

(1947) 11 BOM CK 0003
In the Bombay High Court
Case No : Crown Side Petition of 1947

Usha Durgaparsad Bakhale

APPELLANT

Vs

Commissioner of Police

RESPONDENT

Date of Decision : 20-11-1947

Acts Referred:

Bombay Public Security Measures Act, 1947 — Section 21

Citation : (1948) 50 BOMLR 588

Hon'ble Judges : Desai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Desai, J.—The petitioner in this case is the wife of one Durgaprasad Prasannakumar Bakhale. The respondent is the Commissioner of Police, Bombay. The petition states that the respondent got the said Durgaprasad Prasannakumar Bakhale arrested on September 9, 1947, when the house of the said Durgaprasad was searched, but nothing objectionable was found by the police in the house. Nevertheless the respondent detained the said Durgaprasad at the Esplanade police lock-up and on September 11, 1947, the said Durgaprasad was served with a notice dated September 11, 1947, u/s 3 of the Bombay Public Security Measures Act of 1947 and that he has now been detained at the Worli Temporary Prison under Order No. 486 of 1947 purporting to have been issued by the respondent under the said Act. The notice dated September 11, 1947, which was served on Durgaprasad reads as follows :

That you have instigated and actively helped by providing funds to suspect Laxman and his accomplices for the purpose of stabbing Muslims in Kamatipura area and are concerned in stabbing incidents, bomb throwing incidents in Kamatipura area either as an instigator, active helper or actual perpetrator or financier and are thereby acting in a manner prejudicial to the public safety and the peace of Greater Bombay.

2. The petitioner denies all these allegations and sets out the activities useful and innocent in which her husband was engaged. In paragraph 5 of the petition it is stated that it appears that Durgaprasad was arrested in consequence of a statement made by the suspect Laxman. The petitioner submits that the statement of the accused person Laxman cannot justify the respondent in taking action against Durgaprasad under the Bombay Public Security Measures Act and she submits that the order was made on incorrect facts and false information. In paragraph 8 of the petition it is submitted that the order made against Durgaprasad by the respondent was illegal, void and of no legal effect and that the same was not made bona fide in proper exercise of his duty by the respondent. The petitioner prays that the respondent may be ordered to produce Durgaprasad before this Court (which has accordingly been done) and that Durgaprasad be set at liberty.

3. To-day (November 20, 1947), the matter has been argued by Mr. M. N. Talpade on behalf of the petitioner. The first point that he made was that the order of the Government of Bombay published in the Bombay Government Gazette on April 26, 1947, delegating the power u/s 2, Sub-sections (1), (2) and (4), to the Commissioner of Police, Bombay, is not a proper order. He relies on Section 21 of the Bombay Public Security Measures Act of 1947 which provides as follows:

The Provincial Government may by order direct that any power or duty, which is conferred or imposed on the Provincial Government, shall in such circumstances and under such conditions, if any, as may be specified in the order, be exercised or discharged by any officer or authority subordinate to it, not lower in rank than a Deputy Commissioner of Police in Greater Bombay, or the District Magistrate, or Additional District Magistrate elsewhere.

Section 2 (1) says:

The Provincial Government may, if it is satisfied that any person is acting in a manner prejudicial to the public safety, the maintenance of public order, or the tranquillity of the Province or any part thereof, make an order directing that he be detained etc.

4. Now the point that Mr. Talpade is making on Section 21 is that the order made by the Government of Bombay delegating its powers u/s 21 to the Commissioner of Police does not specify the circumstances and the conditions under which the power was delegated. On a bare reading of Section 21 it is clear that it is an absolute power which the Provincial Government has got to delegate, and that it may but is not bound to specify circumstances under which the power is delegated, and it may but it is not bound to impose and set out the conditions under which the power may be exercised. I should point out that this point was not taken in terms by the petitioner in her petition. In my opinion it was necessary to set out this contention in the petition if it was intended to urge it at the hearing, and the allegations which are made in paragraph 8 of the petition

are far too general in terms to allow this contention and the other contentions which I shall now refer to, to be urged. The Advocate General, however, was good enough to allow the point to be urged and I accordingly considered it and arrived at the conclusion mentioned above.

5. So far as Section 2(1) is concerned, Mr. Talpade relies on the words "any person is acting in a manner prejudicial to the public safety." His argument is that the order of September 11, 1947, mentioned a thing which happened in the past, namely, that the detenu had instigated and actively helped by providing funds and weapons to suspect Laxman and his accomplices. Mr. Talpade told me that that was an event which took place in the past about some months before the date of the order. The learned Advocate General was not prepared to accept the correctness of that statement. In my opinion if it was the intention of the petitioner to show that the help given to Laxman was so remote in point of time as to make it an event which the Commissioner of Police should in no circumstances have allowed to affect his judgment, then it was necessary for the petitioner to set out in terms that fact. The Advocate General, however, points out that this incident is not the only thing which influenced the decision of the Commissioner of Police. The order proceeds to say :

And are concerned in stabbing incidents and bomb throwing incidents in Kamatipura area etc. and are thereby acting in a manner prejudicial to the public safety and the peace of Greater Bombay.

I asked Mr. Talpade whether his contention was that it is a condition precedent to the exercise of the power that the person "is acting" at the very moment the order is made. Mr. Talpade was not prepared to push his argument to that extent. In my opinion the petitioner's contention in this behalf is not well-founded in law, In any event the other part of the order shows that no objection could be sustained as to its validity.

6. The other point that was raised by the learned Counsel appearing for the petitioner is that the exercise of the power by the Commissioner of Police is an abuse of his authority. Now it is true that in paragraph 8 of the petition it is stated that the order was not made bona fide in the proper exercise of his duties by the respondent. No particulars are given in support of that statement, and I am inclined to think that for want of particulars, as in the case of fraud where no particulars also are given, that allegation must be treated as non-existent. If it is suggested that the Commissioner of Police was influenced only by the statement made by Laxman, that is not correct as is obvious on a perusal of the terms of the order dated September 11, 1947. It was stated that in fact at this time there were no stabbing incidents. That statement of fact should have found its place in the petition if it was intended to rely on it. I have no material before me to accept that statement as correct.

7. These being the only points urged in support of the application, I am afraid that I have no material before me to enable me to hold that the order dated

September 11, 1947 which, on the face of it, appears to be a valid order, is an abuse of the authority conferred on the Commissioner of Police.

8. I hold that the order was properly made by a person having the necessary authority in that behalf and that it is a valid and binding order.

9. Under the circumstances I dismiss the petition. There will be no order as to costs.