 of 2001 in his representation and it is entirely false and baseless to say that Hindi version of the grounds was not legible and all the relevant documents were not supplied to the petitioner rather the fact is that the entire documents including the F.I.Rs. of the cases were served upon him along with the grounds of detention.

8. Anti-social element has been defined in Section 2(d) of the Act. Section 2d)(i) reads "a person who either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code", Is anti-social element.

9. Four incidents have been cited in the grounds of detention. All the incidents took place between 18-4-2001 and 20-11-2002 i.e. within a little over one and a half year. The petitioner allegedly attempted to commit murder, committed extortion and gang rape with his associates, attacked the police, set fire to police jeep and used fire arms. His activities did create sense of fear in the mind of public at large and impact of his acts posed threat and danger to the maintenance of public order and peace. Commission of acts by the petitioner referred to above would, of course, prima facie come within the mischief of Section 2(d) of the Act and his activities would not merely cause law and order problem.

10. It may be observed that subjective satisfaction of the detaining authority is of prime importance in such cases, for the preventive detention of a person is the result of subjective satisfaction of the detaining authority. Ours is not the appellate Court of the authorities passing detention order, approving and confirming the same. The Courts exercising powers of judicial review are not expected to consider the challenge to an order of detention, as if sitting as appellate Courts, weighing and reappreciating and going into the question and basis of subjective satisfaction. However, it must also be borne in mind that since

an order of detention in prison involves curtailment of fundamental right of liberty of citizens, freedom of movement and pursuit of normal life the authorities passing, approving and confirming the order of detention cannot claim absolute immunity in regard to the decision arrived at and it is open to the Courts to see whether there has been due and proper application of mind and all the vital and relevant materials have been noticed and considered. At the same time no activity of antisocial element should be allowed to pose threat and danger to maintenance of public order and tranquillity and the even flow of life of the members of the public at large and a ban must be put to such act of antisocial element by putting him behind the bar. In the case we are in seisin of there was ample material on records to satisfy the detaining authority to arrive at the conclusion that the acts committed by the petitioner were prejudicial to the maintenance of public order and peace and tranquillity and his preventive detention was the need of the hour.

11. The only point urged with persuasiveness by Sri Ajay Thakur, learned counsel for the petitioner for assailing and quashing the order of detention, approval and confirmation thereof is that the material fact of acquittal of the petitioner in Tarari P.S. Case No. 47 of 2002 which was also one of the grounds for detention was not placed before the detaining authority and hence subjective satisfaction of the detaining authority must be said to have been vitiated. On the other hand Sri Amar Nath Singh, learned Standing Counsel appearing on behalf of the State-Respondents has contended that the petitioner has very bad criminal history and his activity has been a real threat to maintenance of public order and peace and his acquittal in one of the four cases prior to the passing of the detention order cannot vitiate subjective satisfaction of the detaining authority particularly in view of introduction of Section 12A after amendment of the Act in 1993. Section 12A of the Act provides as follows :

"12-A. Grounds of detention severable.-- (1) Where a person has been detained in pursuance of an order of detention whether made before or after the commencement of the Bihar Control of Crimes Act, 1981 u/s 12 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-

(a) such order shall not be deemed to be Invalid or inoperative merely because one or some of the grounds is or are

(i) vague,

(ii) non-existent,

(iii) non-relevant,

(iv) not connected or not proximately connected with such person or

(v) invalid for any other reason whatsoever

and it is not therefore, possible to hold that the Government or officer making

such order would have been satisfied as provided in Section 12 with reference to the remaining ground or grounds and made the order of detention.

(b) The Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

12. The Constitution Bench of the Apex Court in the case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, has held that an order of detention can be based upon one single ground and even one prejudicial act can be treated as sufficient for forming the subjective satisfaction for detaining a person. It has been clarified that where three orders of detention are made against the same person each of the orders is based on only one ground which is supplied to the detenu. If it is found that the ground of detention in support of two of such orders is either vague or irrelevant but the grounds in support of the third order is relevant, definite and proximate the first two orders would be quashed while the third order would stand.

13. Similar view was expressed in the three Judge Bench decision of the Supreme Court in the case of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, which was followed by a Division Bench of the Apex Court in the case of Madan Lal Anand v. Union of India, 1990 Cri LJ 659. In the case of Madan Lal Anand (supra) while the detaining authority had relied upon and referred to the confessional statement of the detenu as recorded by the Collector u/s 108 of the Customs Act as the ground of detention the retraction made by the detenu was not placed before the detaining authority for consideration. It was urged there that if the retraction had been considered by the detaining authority, his subjective satisfaction could have been in favour of the detenu and against making an order of detention. It was held that it is desirable that any retraction made should also have been placed before the detaining authority but that does not mean that if any such retraction is not placed before the detaining authority the detention order would become bad and invalid. In the case of Prakash Chandra Mehta (supra) it has been held that when the order of detention has been made on two or more grounds such an order of detention shall be deemed to have been made separately on each of such grounds and accordingly that if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad and invalid.

14. The Constitution Bench decision of the Supreme Court recorded in the case of Attorney General of India etc. etc. (1995 Cri LJ 426) (supra) was followed in several cases including the case of Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, . It was observed that though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or manifestation of organised activity. The gravity and nature of the act is also relevant for being considered while making order of detention.

15. In the case of Mohd. Dhana Ali Khan Vs. State of West Bengal, followed in the case of Angoori Devi for Ram Ratan Vs. Union of India (UOI) and Others, the detention of a person under the MISA was considered. The only ground of detention of the detenu was the act of theft in a running train at night. The detenu along with his associates allegedly boarded the train, put the passengers of the train of the compartment under fear and snatched away a wrist watch and a gold necklace from a man and his wife and they decamped with the booty. It was held that though the ground contained a single incident of theft in a running train, that does not by itself take the case out of purview of the provisions of MISA for, the effect of act of the detenu would be to deter peaceful citizens from travelling in a train at night and this would undoubtedly disturb the even flow of life of the community. Thus even a single instance of theft committed by the detenu and his associates was held to be sufficient ground to satisfy the detaining authority to make detention order.

16. The petitioner placed reliance on the cases of Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another, ; Ramesh Vs. State of Gujarat and Others, and V.C. Mohan Vs. Union of India and Others, . In the case of Dharamdas Shamlal Agarwal (Supra) five cases were shown to be pending against the detenu but prior to making the order of detention two cases had ended in acquittal while in the case of Ramesh (Supra) the detaining authority had taken into consideration two criminal cases which were materials in the earlier order of detention of the detenu which was already quashed and, moreover, the detenu had already been acquitted. In V. C. Mohan's Case (Supra) the charges levelled against the detenu were too stale to be taken recourse to in the matter of issuance of an order of detention having regard to the admitted factum of non-involvement of the detenu in any illegal activity and thus consequently too remote as well point of time to be the basis of an order of detention. In view of the principles of law laid down in the cases decided by the Constitution Bench of the Apex Court followed in a catena of decisions referred to in paragraphs Nos. 12 to 15 as well as introduction of new Section 12A after amendment of the Act effected in 1993 the aforesaid three cases relied upon by the petitioner are not applicable to the present case nor can they form the basis for vitiating subjective satisfaction of the detaining authority.

17. In the instant case, even assuming that the ground relating to pendency of Tarari P. S. Case No. 47/2002 out of the four cases was gone or had become inadmissible ground as the petitioner had already been acquitted thereunder and his acquittal was not considered by the detaining authority, still then that would not make the detention order bad for, in view of various decisions of the Apex Court the said order of detention shall be deemed to have been made separately on each of such grounds. The other three grounds of detention were valid and admissible and they were sufficient for forming basis of subjective satisfaction of the detaining authority. Therefore, even excluding one inadmissible ground out of the four grounds the order of detention must be said to be justified.

18. We could not be persuaded to accept the contention of Shri Ajay Thakur, learned counsel that on account of non-consideration of acquittal of the petitioner in one of the four cases satisfaction of the detaining authority was vitiated in law and such detention order cannot be sustained. As already observed the detenu was acquitted in Tarari P. S. Case No. 58/2002 after the order of detention was made and as such that could not have been placed by the sponsoring authority before the detaining authority for consideration. On the other hand, the contention raised by Sri Amar Nath Singh, learned Standing Counsel that in view of the amendment of the Act and introduction of Section 12-A in the Act and decision of Constitution Bench followed in several cases, acquittal of the detenu in one of two or more cases cannot vitiate subjective satisfaction and order of detention seems to be pregnant with meaning and substance and the same must be accepted.

19. In the result the contention of the learned counsel for the petitioner having been rejected, this writ petition must fail and the same is accordingly dismissed.