

(2006) 08 OHC CK 0026

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 128 of 2006

Shankar Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 307, 323, 34, 341, 506

Citation : (2006) 2 OLR 453

Hon'ble Judges : S. Barman Roy, C.J.; Madan Mohan Das, J

Bench : Division Bench

Advocate : B.P. Ray, S.J. Pradhan, P.K. Patnaik, B. Sahoo, B. Mohanty and A. Tripathy, for the Appellant; Government Advocate (for Opp. Parties 1 and 2) and Standing Counsel (Central) (for Opp. Party No. 3), for the Respondent

Final Decision : Allowed

Judgement

S. Barman Roy, C.J.—By this writ petition the petitioner-detenu seeks to challenge the order of detention issued against him by the District Magistrate, Sambalpur on 23.12.2005 under Sub-section (2) of Section 3 of the National Security Act, 1980 directing detention of the petitioner so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The impugned order of detention dated 23.12.2005, as passed by the District Magistrate, Sambalpur under Annexure-1, reads as under:

OFFICE OF THE DISTRICT MAGISTRATE, SAMBALPUR ORDER No. 1812/Res. Dt. 23.12.2005

Whereas I Shri Vishal Gagan, IAS, District Magistrate, Sambalpur has been directed in Government of Orissa, Home (Special Section) Department Order No. 5595 C dated 12th December, 2005 to exercise the powers conferred by Sub-section (2) of Section 3 of the National Security Act, 1980.

Whereas I am aware that Shri Shankar Mishra, aged about 30 years, s/o. Gopal

Chandra Mishra of Saheb Bangala Pada, Badabazar, P.S. Town, District Sambalpur is now in Jail custody in Town Police Station Case No. 322 dt. 16.12.2005 u/s 341/323/506/307/34 IPC by the SDJM, Sambalpur. After coming out of the Jail Shri Shankar Mishra there is possibility indulging in criminal and antisocial activities every time and disturbing public order. I am satisfied that with a view to prevent Shri Shankar Mishra from acting in any manner prejudicial to the maintenance of public order, it is necessary to make the following order. I am also satisfied that the bail petition has been moved by the accused and is under active consideration in the Court of the SDJM, Sambalpur and there is possibility that accused will be released on bail.

Now therefore in exercise of powers conferred by Subsection (2) of Section 3 of the National Security Act, 1980 I do hereby direct that the said Shri Shankar Mishra, aged about 30 years, s/o. Gopal Chandra Mishra of Saheb Bangala Pada, Badabazar, P.S.Town, District - Sambalpur be detained in the Circle Jail, Sambalpur until further orders.

Sd. Vishal Gagan District Magistrate, Sambalpur.

On 23.12.2005 when the order of detention was passed, the petitioner was in custody in connection with some police cases. The order of detention was served upon the petitioner on 24.12.2005. It is further claimed by the petitioner - detenu that the grounds of detention under Annexure-2, as issued by the District Magistrate, Sambalpur, was served upon the petitioner on 24.12.2005. Various police cases have been referred to in various paragraphs of the said grounds of detention alleging, inter alia, that the petitioner was involved in all those cases as mentioned therein. Various police cases mentioned in paragraphs 1, 2, 3, 5, 10, 11 and 13 of the said statement of grounds involve serious offences under the Indian Penal Code alongwith other penal laws of the country. It is claimed in the said statement of grounds that the petitioner is involved in all those police cases. However, it has been specifically pleaded by the petitioner in paragraph 20 of the petition that six cases that had been mentioned in the aforesaid grounds of detention ended in acquittal of the petitioner. None of these facts that the petitioner was acquitted in six police cases, as relied upon by the detaining authority in the grounds of detention, was brought to his notice at the time of passing the order of detention. In paragraph 21 of the writ petition the petitioner has given certain facts from which it appears that though the Superintendent of Police of the District was aware that the petitioner was acquitted in six police cases as mentioned in paragraphs 1, 2, 3, 5, 10, 11 and 13 of the grounds of detention, yet he did not mention the fact of acquittal of the petitioner in all those cases in his report to the District Magistrate of the District. The District Magistrate upon perusal of the report of the Superintendent of Police issued the order of detention. Had the Superintendent of Police mentioned the fact of acquittal of the petitioner in six police cases in his report to the District Magistrate, it is doubtful whether the detaining authority would have issued the impugned order of detention against the petitioner.

3. We have also scanned the affidavit filed on behalf of the State. The aforesaid pleading of the petitioner has not been denied by the State in its affidavit. Therefore, we are constrained to hold that had the fact of acquittal of the petitioner in the aforesaid six police cases been duly brought to the notice of the District Magistrate before the impugned order of detention was passed, it is highly doubtful whether he would have passed the impugned order of detention against the petitioner. These six police cases were specifically relied upon by the detaining authority in the grounds of detention with a view to justify the detention of the petitioner under the provisions of the stringent law like the National Security Act.

4. In the aforesaid circumstances, we are constrained to hold that we have no other option but to allow the petition and issue a writ of habeas corpus as claimed by the petitioner. Accordingly, we allow this petition, quash the impugned order of detention dated 23.12.2005 under Annexure-1 passed against the petitioner by the detaining authority and direct that the petitioner be set at liberty forthwith, if he is not required to be detained in connection with any other case.