

(2018) 04 RAJ CK 0065
In the Rajasthan High Court
Case No : Habeas Corpus No. 241 of 2017

Vikram Meena And Anr.@APPELLANT@Hash State Of Rajasthan Ors.

Date of Decision : 11-04-2018

Acts Referred:

Rajasthan Prevention of Anti-Social Activities Act, 2006 — Section 2(g), 3(1), 3(2), 13(1)
Indian Penal Code, 1860 — Section 143, 147, 149, 283, 323, 324, 327, 332, 341, 353, 358, 365, 379, 380, 382, 395, 397, 398, 427, 452, 457, 458, 461, 504, 511
Code of Criminal Procedure, 1973 — Section 110, 151
Andhra Pradesh Preventive Detention Act, 1986 — Section 3
Prevention of Damage to Public Property Act, 1984 — Section 3

Citation : (2018) 04 RAJ CK 0065

Hon'ble Judges : MOHAMMAD RAFIQ, J;GOVERDHAN BARDHAR, J

Bench : Division Bench

Advocate : Suresh Dhenwal, B.N. Sandu, Dinesh Kumar Yadav

Final Decision : Dismissed

Judgement

This habeas corpus petition has been filed by Vikram Meena assailing the order of preventive detention dated 07.10.2017 passed by District Collector

-cum- District Magistrate, Sikar, (hereinafter shall be referred to as "the respondent no.2") under Section 3(2) of the Rajasthan Prevention of

Anti-Social Activities Act, 2006 (for short, "the Act of 2006") and also order dated 15/16.11.2017 passed by the State Government under

Section 13(1) of the Act of 2006 affirming the aforesaid order of preventive detention for a period of one year i.e. from 09.10.2017 to 08.10.2018.

Shri Suresh Dhenwal, learned counsel for petitioner, has argued that the impugned orders cannot be sustained being contrary to the provisions of the

Act of 2006 and the material on record and the same are liable to be quashed and set aside. Whatever material was taken into consideration by the

competent authority for passing the impugned order was not sufficient to hold

that he was a dangerous person and that by virtue of his activities, he has become a menace to the society inasmuch as was acting in a manner prejudicial to maintenance of the public order. Learned counsel referred to various offences alleged to have been committed by the petitioner as detailed out in the memo of reply to writ petition filed by the respondent. He submitted that these offences are petty and minor in nature, for example, the alleged offences are under Sections 143, 147, 149, 283, 323, 324, 327, 332, 341, 353, 358, 365, 379, 380, 382, 395, 397 398, 427, 452, 457, 458, 461, 504 and 511 of the IPC and Section 3 of the PDPP Act. The only solitary case which can be said to be of somewhat serious was one under Sections 395, 397, 365 and 398 IPC arising out of F.I.R. No.444/2011 registered with Police Station Bassi, District Jaipur. It is argued that in six cases out of twenty cases, the petitioner has already been acquitted and rest are pending trial. Most of the cases are of theft and are not grave enough to justify exercise of extraordinary power of preventive detention by the respondent State. The petitioner cannot be said to be a habitual offender within the meaning of Section 2(g) of the Act of 2006, as he has not been convicted in a single case. Earliest criminal case was registered against the petitioner on 15.03.2006 and the last one has been registered on 18.02.2017. This has happened only because once the petitioner was booked by the police for petty offence of theft, now he is being implicated in all those cases where the police fails to nab the real culprit. For this reason alone, the police has drawn proceedings against the petitioner under Section 110 of the Code of Criminal Procedure for binding him to maintain peace. The petitioner has not been convicted in a single case. The offence of the petitioner cannot be said to be the offence against the society inasmuch as these kind of offences can be taken care of by ordinary laws as they pertain to law and order situation of the area and the offences are not such which may disturb the peace of the society.

Mr. B.N. Sandu, learned Additional Advocate General, opposed the habeas corpus petition and submitted that the impugned order has been passed by the competent authority after application of mind and keeping in view the history of the petitioner, who has been repeatedly involving himself in one or the other crime. In none of those six cases out of 20 in which the petitioner has been acquitted, the petitioner has been granted honourable acquittal

because all these acquittals have been secured on the basis of the compromise and this happened because no one could muster up courage to depose against the petitioner.

Learned Additional Advocate General submitted that apart from above referred to twenty cases, proceedings under Sections 110 and 151 of the

Cr.P.C. have also been initiated against the petitioner in as many as eight cases and he was bound down to maintain peace and tranquility. Even then,

he has persisted in regularly involving himself in criminal activities. He was thus acting in a manner prejudicial to the maintenance of public order and

his activities were such which adversely affected the maintenance of the public order.

We have given our anxious consideration to rival submissions and also perused the material on record produced by the learned Additional Advocate

General.

Section 3(1) of the Act of 2006 provides that the State Government may, if satisfied with respect to any person that with a view to preventing him

from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be

detained. By invoking the provision of sub-section (2) of Section 3 of the Act of 2006, the State Government has empowered the District Magistrate

with such similar power to be exercised in any area within the local limits of his jurisdiction to the effect that if the State Government is satisfied that it

is necessary so to do, it may, by order in writing, direct that the District Magistrate may also, if satisfied as provided in sub-section (1), exercise the

powers conferred by the said subsection. According to sub-section (3) of Section 3 of the Act of 2006, however, when any order is made by an

authorized officer i.e. the District Magistrate, he shall forthwith report the fact to the State Government together with the grounds on which the order

is made and such particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after

the making thereof, unless, in the meantime, it has been approved by the State Government.

In the present case, the initial order under sub-section (2) of Section 3 was passed by the District Magistrate on 07.10.2017 informing the petitioner

about his proposed preventive detention and also handing over him over the

ground of detention with the advice that if he wanted, he could make a representation to the Government/Advisory Board of the Rajasthan High Court or to the District Magistrate himself. The receipt thereof was given by the petitioner/obtained by the respondent with the grounds of detention along-with the documents being supplied to the petitioner through the Superintendent, Central Jail, Jaipur vide letter dated 09.10.2017. The District Magistrate on 09.10.2017 itself informed the State Government, by forwarding all the material to them, about the preventive detention. The State Government by order dated 13.10.2017 confirmed the order passed by the District Magistrate on 07.10.2017. It is thereafter that the Advisory Board was informed by the Government by letter dated 16.10.2017. The matter was then placed before the Advisory Board, which in its meeting dated 30.10.2017 approved the order of preventive detention of the petitioner. It is thereupon the Government by order dated 15/16.11.2017 affirmed the order dated 07.10.2017 under Section 13(1) of the Act of 2006 and directed that the petitioner shall be detained for a period of one year from 09.10.2017 to 08.10.2018.

A perusal of the material on record clearly indicates that the petitioner has been at regular intervals indulging in criminal activities inasmuch as six cases out of 20 cases, which have been decided so far, resulted in his acquittal, not on merits but owing to the compromise that had been arrived at between the petitioner, who was accused in those cases, and the complainant parties. The allegation of the respondent in this respect is that no witness therein came forward to depose against the petitioner, which is quite clear from the fact that in all those six cases, the petitioner has been acquitted on the basis of compromise. Fourteen cases are still pending. It is not in dispute that majority of the cases registered against the petitioner are of theft. Out of 20, 11 cases are such which involved the offence under Sections 341, 427, 452, 457, 458, 461, 504 and 511 of the IPC and Section 3 of the PDPP Act. Apart from the case for offence under Sections 395, 397, 365 and 398 IPC, the police has been regularly initiating the proceedings under Sections 110 and 151 of the Cr.P.C. inasmuch as on eight occasions he has been bound down by the Executive Magistrate to maintain peace. Even then, the petitioner with regular intervals indulged in commission of offence. In this fact scenario, if the competent authority

found that the activities of the accused cannot be controlled under the ordinary laws, it would be justified in invoking power under the Special Act. In totality of circumstances, findings recorded by the competent authority that the petitioner has become menace to the society and his activities are prejudicial to maintenance of public order and that he was acting in a manner prejudicial to the public order, cannot be said to be without foundation. In fact, the explanation to sub-section (4) of Section 3 provides that for the purpose of this sub-section public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the public at large or any section thereof or a grave or widespread danger to life or property.

The assertion of the respondents that the petitioner has become dangerous person and that he was acting in a manner prejudicial to the maintenance of public order, finds support not only from six cases in which he has been acquitted on the basis of compromise in all of which, but also repeatedly proceedings have been initiated against him by the Executive Magistrate under Sections 110 and 151 of the Cr.P.C., twice in 2010, once in 2011, once each in 2013, 2014, 2015, 2016 and 2017. The chart reproduced in the reply to the petition shows that the petitioner even during this period regularly got himself involved in criminal activities once in the year 2010, twice in the year 2011, on as many as six occasions in 2013, once in 2014, thrice in 2015 and once each in 2016 and 2017. We are therefore not inclined to countenance the argument that for a person to be "habitual" offender within meaning of Section 2(g) of the Act of 2006, even if he has not been convicted in some of the offences, and even when in six cases out of twenty he could secure acquittal because of compromise, which as per the respondent, happened due to his fear in the society. For being "habitual" offender within the meaning of Section 2(g) of the Act of 2006, the petitioner should have committed several acts or omissions, repeatedly, persistently and frequently, having a thread of continuity stringing together similar repetitive acts or omissions, but shall not include isolated, individual and dissimilar acts or omissions. This requirement is satisfied in the facts of the present case.

The Supreme Court in *Subramanian Vs. State of Tamil Nadu & Another*, (2012) 4 SCC 699 was dealing with a case wherein order of preventive

detention was passed under the provisions of T.N. Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas,

Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 on the ground that the detainee was habitual offender, who

acted in a manner prejudicial to maintenance of public order.Â Apart from incident of the year 2011 on the basis of which detention order was

passed, two incidents which took place within a span of six months in 2010 and one incident of 2008 involving detainee were highlighted in the grounds

of detention coupled with definite indication about impact thereof also precisely stated in the grounds.Â All incidents mentioned in the grounds

substantiated subjective satisfaction of detaining authority as to how acts of the detainee were prejudicial to public order and in that context, it was held

by the Supreme Court that past incidents cannot be regarded as stale.

The Supreme Court in *G. Reddeiah Vs. Government of Andhra Pradesh & Another*, (2012) 2 SCC 389 was dealing with a case where preventive

detention order was passed under the provisions of Andhra Pradesh Preventive Detention Act, 1986 as the detainee therein was found involved in

felling, transporting, smuggling of red sanders trees and committing theft of forest wealth for as many as eight times within a year thus, causing

irreparable loss to national wealth.Â It was held that If the Government/ detaining authority is able to satisfy the court that a person either by himself

or in association with other members of a gang habitually commits or attempts or abets such commission of offence punishable under IPC, he can be

detained in terms of the provisions of Andhra Pradesh Forest Act and Forest Rules subject to satisfying Section 3 of 1986 Andhra Pradesh Preventive

Detention Act and such satisfaction should either be reflected in detention order or in affidavit justifying detention order.Â Grounds of detention

therein clearly indicated that the detainee was habitually indulging and was mastermind behind various illegal activities resulting in destruction of forest

wealth and that detaining authority was unable to control him by invoking provisions of ordinary criminal law.Â The detention order was held valid by

the Supreme Court.

The Supreme Court in *Vijay Narain Singh Vs. State of Bihar & Others*, (1984) 3

SCC 14, while dealing with a case arising out of Bihar Control of

Crimes Act, 1981 and dealing with argument as to who would be anti-social element, held that a person habitually committing acts prejudicial to public

order would be for the purpose of said Act an anti-social element.

Observations made by their Lordships in para 31 are under:

31. It is seen from section 12 of the Act that it makes provision for the detention of an anti-social element. If a person is not an anti-social

element, he cannot be detained under the Act. The detaining authority should, therefore, be satisfied that the person against whom an order is made

under section 12 of the Act is an anti-social element as defined in section 2 (d) of the Act. Sub-clauses (ii), (iii) and (v) of section 2 (d) of the Act

which are not quite relevant for the purposes of this case may be omitted from consideration for the present. The two other subclauses which need to

be examined closely are subclauses (i) and (iv) of section 2 (d). Under sub-clause (i) of section 2 (d) of the Act, a person who either by himself or as

a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI dealing

with offences affecting the human body or Chapter XVII dealing with offences against property, of the Indian Penal Code is considered to be an

antisocial element. Under sub-clause (iv) of section 2 (d) of the Act, a person who has been habitually passing indecent remarks to, or teasing

women or girls, is an anti-social element. In both these sub-clauses, the word 'habitually' is used. The expression 'habitually' means

'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and

similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or

omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the

use of the word 'habitually' separately in sub-clause (i), sub-clause (ii) and sub-clause (iv) of section 2 (d) and not in sub-clauses (iii) and (v)

of section 2 (d). If the State Legislature had intended that a commission of two or more acts or omissions referred to in any of the sub clauses (i) to

(v) of section 2 (d) was sufficient to make a person an 'anti-social element', the definition would have run as 'Anti-social element'

means "a person who habitually is". As section 2 (d) of the Act now stands, whereas under sub-clause (iii) or sub-clause (v) of section 2 (d) a single act or omission referred to in them may be enough to treat the person concerned as an "anti-social element", in the case of sub-clause (i), sub-clause (ii) or sub-clause (iv), there should be a repetition of acts or omissions of the same kind referred to in sub-clause (i), subclause (ii) or in sub-clause (iv) by the person concerned to treat him as an "anti-social element". Commission of an act or omission referred to in one of the sub-clauses (i), (ii) and (iv) and of another act or omission referred to in any other of the said subclauses would not be sufficient to treat a person as an "anti-social element". A single act or omission falling under sub-clause (i) and a single act or omission falling under sub-clause (iv) of section 2 (d) cannot, therefore, be characterised as a habitual act or omission referred to in either of them. Because the idea of "habit" involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them they cannot be treated as habitual ones.

The Supreme Court in D.M. Nagaraja Vs. Government of Karnataka & Others, (2011) 10 SCC 215, while dealing with an order of preventive detention passed under the provisions of Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985, held that if the detaining authority has arrived at subjective satisfaction that because of detenee's habituality in committing crimes and violating public order and being not amenable and controllable by normal procedure, it was necessary to detain him under the provisions of the Act of 1985 and passed preventive detention order, such order is not open to interference on the ground that action could be taken against him under ordinary laws.

In view of above discussion of facts and the law, we do not find any infirmity in the subjective satisfaction arrived at by the competent authority in passing the impugned order of preventive detention.

In the result, there is no merit in this habeas corpus petition and the same is accordingly dismissed.