

(2003) 12 BOM CK 0002

In the Bombay High Court

Case No : Criminal Writ Petition No. 674 of 2003

Shri Vijay Ramchandra Angre

APPELLANT

Vs

Shri S.M. Shangari and Others

RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (2004) 106 BOMLR 740

Hon'ble Judges : S.S. Parkar, J;H.L. Gokhale, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.S. Parkar, J.—This petition has been filed challenging the detention order issued by respondent No. 1 detaining the petitioner under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, hereinafter referred to as M.P.D.A. Act.

2. The detention order was passed on 24.12.2002 u/s 3 of the M.P.D.A. Act to prevent the petitioner from carrying on dangerous activities. The said order of detention was served on the petitioner on 27.12.2002 and he was taken into custody. At the time of his detention the petitioner was served with the order of detention, the grounds of detention and the documents relied on by the detaining authority. Though the order of detention has been challenged on number of grounds this petition can be allowed on the ground taken in ground 9(I) of the petition. In the said ground it is pointed out that though the in-camera statements of two witnesses have been served along with the documents, there is no mention therein about the same having been verified by the Assistant Commissioner of Police.

3. The grounds of detention mention at the end of paragraph (xi)(b) as follows:

On going through the proposal and finding the verification by Assistant Commissioner of Police, Ambernath Division, I believe the contents of the "in-

camera statements" to be true.

Though the reference is made in the grounds of detention about the verification of the in-camera statements by the Assistant Commissioner of Police, Ambernath Division, it is not disputed on behalf of the respondents that the copy of the two in-camera statements supplied to the detune did not contain the verification of the said statements by the Assistant Commissioner of Police. The perusal of the original file produced by Mr. Patil does show that there was verification made by the Assistant Commissioner of Police in respect of both the in-camera statements recorded by the Inspector of Police. Mr. Patil, however, fairly conceded that the copies of the in-camera statements of the two witnesses supplied to the detune did not contain the verifications by the Assistant Commissioner of Police. In reply to the said ground taken up in the petition the detaining authority in the affidavit dated 5th August, 2003 has only stated that the statements were recorded by responsible officer of the sponsoring police station and they were duly verified by the officer who was of higher rank to the person who recorded the statements. It is further stated that the Assistant Commissioner of Police verified the statements. In paragraph 15(f) of the reply the detaining authority has stated that the verification of in-camera statements of witnesses A and B had been done by the Assistant Commissioner of Police in accordance with law. There is no mention in the reply that the copy of the verification was supplied to the detune.

4. Mr. Tripathi relying on the decisions of this Court has contended that the right of the detune to make representation under Article 22(5) of the Constitution has been violated as the copies of the in-camera statements supplied to the detune did not contain the verification made by the concerned Assistant Commissioner of Police. The reliance is placed on the decision of the Division Bench of this Court in the case of Subhangi Tukaram Sawant Vs. R.H. Mendonca and Others, . In para 3 of the said judgment it is observed as follows:

3. From the grounds supplied to the detune it is apparent that the detaining authority has taken into consideration in-camera statement of witness (A) recorded on 16.9.1999 and in-camera statement of witness (B) recorded on that very date. There is no dispute that the said in-camera statements were recorded by Senior Police Inspector, Saki Naka Police Station and the said in-camera statements were verified by the Assistant Commissioner of Police. However, the copies of in-camera statements supplied to the detune do not contain verification made by the concerned Assistant Commissioner of Police. This has resulted in violation of Article 22(5) of the Constitution of India and vitiates the order of detention.

5. Similar view has been taken by the other Division Benches of this Court, firstly (Coram: Vishnu Sahai and S.K. Shah, JJ.) in the case of Shri Joginder Prakash Piwal v. Shri M.N. Singh Criminal Writ Petition No. 1649 of 2001, decided on February, 2002 and then in in the case of Soma Laxman Khaire v. Shri M.N. Singh Criminal Writ Petition No. 194 of 2002 decided on 8.4.2002 (Coram : D.G. Deshpande and S.K. Shah, JJ.).

6. Apart from that the reliance is also placed on the judgment of the Division Bench of this Court in the case of Smt Kailas Laxman Joshi Vs. B. Akashi Commissioner of Police, Thane and others, . In that decision the importance of verification by higher officer of the statements recorded in-camera is highlighted. It is observed that such verification by higher officer would provide sufficient safeguards for avoiding possible misuse of the power by the lower ranking officers. In the case of Smt. Phulwari Jagdambaprasad Pathak Vs. Shri R.H. Mendonca and Others, the Supreme Court has held that detention under the provisions of the M.P.D.A. Act can be clamped down on the basis of in-camera statements provided they are true and the facts stated therein have a reasonable nexus with the purpose for which the order is passed. When the liberty of a citizen can be curbed on the basis of in-camera statements, it is essential that the veracity and truthfulness of such statements is verified by the higher officer in order to avoid misuse of such power to curb the liberty of a citizen. It is unfortunate that despite the aforesaid view taken in number of decisions of this Court the detaining authorities do not care to supply the copies of verifications of the in-camera statements to the detunees.

7. Though from the original file we notice that the in-camera statements have been verified by the Assistant Commissioner of Police, we are at a loss to know the reason for keeping it back from the detune though the copies of the statements had been furnished to him. The reply affidavit does not explain the reason for not furnishing the copies of the verification of the said statements to the detune along with the in-camera statements and the other documents. Following the view taken by the other Division Benches of this Court, the impugned order of detention is liable to be quashed and set aside on the said ground. It is a case of non-supply of documents relied on by the detaining, authority which affects the right of the detune under Article 22(5) of the Constitution to make an affective representation.

8. In the result this petition is allowed and the rule is made absolute in terms of prayer Clause (c). The detune-Vijay Ramchandra Angre is directed to be released forthwith from his detention unless required in any other case.