

(1984) 04 AHC CK 0011

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 12533 of 1983

Suresh Tewari

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-04-1984

Acts Referred:

Arms Act, 1959 — Section 25, 27

Criminal Procedure Code, 1973 (CrPC) — Section 36, 9

Penal Code, 1860 (IPC) — Section 397, 412

Uttar Pradesh Dacoity Affected Areas Act, 1983 — Section 5(1), 5(2), 6

Citation : (1982) 8 ACR 273

Hon'ble Judges : B.N. Sapru, J;A.N. Varma, J

Bench : Division Bench

Advocate : Nand Lal Jaiswal, for the Appellant; Sushil Kumar, G.A., for the Respondent

Judgement

B.N. Sapru, J.—This is an application for issue of a writ of Habeas Corpus filed by Suresh Tewari as also a bail application filed on behalf of Suresh Tewari.

2. The applicant Suresh Tewari has been detained in jail in connection with offences under Sections 397/412 IPC, being Crime No. 33 of 1983 of P. S. Mau, district Banda and under Sections 25/27 Arms Act in Crime No. 51 of 1982 of the same police station.

3. Banda has been declared a dacoity affected area under the U.P. Dacoity Affected Area Act, 1983 (U.P. Act No. XXXI of 1983).

4. The offence for which the applicant Suresh Tewari is being tried, were committed within the limits of Banda. After his arrest, Suresh Tewari was detained in pursuance of a warrant of arrest by the Special Judge, Banda. The Special Judge, Banda by his order dated 20-11-1982 consolidated the two Sessions Trials being Sessions trial No. 277 of 1982 and No. 278 of 1982 and framed charges against the accused persons including the applicant Suresh Tewari on 28-11-1982.

5. Before the trial of the accused persons could start, a transfer application was moved by the State in this Court for transfer of Sessions Trials. The State Government by notification No. 1306/VII-A Nyaya-221/81 dated March 17, 1983 created a Court of Special Judge at Allahabad for the purposes of speedy trial of Sessions trial Nos. 277, 278 and 435 of 1982 pending in the Court of the Special Judge, Banda.

6. The High Court in its administrative side appointed Sri P.N. Roy, the District & Sessions Judge, Allahabad as a Special Judge to try the cases. Sessions trial Nos. 277, 178 and 435 of 1982 commenced before Sri P.N. Roy, Special Judge Allahabad, from 2-1-84 and is going from day to day and a number of witnesses have been examined. The accused persons are detained in Naini Central Jail under the orders of remand passed from time to time by the Special Judge, Allahabad, Sri P.N. Roy, who is trying the cases.

7. The first ground of attack in the Habeas Corpus petition is that since Allahabad is not a dacoity affected area, the Special Judge, Allahabad, cannot be authorised by the Government or the High Court with jurisdiction to try the offences.

8. Under Sub-section (1) of Section 5 of the U.P. Dacoity Affected Areas Act, 1983, the State Government may, in consultation with the High Court, constitute, by notification, as many special courts, as may be necessary in or in relation to such dacoity affected area or areas as may be specified in such notification. Sub-section (2) of Section 5 provides that a Special Court shall consist of a single Judge, who shall be appointed by the High Court from amongst the serving Sessions Judge or Additional Sessions Judges. In the Explanation to that Sub-section it is added that the word "appoint" shall have the meaning assigned to it in the Explanation to Section 9 of the Code of Criminal Procedure, 1973.

9. Section 6 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, a scheduled offence shall be triable only by a special Court.

10. Section 5 of the Act provides for constitution of Special Courts for speedy trial of the offence committed in a dacoity affected area. It does not require that the Special Court constituted u/s 5, Sub-section (1) of the Act shall be located physically within the dacoity affected area.

11. Sri P.N. Roy, the District & Sessions Judge, Allahabad has been appointed as Special Judge to try the Sessions Trial Nos. 277, 278 and 435 of 1982. He is qualified to be appointed as a Special Judge as he is the Sessions Judge, Allahabad. His appointment as Special Judge cannot be said to be illegal.

12. The argument of the learned Counsel for the applicant that the orders of remand passed by him are illegal, cannot be sustained in view of the fact that he is seized of the cases and has jurisdiction to remand the accused into custody.

13. Another argument of the learned Counsel for the Petitioner was that the Petitioner had been transferred from Banda to Naini Central Jail, Allahabad, by

the order of the Chief Judicial Magistrate, Banda, dated 28-5-1982 and the Court at Banda did not remand the accused with effect from 22-11-1982 in Crime No. 33 of 1982 and with effect from 16-4-1982 in Crime No. 51 of 1982 till 18-7-1983 when the Petitioner was remanded by the learned Sessions Judge, Allahabad, in consequence of the order of transfer. This argument has no force as at present the applicant is being detained under proper orders of remand by the Special Judge, Allahabad--See in this connection a Full Bench decision of this Court in the case of Surjeet Singh v. State of U.P. decided on 21-12-1983 by Hon"ble B.N. Katju, J., Hon"ble K.C. Agarwal, J. and Hon"ble R.A. Misra, J.

14. Another argument of the learned Counsel for the applicant is that the detention of the applicant in jail is illegal as Jagdish Singh, Inspector, C. B., C.I.D. Allahabad, was not competent to file the charge sheet in this case, and consequently the order of remand passed by Sri P.N. Roy on the basis of the charge sheet submitted by Sri Jagdish Singh is illegal.

15. By amendment No. 6 dated March 8, 1939, to the Criminal Investigation Department Manual, United Provinces at the end of paragraph 1. Chapter I, Part I it was added:

For these purposes the jurisdiction of all officers of the Criminal Investigation Department extends throughout the United Provinces.

16. Sri Jagdish Singh has been appointed as Inspector, C. B., C.I.D., at Allahabad and by virtue of this amendment his jurisdiction extends to throughout the United Provinces now Uttar Pradesh.

17. By virtue of Section 36 of the Code of Criminal Procedure Sri Jagdish Singh can exercise the powers of a Station Officer as he being the Inspector, C. B., C.I.D. is superior in rank to the Station Officer and he can exercise the powers to investigate which includes the power to submit a charge sheet. In this connection, reference may be made to a decision of this Court in the case of Textile Traders Syndicate Ltd. Vs. State of U.P. and Others, .

18. In the result, we find no merit in the petition for Habeas Corpus which is dismissed.

19. As far as the bail application is concerned, we find no merit in the bail application which is also dismissed.