

(1999) 02 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 8485 of 1998

Ravubha Pratapsinh Jadeja

APPELLANT

Vs

K.N. Bhatt or his Successor in Office

RESPONDENT

Date of Decision : 05-02-1999

Acts Referred:

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(2)

Citation : (1999) CriLJ 4147 : (2000) GLR 79

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : H.R. Prajapati, for Tushar Mehta, for the Appellant; J.C. Gohil, Asst. Government Pleader for Respondent No. 1 and Bharat T. Rao, for the Respondent

Final Decision : Allowed

Judgement

D.C. Srivastava, J.—In effect, in this petition under Article 226 of the Constitution of India, two writs have been prayed for, (i) writ of certiorari for quashing the detention order dated 17.8.1998 passed by the District Magistrate, Anand under section 3(2) of the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the Act") and (ii) writ in the nature of Habeas Corpus for immediate release of the petitioner from illegal detention.

2. From the grounds of detention, it seems that at the time of surprise check of the petrol pump of the owner/licence holder, certain irregularities were found and it was also found that some solvent, other than diesel, was being mixed at the petrol pump of the owner. A sample was taken. It further proceeds that serious obstruction was caused in due discharge of duties of public servants engaged in raiding the petrol pump of the owner /licence holder. For this, a separate criminal case has been registered in a competent court. The petitioner was the Manager of the aforesaid petrol pump. On identical allegations, he was also detained under an order of detention u/s 3(2) of the Act. The said order of detention has been challenged in this writ petition.

3. The writ petition was subsequently amended and para 4(h) was added in which it was submitted that inconnection with criminal case No. 51 of 1998 undersections 147,148, 332, 343, 584, 506(2), 201, 307 and 186 IPC,registered on 28.7.1988, the petitioner wasarrested on 30.7.1998. The detention order was passed much thereafter viz. on 17.8.1998.

4. It has been contended that it is not disclosed in thegrounds of detention that the petitioner was arrested on30.7.1998 . It was also argued that it is not reflectedin the grounds of detention that the detaining authoritywas aware that the petitioner was in judicial custody onthe day the detention order was passed against him. This omission, according to the learned advocate for thepetitioner, has rendered the impugned order invalid and illegal.

5. Counter affidavit has been filed by the detaining authority , but in the said counter affidavit, it has notbeen denied that the petitioner was arrested on30.7.1998. In the grounds of detention, it is notdisclosed that the detaining authority was aware of thefact that the petitioner was in judicial custody on theday the impugned order was passed. An attempt has been made to supplement this defect through the counteraffidavit, but that attempt has also miserably failed.There is no clear deposition in the counter affidavitthat the detaining authority was aware on the date ofpassing of the impugned order that the petitioner was injudicial custody since 30.7.1998. What has been tried tobe explained in the counter affidavit is that bailapplication of the petitioner was rejected by thecompetent court and he was likely to be enlarged by theHigh court and thereafter he may continue his illegalblack marketing activities. This,in my mind, is notrequirement of law. Law of the land on the subject hasbeen summarised finally by the Apex court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, after consideringcatena of decisions in this case. Whether order ofdetention can be passed against a person who is alreadyin judicial custody or not was considered and reviewed bythe Apex court and finally six guidelines in thisdirection were laid down by the Apex court. The firstguideline seems to be important and applicable to thefacts of the instant writ petition. The said guidelineNo.1 is that detention order can validly be passed evenin case of a person who is already in judicial custody.In such case, it must appear from the grounds ofdetention that the authority was aware that the detenuwas already in custody.

6. From this first guideline itself, it is clear that thereis no prohibition or bar in passing the detention orderagainst a person who was already in judicial custody onthe day when the impugned order was passed.However,further requirement is that whenever an order is proposed to be passed against that person who was alreadyin judicial custody, the detaining authority must make itclear in the grounds of detention that he was aware thatthe detenu was already in custody. This second requirement is not directory but mandatory and themandate of the Apex court is that such disclosure that the person was in judicial custody must be reflected inthe grounds of detention and not in the subsequent counter affidavit

filed at the time of hearing of the writ petition challenging the detention order.

7. I have carefully gone through the grounds of detention and I am unable to find therein that the detaining authority has made even a passing reference that the petitioner was in judicial custody on the day the impugned order was passed. Likewise, it is not disclosed in the grounds of detention that the detaining authority was aware that the petitioner was already in custody when the impugned order was passed. This defect cannot be supplemented at a subsequent stage by filing counter affidavit which is also vague.

8. The result, therefore, is that the impugned order of detention against the petitioner who was in judicial custody, is rendered illegal inasmuch as awareness of the detaining authority that the petitioner was in judicial custody is not reflected in the order of detention or in the grounds of detention. This ground alone is sufficient for setting aside the impugned order. The writ petition in these circumstances succeeds and is hereby allowed. The detention order dated 17.8.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.