

(2000) 01 BOM CK 0058

In the Bombay High Court

Case No : Criminal Writ Petition No. 1407 of 1999

Smt. Sabira Shaikh Raees

APPELLANT

Vs

R.H. Mendonca and Others

RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

Constitution of India, 1950 — Article 19, 22(5), 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)
Penal Code, 1860 (IPC) — Section 143, 147, 148, 224, 225

Citation : (2000) CriLJ 2339 : (2000) 3 MhLj 60

Hon'ble Judges : Vishnu Sahai, J; P.V. Kakade, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; Rajiv Patil, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this Writ Petition preferred under Article 226 of the Constitution of India, the petitioner who styles herself as the wife of the detenu Raees Bashir Shaikh, has impugned the detention order dated 21st July, 1999 passed by the First Respondent Mr. R.H. Mendonca, Commissioner of Police, Brihan Mumbai, detaining the detenu under Sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (No. LV of 1981) (Amendment - 1996) (hereinafter referred to as the MPDA Act).

The detention order along with the grounds of detention, also dated 21st July, 1999, was served on the detenu on 13th August, 1999. True copies of the detention order and the grounds of detention are annexed as Annexures A and B respectively to this writ petition.

2. A perusal of the grounds of detention would show that the impugned detention order is founded on one C.R., namely C.R. No. 265 of 1998 of Sir J.J. Marg Police

Station, Mumbai, u/s 224, 225, 143, 147, 148, 332 and 452, IPC registered on a complaint lodged by Police Constable Pravin Kadam and two in - camera statements of witnesses A and B respectively.

3. We have heard learned counsel for the parties. Since in our view, this petition deserves to succeed on the ground pleaded as ground No. 9 (D) in the petition, we are neither advertent to the other grounds of challenge raised in the writ petition nor to the details of the prejudicial activities of the detenu contained in the grounds of detention, giving rise to the impugned detention order.

4. Ground No. 9 (D) in short is that the detenu is well-versed in Hindi language and the Hindi translation of documents furnished to him suffers from some basic infirmities which have impaired his right to make an effective representation under Article 22(5) of the Constitution of India. Mr. Tripathi learned counsel for the petitioner, amongst others, invited our attention to two infirmities. He urged that in para 5 of the grounds of detention, which are in English, it has been averred that the detenu was a habitual criminal and action taken against him under the normal law of land was found to be inadequate and effective to deter him from indulging in criminal activities prejudicial to the maintenance of public order in the limits and areas in Brihan Mumbai. Mr. Tripathi urged that in the Hindi translation of the said portion of para 5 of the grounds of detention, it has been mentioned in the place of "public order" law and order.

Mr. Tripathi also urged that whereas in para 6 of the grounds of detention, which as said earlier are in English, it has been mentioned that the Detaining Authority was subjectively satisfied that in case the detenu was not preventively detained under the MPDA Act, he would revert to similar activities prejudicial to the maintenance of public order in future, in the Hindi translation of the said portion of para 6 it has been mentioned that he would revert to similar activities prejudicial to the maintenance of law and order in future.

Mr. Tripathi vehemently contended that the aforesaid inaccuracies in the Hindi translation impaired the detenu's right to make an effective representation under Article 22(5) of the Constitution of India. In fact, Mr. Tripathi went to the extent of urging that in case of breach of law and order. MPDA Act would not be attracted.

5. Ground No. 9(D) has been replied to in para 18 of the return of the Detaining Authority. Mr. Rajiv Patil, learned counsel for the respondents strenuously urged that the said grounds is devoid of substance for two reasons namely :-

(a) the detenu knew English and therefore no prejudice was caused to him if there were some minor inaccuracies in the Hindi translation of the grounds of detention; and

(b) there was no mistake of a glaring nature in the Hindi translation which would affect the detenu's right to make an effective representation under Article 22(5) of the Constitution of India.

It is pertinent to mention that the said stand has also been taken in para 18 if his return by the Detaining Authority where ground No. 9(D) has been replied to.

6. We have reflected over the rival submissions and we are constrained to observe that we do not find any merit in Mr. Patil's submission. We make no bones in observing that once the Detaining and Sponsoring Authority decided to furnish a Hindi translation to the detenu, it hardly lay in their mouth to suggest that they had a licence to give the incorrect translation because, the detenu know English and no prejudice would be caused to him on account of some incorrectness in the Hindi translation. We could have appreciated had the Detaining Authority taken the stand that since the detenu knew English, it was under no obligation to supply him the Hindi translation but, we cannot give judicial protection to the mistake in the Hindi translation on account of this fact.

In this connection, it would be pertinent to refer to para 17 of the decision of a Division Bench of this Court, reported in 1987 Cri LJ 1787 (Smt. Shashikala Krishnarao Rane v. Union of India). A perusal of the said para would show that the Marathi translation of the grounds of detention, as also the declaration u/s 9(1) of the COFEPOSA Act supplied to the detenu, contained some mistakes and in spite of the fact that the detenu knew English the Division Bench accepted the contention of the petitioner's counsel (Mr. M.G. Karmali) that they could not be put in the cold storage. We are extracting the relevant portion of the observations contained in the said para which read thus :-

We are inclined to accept this submission made by Mr. Karmali. If the Detaining Authority thought it expedient to furnish the translations even though the detenu knew English, then the detenu was entitled to take advantage of the translations and to point out that the translations which he relied upon did not convey a faithful meaning of the original grounds or the Declaration u/s 9(1) of the Act and were such as to make it impossible for the detenu to communicate and on that ground also the Order ought to be struck down.

7. We are also not inclined to accept Mr. Patil's contention that the inaccuracies in the translation were of a minor nature and did not affect the detenu's right to make a proper and effective representation under Article 22(5) of The Constitution of India.

As we have seen earlier in paras 5 and 6 of the grounds of detention, the word public order was used but, in the Hindi translation of the said paras, public order was translated as law and order.

7A. We regret that public order and law and order are not synonymous. The two terms are distinct in the eyes of law, and so distinct that the breach of law and order would not invite the issuance of a preventive detention order under the MPDA Act but, a breach of public order would.

8. It should be borne in mind that preventive detention is draconian piece of legislation. The law may permit it on the principle of doctrine of necessity; it

being imperative where the prejudicial activities of a person sought to be detained cannot be contained or curbed by the ordinary law of land but, as the Supreme Court observed way back in the year 1981, in the decision reported in Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, at p. 1490, para 4 of Cri LJ :-

Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Article 22(5) read with Article 19, the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu.

(Emphasis supplied)

9. If the said ratio of the Apex Court is to be borne in mind then, there is no getting away from the fact that the translation of the documents supplied to the detenu must be accurate, and where the same is not, as is the case here, the logical imperative, howsoever regrettable from the stand point of law and order, would be that the detenu would have to be released.

10. In the circumstances, we allow this writ petition; quash the impugned detention order; direct that the detenu Raees Bashir Shaikh be released forthwith unless wanted in some other case; and make the Rule absolute.