

(1998) 04 RAJ CK 0026

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 2562 of 1997

Umed Mal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-04-1998

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 4
Constitution of India, 1950 — Article 19, 19(1), 226, 226(1), 226(1A)

Citation : (1999) 1 ALD(Cri) 281 : (1998) CriLJ 3465

Hon'ble Judges : V.S. Kokje, J;V.G. Palshikar, J;P.P. Naolekar, J

Bench : Full Bench

Advocate : V.D. Kalla, for the Appellant; J.P. Joshi, (for Nos. 1 and 2) and K.L. Jasmatiya, Addl. Advocate-General (for No. 3), for the Respondent

Judgement

V.S. Kokje, J.—Petitioner Umed Mai challenged his detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter to be referred as the Act"), by filing this Habeas Corpus Petition which was listed before a Division Bench of this Court as per the rules.

2. On November 27,1997, the Division Bench hearing the matter passed an Order after hearing preliminary objections of the respondents as to the jurisdiction of this Court to entertain the petition. In that Order, the Division Bench took stock of the case law on the point but instead of deciding the question itself, expressed the view that the matter regarding the jurisdiction in such cases needs consideration by a larger Bench. The matter was therefore, directed to be placed before Hon"ble the Chief Justice for Orders on constitution of a larger Bench and on February 04, 1998, Hon"ble the Acting Chief Justice constituted this Full Bench to answer the reference.

3. The factual setting in which the question of territorial jurisdiction of this Court to entertain the Habeas Corpus Petition arose as under :-

4. The petitioner has brought this petition on behalf of his friend Arvind Kumar

Babel, son of Shri Dharmesh K. Babel who has been detained u/s 3(1) of the Act (he shall be referred to hereinafter as "detenue"). The petitioner himself and the detenue claim to be permanent residents of Rajasthan and claim to be residing for the purpose of earning livelihood in Mumbai in the State of Maharashtra. It is alleged in the petition that the petitioner and the detenue were both in Jodhpur in the State of Rajasthan on June 24, 1997. One Shri R.R. Yadav, Sub-Inspector of Police, PCB, CID, Mumbai took the petitioner and the detenue to the Police Station City Police, Jodhpur and later took the detenue in his custody at Jodhpur. It is also alleged that the detenue was served with the detention Order on February 14, 1997 passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence, Bureau. (COFEPOSA UNIT), New Delhi. Grounds of detention and the list of documents were, also served upon the detenue. The petitioner lost contact with the detenue thereafter but according to his information, the detenue was taken away from the State of Rajasthan to Pune in the State of Maharashtra.

5. It is also alleged in the petition that as per the documents supplied to the detenue, the alleged incident, on the basis of which the detention Order was passed, took place on September 24, 1996 when one Shri Ranjan Raghunath Belek"ar was boarding a flight to Bangkok in suspicious circumstances His baggage was checked and huge amount of foreign currency was recovered. As he could not explain properly the source of foreign currency found in his possession, he was taken into custody and was interrogated. It is alleged that said Shri Ranjan Raghunath Belekar disclosed that he had purchased the foreign currency from the detenue. On this the detenue was taken into custody and was allegedly compelled to execute certain documents by adopting third degree methods. The detenue was arrested and produced before the Additional Chief Metropolitan Magistrate, Mumbai and was released on bail on June 30, 1997. The case is still pending in the Court. It is alleged that nothing further was done in the matter till the detention of the detenue at Jodhpur.

6. The territorial jurisdiction for filing the petition at Jodhpur is claimed in the following words in the petition :

That because the detenue has lost his liberty within the territorial jurisdiction of this Hon"ble Court and he was kept in illegal custody by virtue of illegal order issued by the respondent No. 2 and because of this illegal order, liberty of the detenue has been snatched away and as such, the petitioner is filing this writ petition before this Hon"ble Court for quashing of the Order.

7. The respondents have raised preliminary objections in their counter-affidavits in the following terms

It is submitted that the entire activities of Shri Babel were concentrated at Mumbai. The detention order was issued at his residential address at Mumbai directing that he be kept at Yerawada Central Prison, Pune. Cause of Action arose in Mumbai since he was arrested in Mumbai and produced before the Additional

Chief Metropolitan Magistrate, Mumbai where he submitted his bail application and was granted bail on 30-9-96. The proceedings for prosecution are also pending in Mumbai only. Since he had not adhered to the Bail order, the proceeding for cancellation of bail were also initiated at Mumbai. No doubt Shri Arvind K. Babel could be detained at Jodhpur but he was immediately lodged in Yerawada Central Prison, Pune, in compliance with the Detention Order by the Mumbai Police. Therefore, the mere fact that Shri Babel was served with the Detention Order at Jodhpur does not give the petitioner any right to invoke the jurisdiction of this Hon'ble Court. On the contrary and for the facts narrated above, it is most respectfully submitted that this Hon'ble Court be pleased to hold that it has no jurisdiction to entertain the petition in question and the same may be dismissed on this ground alone.

8. Thus the point for determination is whether factual taking into custody of the detinue at Jodhpur in the State of Rajasthan even for purposes of being carried away to Pune for further detention would give rise to cause of action or part of it for clothing this Court with Jurisdiction to entertain a petition for issue of a writ of Habeas Corpus for setting the petitioner at liberty.

9. Cl. (2) of the present Article 226 of the Constitution of India was initially incorporated as Clause (1)(A) by the Constitution (15th Amendment) Act, 1963 and by Constitution (42nd Amendment) Act, 1976 it was renumbered as Cl. (2). By the Amendment, it has been provided that the High Court within the territorial jurisdiction of which cause of action wholly or in part arises, shall exercise the power conferred by Clause (1) of Article 226 irrespective of whether the seat of Government or the Authority to which the writ is to be issued or residences of the persons claiming relief is situated within the territories of that High Court or not. It would be useful to reproduce the clause hereunder.

The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising Jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

10. A bare reading of Cl. (2) of Article 226 would show that the jurisdiction of the High Court, to exercise powers under Article 226(1) may also depend upon the accrual of the cause of action wholly or in part within the territorial jurisdiction of that High Court.

11. In the present case, therefore, the crux of the matter is whether factual detention of the detinue within the territory of Rajasthan in execution of the detention order passed outside the State of Rajasthan for something which is also done outside the State of Rajasthan would supply the cause of action wholly or in part for approaching this Court with a petition for issue of writ of Habeas Corpus.

12. We have heard the learned counsel for the parties and have gone through the cases cited by them as also the cases cited in the Order of reference.

13. In *P. Subramani Vs. State of Karnataka and Others*, the Madras High Court took the view that the High Court of the State in which the detention physically takes place shall have jurisdiction to entertain petition challenging the detention. The learned Judges categorically observed at the end of para 6 of their Judgment as follows:-

In this case, not only the order was served upon the detenu in Salem in Tamil Nadu his liberty was deprived in the same place and the grounds of detention were also served on him at the same place. Therefore, the essential act of detention physically happened in Tamil Nadu as far as the petitioner is concerned and, therefore, a considerable part of the cause of action took place in the State of Tamil Nadu, conferring jurisdiction upon this Court.

14. In *Smt. Manjulaben and Another Vs. C.T.A. Pillay and Others*, of the Judgment, it was observed as follows:-

Now it is clear from the facts of these cases that the detenus have their ordinary place of residence in this State. They were initially detained in the State and were then transferred to the Central Jail at Jaipur. These facts are undisputed. Their detention was continued under the fresh orders of detention issued under the provisions of the impugned Act. The detenus were not set at liberty on the expiry of the previous orders of detention passed under the Maintenance of Internal Security Act, 1971. Under their fresh orders of detention the detenus were kept in the Central Jail, Jaipur. Their initial detention at Baroda is continued. The effect of the impugned orders of detention is that the detenus are prevented to enter the State or to reside or to carry on their business therein. The aforesaid facts furnish a part of cause of action within the territorial limits of this Court and this Court has, therefore, jurisdiction to entertain these writ petitions.

...As initial detention of detenus which was at Baroda is continued, the same furnishes a part of cause of action to the detenus which arises within the jurisdiction of this Court. Moreover the provisions of Article 19, Clauses (d) and (e) also indicate that this high Court has the jurisdiction to entertain these writ petitions under Article 226(1A) as a part of cause of action, namely, initial deprivation of liberty of the detenus took place within the territorial jurisdiction of this Court.

15. In *Ramchand Santumal Bhatia v. Tarun Roy* 1988 Cri LJ 641, a Division Bench of the Bombay High Court squarely dealing with the question of territorial jurisdiction held that the place where detenu is taken into custody and served with order and grounds of detention being within the territorial jurisdiction of a High Court would be sufficient to attract jurisdiction of that High Court. It was also observed that the High Court may in an appropriate case direct the petitioner to move other High Court for relief. In that case the detenu was arrested at Calcutta and was put up before a Magistrate who directed her

enlargement on bail. Then she came to the State of Maharashtra of which she was a permanent resident. The Government of India then passed an Order of detention under the COFEPOSA. This order with the ground was served upon the detinue within the State of Maharashtra and she was then taken to Calcutta. This is how the matter reached the Bombay High Court on presentation of a petition for issue of writ of Habeas Corpus. An argument was advanced in that case that as freedom of movement throughout India guaranteed by Article 19(1) of the Constitution of India was violated in detention matters all the High Courts in India will have jurisdiction to entertain a petition challenging the detention. Negating the contention the Bench observed that if violation of right to freedom guaranteed by Article 19 is to be taken as a criterion, not only Habeas Corpus matters but all the petitions under Article 226 of the Constitution complaining of violations of any of the rights guaranteed by Article 19 would be entertainable by any of the High Courts in India irrespective of the situation of the office or residence of the respondent or the place of accrual of cause of action. It was pointed out that such a construction would defeat the very purpose of amendment incorporated in Clause (2) in Article 226 of the Constitution. The point was further elaborated in the following words 1988 Cri LJ 641 at p. 646:

The Delhi Court in *Smt. Ramadevi v. K.A. Gafoor*, ILR (1976) 1 Delhi 72 considered a similar question at greater length. It went into the history leading to the Constitution (Fifteenth Amendment) Act, 1963. In *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, Chief Justice B.P. Sinha speaking for the majority had observed :-

The concept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing faraway from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 226.

It was this view which led to the introduction of the measure known as the Constitution (Fifteenth Amendment) Act, 1963. The statements of objects and reasons to that Act showed that the then Punjab High Court was the only High Court having jurisdiction under Article 226 of the Constitution vis-a-vis the Central Government. This placed litigants from distant places at a considerable disadvantage. The object of the amendment was to provide relief to litigants seeking redress against any Government, authority or person for any action taken, in permitting them to approach any High Court, provided, the cause of action had arisen within its jurisdiction. For that purpose an amendment was proposed and that is how Article 226(1A) came into the basic code.

In this case, it was further observed distinguishing the decision of the Supreme Court in *State of Rajasthan and Others Vs. Swaika Properties and Another*, as

under 1988 Cri LJ 641 at p. 648:

The analogy of the service of a notice in the above precedent does not appear to be apposite to service of a detention order, when the latter is challenged in a habeas corpus petition. In that case, the actionable cause had arisen antecedent to the service of the notice. In the latter case, the making of the order creates no cause that can be questioned in a writ petition. The cause to do so arises when the detenu is taken into custody to serve out the period of detention. This position is fortified when the detenu is served with the order and grounds of detention at the very time he or she is taken into custody and moved on route to the place where the detention is to be served. Therefore the place where the detention order and grounds are served, would be a place where part of the cause of action has arisen.

Dealing with a single Bench decision of the Punjab & Haryana High Court in *Ujagar Singh and Others Vs. State of Punjab and Others*, it was observed that the convenience of the detaining authority which has to answer such petitions is not an insignificant factor and the conclusion was drawn in the following words 1988 Cri LJ 641 :

To sum up, Ulhasnagar being the place where the detenu was taken into custody and where she was served with the order and grounds of detention, suffice to attract the jurisdiction of this Court. We would however like to make it clear that convenience of the detaining authority and the factor of greater suitability of another forum are not to be ignored. In appropriate cases, a direction to the person questioning a detention to move other Courts also having jurisdiction, may be required to be given.

16. Two single Bench cases of Punjab & Haryana High Court were also cited. In *Ujagar Singh and Others Vs. State of Punjab and Others*, which was considered in Ramchand's case 1988 Cri LJ 641 (Bombay) (supra), the detenues were arrested at Amritsar for commission of offence. They were transferred after their arrest at Amritsar to be tried by the Additional Special Court at Jodhpur. A writ petition was filed in Punjab and Haryana High Court for production of detenues before it and for judicial enquiry in to detenues before it and for judicial enquiry in to the incident which took place in Jodhpur Jail and for transfer of the detenues back to somewhere in the State of Punjab facilitating interviews by their relations and friends. However, in this case, the question of territorial jurisdiction of Punjab and Haryana High Court was not decided and the petitions were rejected by observing that when a sister Court with more efficacy, promptitude and exactitude could hold an enquiry and grant relief it would not be proper to entertain the petition by any other High Court. It was held that Rajasthan High Court at Jodhpur could grant prompt and adequate relief to the petitioner and therefore, the petition was not entertained by the Punjab & Haryana High Courts.

17. In the other case *Manjit Singh Dhingra v. Union of India* ILR (1987) 2 P&

H61 , again Hon"ble Justice Shri M.M. Punchhi (as His Lordship Hon"ble the Chief Justice of India, then was) held that when a person sought to be detained in compliance with an order of detention passed by a State Government, challenge to the detention Order should not be entertained by any other High Court than the High Court of the State, the Government of which passed the detention Order. In that case, the Order of detention was passed in the State of Maharashtra and the petitioner had moved the Punjab and Haryana High Court. This petition was again dismissed reiterating the view taken in Ujagar Singh and Others Vs. State of Punjab and Others, without deciding whether the Punjab and Haryana Court had territorial jurisdiction to entertain the petition. It was again observed that the Bombay High Court could grant adequate relief to the petitioner and he should seek remedy there. In deciding the question of jurisdiction which is before us, these two rulings of the Punjab and Haryana High Court would render little help.

18. In *Sewa Ram v. Union of India* (D.B. Civil Habeas Corpus Petition No. 1243/97), decided on August 27, 1997, a Division Bench of this Court (Hon"ble Mr. Justice P.C. Jain and Hon"ble Mr. Justice Mohd Yamin), held that factually arrest of the person in execution of the detention order passed outside the territories of Rajasthan would not supply cause of action to maintain a petition in the High Court of Rajasthan. The reasoning adopted by the Bench was that the cause of action accrued as soon as the detention Order was passed because it amounted to the intended deprivation of liberty of the detainee. The Bench further observed that upon the happening of the event of passing of the detention Order two remedies were available to the detainee. He could invoke the jurisdiction of the Court having territorial jurisdiction over the place where the detention order was passed or he could have applied for pre-arrest bail to the concerned Court. The Court further observed as follows :-

Since the detainee was invested with the actionable cause of action when the detention order was passed, the invoking of the doctrine of accrual of part of cause of action is totally misconceived and legally unfounded. Part of cause of action, in fact, emanates from the whole cause of action. Hence we do not agree to recognize the right of the detainee to challenge the order of detention by choosing the forum where his arrest was made on the ground of accrual of part of cause of action. u/s 4 of the Act, the detention order can be exhibited (sic) at any place in India. However, the detainee cannot be allowed to choose his forum of action on the basis of his arrest. If such a right is recognized he can regulate his arrest at a particular place for choosing his territorial jurisdiction. We, therefore, hold that the whole of cause of action accrued as soon as the detention order was made. The subsequent arrest of the detainee in the execution of the detention order is of no consequence. It cannot determine the territorial jurisdiction. We, therefore, negative the contention of the petitioner that part of cause of action accrued to the detainee in Rajasthan.

19. Certain other rulings were also cited for the proposition that the petitioner

could not have challenged the detention order before it was served or executed and therefore, the only High Court to which he could approach was Rajasthan High Court. We do not consider that it is necessary for us to pronounce whether the High Court at Bombay or Delhi would have jurisdiction or not. We would confine to the question of jurisdiction of this Court.

20. In order to find out whether detention would supply a cause of action, we will have to go to the meaning of the words cause of action! In Black's Law Dictionary (Fifth edition), it has been defined as under :

Cause of action. The fact or facts which give a person a right to judicial relief. The legal effect of an occurrence in terms of redress to a party to the occurrence. A situation or state of facts which would entitle party to sustain action and give him right to seek a Judicial remedy in his behalf. *Thompson v. Zurich Ins. Co., D.C. Minn, 309 F. Supp. 1178, 1181.* Fact, or a state of facts, to which law sought to be enforced against a person or thing applies. Facts which give rise to one or more relations of right-duty between two or more persons. Failure to perform legal obligation to do, or refrain from performance of, some act. Matter for which action may be maintained. Unlawful violation or invasion of right. The right which a party has to institute a judicial proceeding.

In Biswas Encyclopaedic Law Dictionary, we find the following entry:

Cause of action. Cause of action means every fact which is material to be proved to entitle the plaintiff to succeed every fact which the defendant would have a right to traverse. *Cooke v. Gill, 873 LR SCP 107.* The expression means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to the Judgment of the Court AIR 1949 78 (Privy Council) *W.W. Joshi v. State of Bombay AIR 1959 Bombay 363, 61 Bom LR 829.*

In Mulla's CPC (Fifteenth Edition), it has been described in following terms:

Cause of action, "A cause of action" means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a Judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove; such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to an immediate Judgment must be part of the cause of action. It is, in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit. But it has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It is a media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

21. Applying the above tests, we cannot escape the conclusion that factual detention of a person at a particular place would supply cause of action, for challenging the detention. We respectfully disagree with the view expressed by the Division Bench in *Sewaram's case* (supra) that passing of the detention order supplies the whole and indivisible cause of action which cannot be allowed to be split and since the "part of the cause of action in fact emanates from the whole cause of action it would not supply an independent right to action/There is no legal foundation for such a view which militates against the very concept of part of cause of action. If parts of cause of action have to merge with the whole and on that basis right of action is to be denied, the words cause of action wholly or in part used in Article 226(2) would be otiose and the very purpose of amendment of Article 226 would be lost. If the view in *Sewa Ram's case* (supra) is taken to be correct, it will create a situation where every detainee would have to approach the High Court within whose territorial jurisdiction the detention order was passed irrespective of the place of alleged illegal activity or factual detention. This will defeat the very purpose of Article 226(2). Besides, while attempting to stop anticipated "forum shopping" by the detenus we cannot give the detaining authorities undue liberty to choose their own forum by passing the detention order at a place far away from the theatre of alleged illegal activities as well as the place of apprehension and detention causing great harassment and inconvenience to the detainee, his family and friends. If detention has to retain its preventive character and is not to be allowed to become punitive in practice, if not in law, we have to reject the narrow construction put on the concept of partial cause of action by the Division Bench in *Sewa Ram's case* (supra) and accept a liberal, pragmatic and practical construction which would be in consonance with the letter and spirit of Article 226(2) of the Constitution.

22. In the aforesaid circumstances, we are of the view that *Sewa Ram's case* (D.B. Civil Habeas Corpus Petition No. 1243/97), decided on August 27, 1997 does not reflect the correct position of law. The test to be applied to decide whether this Court would have territorial jurisdiction to entertain a petition or not, is as to whether cause of action wholly or in part has arisen within the territories of the State of Rajasthan or not. If the cause of action wholly or in part has arisen within the territories of the State of Rajasthan then this Court shall have jurisdiction to entertain a petition under Article 226 of the Constitution of India.

23. We are of the opinion that service of the detention order and taking of the detainee in custody in execution of such an order within the territories of the State of Rajasthan shall supply part of cause of action for challenging the detention order. It is a different matter however, that whether to entertain a petition under Article 226 of the Constitution or not is within the discretion of the High Court and in exercise of such discretion, the Court may even say on the grounds of expediency or otherwise that even if it had jurisdiction it shall not exercise it because in its opinion, it would be proper that a petition is brought before a High Court within the territories of which substantial part of cause of

action had arisen or that any other High Court would be able to take cognizance of the matter and grant relief after holding an inquiry with more efficacy promptitude and exactitude. In cases where the High Court finds that the circumstances show that the detenue had himself brought about the situation in which he made himself scarce at the place of incident or of his normal residence and contrived to be taken into custody in the State only to confer jurisdiction on the High Court of that State, it may refuse to entertain the petition in its discretion, but to say that petition would not be entertained in its discretion is different from saying that the Court has no jurisdiction to entertain the petition. Exercising discretion to entertain or not to entertain the petition is also exercising jurisdiction under Article 226 of the Constitution of India.

24. We therefore hold that in this case, because of the service and execution of the detention order within the territories of the State of Rajasthan, this Court will have territorial jurisdiction to entertain the petition. We therefore, answer the reference accordingly. Let the record be sent to the concerned Division Bench immediately.

The reference is answered accordingly.