
(2014) 01 MP CK 0096
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5966 of 2013

Vivek Jain

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Copyright Act, 1957 — Section 63, 65
National Security Act, 1980 — Section 12, 14, 3, 3(2), 3(3)
Penal Code, 1860 (IPC) — Section 336, 337, 420, 468

Citation : (2014) CriLJ 3159 : (2014) 4 RCR(Criminal) 348

Hon'ble Judges : S.K. Gangele, J;D.K. Paliwal, J

Bench : Division Bench

Advocate : Arun Pateriya and G.S. Sharma, Advocate for the Appellant;
Raghvendra Dixit, Govt. Advt, Advocate for the Respondent

Final Decision : Allowed

Judgement

D.K. Paliwal, J.—This petition has been filed by Anil Kumar Jain on behalf of his son Vivek Jain for quashing the order of detention (Annexure P/2) passed by the District Magistrate, Gwalior on 11.6.2013 u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act), whereby the petitioner has been taken into custody and detained and the order passed by the State of M.P. (Annexure P/1) approving the detention order passed by the District Magistrate, Gwalior. Factual matrix in brief is that the District Magistrate, Gwalior has passed the order on 11-06-2013 (Annexure P/2) in exercise of powers u/s 3(2) of the National Security Act, 1980 detaining the petitioner for one year. The order passed by the District Magistrate has been approved by the State Government vide order dated 03-08-2013. The order of detention is based on the ground referred to in Annexure P/3 that the petitioner is engaged in manufacturing adulterated Deshi Ghee in the name of branded companies causing danger to the health of the residents/consumers. It is further mentioned that the petitioner had earned huge money from the aforesaid business. It is further mentioned that

nobody was willing to lodge report against the petitioner because he has created terror and fear in the area. It has further been mentioned that on 27.10.2012 S.H.O., Bahodapur, on receipt of the information that petitioner was engaged in manufacturing of adulterated Ghee, has informed the SDM, Gwalior Smt. Vidisha Mukherjee, Shri Rakshpal Singh, CSP, Gwalior, Sushri Savita Saxena, Food Security Officer, Gwalior, thereafter, raid was conducted in the factory premises of the petitioner. The petitioner was found in the house belonging to Ruby Bai along with his associates manufacturing the adulterated Ghee. The Ghee was being packed on the wrapper of Mother Choice trade mark and various other brand wrappers. During raid the articles used for adulteration and also wrappers of various brand names along with about 26 Tins of Dalda, 31 Tins containing Palm oil and also number of cartons containing adulterated Ghee were found. The sample was sent for analysis to the State Food Laboratory, Bhopal, where it was found below standard. The crime No. 506/2012 under Sections 420, 468 of IPC and under Sections 51, 52, 55 of Food Protection and Standard Act, 2011 and Sections 63, 65 of Copy Right Act has been registered. It is further mentioned that on 23.10.2012 the petitioner has also given beating to son of Vinod Kumar and also exploded the Phataka causing injury to the son of the complainant. Upon the report crime No. 501/2012 under Sections 336, 337 of IPC has been registered against the petitioner. On the basis of the recommendation of the Supdt. of Police, Gwalior and after recording statements of witnesses the District Magistrate has directed that the petitioner be detained for one year. The petitioner was also informed that he has right to make representation against the detention order to the State of Madhya Pradesh. The State Government vide order dated 3.8.2013 has confirmed the order of detention upto 11.6.2014 by passing the order Annexure P/1 u/s 12 of the National Security Act, 1980. Being aggrieved the petitioner has filed this petition.

2. Learned counsel for the petitioner has submitted that the impugned action is arbitrary, illegal and contrary to law. It is further submitted that District Magistrate has not informed the petitioner that petitioner should file the representation before the Central Government thus the right of petitioner is adversely affected under Article 22(5) of the Constitution of India. The detention order has been passed on 11.6.2013 and the representation has been sent by the petitioner on 24.6.2013 but the same has been decided on 3.8.2013, thus there is inordinate delay in deciding the representation and there is no explanation about the delay. It is further submitted that the District Magistrate has not supplied the copy of the documents on which he relied upon and passed the impugned order. The District Magistrate and the Secretary has not considered the fact that same offence has been registered against the co-accused Sunil Singh Chouhan but the S.H.O. has not sent the report for taking action u/s 3(2) of National Security Act, 1980 against Sunil Singh Chouhan. Hence the impugned order deserves to be set aside.

3. The learned Government Advocate for the State supported the order.

4. We have considered the submissions of the learned counsel of the parties. As regards not apprising the petitioner of his right to submit representation before the Central Government who has also power to revoke the order of detention is concerned, it is relevant to refer the provision of Section 14 of The National Security Act, 1980, which reads as under:--

"14. Revocation of detention orders.-(1) Without prejudice to the provisions of Section 21 of the Central Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified,-

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (3) of section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984] bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) u/s 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order."

5. The plain reading of aforequoted provision makes it clear that the detention order can be revoked by the State Government as well as by the Central Government. Therefore the detenu must be apprised of his right to submit representation before the State Government as well as Central Government. At this juncture it is also relevant to quote section 8 of the Act which reads as under:-

"8. Grounds of order of detention to be disclosed to persons affected by the order.-(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

6. Thus section 8 of the Act further strengthen the position that detenu be apprised of his right to make representation before the State Government as well as before the Central Government.

7. The Hon''ble Apex Court in the case of Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, has considered this aspect and observed after taking into account several judgments earlier passed on the point as under:-

"14. Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority that has made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation."

8. In the instant case the order passed by the District Magistrate does not disclose that the detenue was apprised of his right to make his representation also to the Central Government. The order passed by the District Magistrate reveals that detaining authority mentioned only that against the detention order detenu has right to file his representation before the Secretary, Home Department nowhere the detenu was apprised of his right to submit his representation before the Central Government, who also has power as per the provisions of Section 14 of the Act.

9. Taking into consideration that the Central Government is also authorized to revoke the detention at any time, the detention order passed by the District Magistrate u/s 3(2) of the Act read with section 3(3) of the Act does not reveal that detenu was apprised of his right to make representation before the Central Government we are of the considered opinion that mandatory provision has not been complied with while passing the order Annexure P/1.

10. In view of the aforesaid discussion, it is not necessary to consider other ground raised by the petitioner because the impugned order deserves to be quashed solely on the ground that the petitioner was not apprised of his right to make his representation also to the Central Government. In view of aforesaid discussion this petition succeeds. The further detention of the detenu in pursuance to the order Annexure P/1 dated 3.8.2013 passed by the Secretary, Home Department, Government of M.P. and order Annexure P/2 dated 11.6.2013 passed by the District Magistrate, Gwalior are hereby quashed. It is directed that detenu be released forthwith from the custody, if not required in connection with any other offence.

The petition is disposed of accordingly.