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Court : Madhya Pradesh

Decided On : Jan-21-2015

Judge : P.K. Jaiswal &Amp; S.C. Sharma

Appeal No. : Writ Petition No. 9284 of 2014

Appellant : Munna

Respondent : State of M.P.

Judgement :

1. By this writ petition, the petitioner is challenging the order of detention dated 12.09.2014 (Annexure P/1), order of confirmation dated 14.11.2014 (Annexure P/3) and further confirmation order dated 29.11.2014 (Annexure P/4) passed under Section 3 (2) of the National Security Act, 1980 (hereafter referred to as "the Act", for brevity) on the ground that the aforesaid order is defective and contrary to the law laid down by the Apex Court in the case of Dharamdas Shamlal Agarwal v. Police Commissioner and another reported in (1989) 2 SCC 370 and the Gwalior Bench decision of M.P. High Court in the case of Tahsildar Singh v. State of MP and others reported in 2010 (2) JLJ 56.

2. The Superintendent of Police, Ratlam submitted a memorandum on 12.09.2014 to the District Magistrate, Ratlam for detention of the petitioner under the provisions of the Act. It has been mentioned by the Superintendent of Police in the memorandum that the petitioner was a notorious criminal and is involved in number of criminal offences. Due to criminal activities of the petitioner, the persons were not willing to come forward to record their evidence in criminal cases and due to the activities of the petitioner, the peace of the area was in danger. The Superintendent of Police mentioned details of the seven criminal cases registered against the petitioner under different sections of the Indian Penal Code, which are as under:

S.No.	Crime No.	Offence under sections	Date of incident
1.	490/2007	13 Gambling Act	28.12.2007
2.	86/2008	25 Arms Act	23.02.2008
3.	311/2008	25 Arms Act	18.06.2008
4.	460/2009	4, 6, and 9 MP Go Hatya Pratishedh Adhiniyam, 2004	16.10.2009
5.	118/2010	25 Arms Act	25.03.2010
6.	184/2012	4, 6, and 9 MP Go Hatya Pratishedh Adhiniyam, 2004	10.04.2012

Certain prohibitory actions against the petitioner are also registered on 18.08.2013, 25.08.2014 and 09.09.2014 under Sections 41 (2) and 110 of the Criminal Procedure Code, 1973.

3. The District Magistrate, as per the memorandum of the Superintendent of Police, perused the record and considering the aforesaid grounds, passed an order of detention under Section 3 (2) of the Act. The grounds are based on the basis of the registration of the criminal cases against the petitioner. The matter was referred to the Advisory Board and the Board also recommended the detention of the petitioner under the Act; and consequently, the State Government by order dated 14.11.2014 (Annexure P/3) affirmed the detention order of the petitioner, after the District Magistrate, which was further extended up to 12.03.2015 by order dated 29.11.2014 (Annexure P/4).

4. Learned counsel for the petitioner has submitted that the order of detention is illegal, because the Superintendent of Police did not consider the facts that the petitioner was acquitted in number of criminal cases in his memorandum to the District Magistrate. Hence, true and proper information has not been supplied by the Superintendent of Police to the District Magistrate and the District Magistrate has formed a wrong satisfaction about the detention of the petitioner under the provisions of the Act. In support of his contention, learned counsel for the petitioner has relied on a judgment of this Court in the case of Geeta Sahu v. District Magistrate, Shahdol and others reported in 2000 (4) MPHT 482.

5. In reply, learned counsel for the respondent / State has submitted that after considering the material available on record and recommendations of the Superintendent of Police and registration of number of criminal cases against the petitioner so also considering the fact that the petitioner is an antisocial element, who indulges himself in antisocial activities and thereby causing fear and terror to the general public and has terrorised the general public of the city of Indore to such an extent that only few people come forward and lodge the first information report whereas there are other persons who although have reported the commission of the offence by the petitioner, but due to the terror of the petitioner they have not garnered enough strength to lodge first information report against the petitioner. The District Magistrate has formed a positive opinion that detention of the petitioner under the provisions of the Act is necessary. The opinion is formed after perusal of the record. Hence, there is no merit in the petition and prays for dismissal of the writ petition.

6. Paragraph at page 7 of the return filed by the State, reads as under:

"It is submitted that the petitioner is an antisocial element, who indulges himself in antisocial activities thereby causing fear and terror to the general public. It is submitted that various FIRs for the offence under the Indian Penal Code were lodged against the petitioner. It is submitted that the petitioner has been indulging in various criminal activities, as a result of which different First Information Reports have been lodged against him by various persons and since 2007 onwards, the same are pending before various courts. It is further submitted that the petitioner has terrorised the general public of the city of Indore to such an extent that only few people come forward and lodge the First Information Report whereas there are other persons who although have reported the commission of the offence by the petitioner, but due to the terror of the petitioner they have not garnered enough strength to lodge First Information Report against the petitioner."

7. As per the detention order and the documents annexed by the respondents, this case pertains to the city of Ratlam, whereas Pratap Singh Ranawat, City Superintendent of Police, Ratlam and Officer-in-Charge of the case, who has signed the return and as per the affidavit he has deposed on oath that he is well conversant with the facts of the case and the contents of the reply are true to his information derived from official record, but in page No.7 of the return has wrongly stated that the petitioner has terrorised the general public of the city of Indore. It seems that without going through the return, he appended his signature on each page of the return and gave incorrect affidavit. This shows how the Government officers deal with the matter.

8. As per the copy of the orders filed by the petitioner, it is not in dispute that in Crime No.86/2008, the petitioner has been acquitted long back. Similarly, in Crime No.311/2008, Crime No.118/2010, Crime No.460/2009 and Crime No.184/2012, he has been acquitted, as is evident from the acquittal orders dated

29,03,2011, 23.11.2011, 07.02.2012 and 15.07.2014 respectively. These orders are on record and the same has also been supplied to the learned counsel for the respondents.

9. In respect of Crime No.545/2014, incident dated 09.09.2014, it is submitted by the learned counsel for the petitioner that the same has been registered against the son of Babu Kasai i.e. against the unknown person and there is no material that on or before the date of initiating proceedings against the petitioner, named FIR has been lodged against the petitioner or challan has been filed against him. Even in the FIR, no name of the petitioner has been mentioned. From the record, it appears that he was arrested on 13.09.2014 i.e. immediately next date of passing of the detention order dated 12.09.2014 under Section 3 (2) of the Act.

10. As per the petitioner, he has been acquitted in six cases out of seven cases registered against him. Other cases were in respect of prohibitory proceedings initiated under the provisions of the Code of Criminal Procedure, 1973. The Superintendent of Police in his memo did not mention the fact that the petitioner has been acquitted by the Criminal Court in criminal cases as stated herein before. It has only been mentioned by the Superintendent of Police that case is registered against the petitioner and charge sheet had been filed before Court. The same facts have been mentioned by the District Magistrate in his order of detention. Relevant part of the detention order dated 12.09.2014 passed in Case No.13/NSA/2014 reads, as under:

Language

11. The Hon'ble Supreme Court in the case of Dharamdas Shamlal Agarwal v. Police Commissioner and another (supra) has held with regard to non-placing the correct and material facts before the Detaining Authority, as under: Though as per Section 6 of the Act the grounds of detention are severable and the order of detention shall not be deemed to be invalid or inoperative if one ground or some of the grounds are invalid, the question that arises for consideration is whether the Detaining Authority was really aware of the acquittal of the detenu in those five cases mentioned under Serial Nos. 2 and 3 on the date of passing the impugned order. It is surprising that the Detaining Authority who has specifically mentioned in the grounds of detention that the petitioner's cases 2 and 3 were pending trial on the date of passing the order of detention has come forward with a sworn statement in reply, filed nearly three months after signing the grounds of detention, that he knew that the accused had been acquitted in both the cases. The averments made in paragraphs 12 and 13 in the affidavit in reply are not clear at what point of time the Detaining Authority came to know of the acquittal of the detenu in both the cases. At any rate, it is not his specific case that the fact of acquittal was placed before him for consideration at the time of passing the impugned order. But what the authority repeatedly states is that "each activity of the petitioner is a separate ground of detention" and adds further that "the fact that the petitioner was acquitted in Criminal Case No. 411/82 and 412/82 is of no consequence ...". We are unable to comprehend the explanation given by the Detaining Authority. It has been admitted by Mr. Poti that the Sponsoring Authority initiated the proceedings and placed all the materials before the Detaining Authority on 14.09.1988 by which date the petitioner had already been acquitted in the above said two cases. Thus, it is clear that either the Sponsoring Authority was not aware of the acquittals of those two cases or even having been aware of the acquittals had not placed that material before the Detaining Authority. So at the time of signing the order of detention, the authority should have been ignorant of the acquittals. Evidently to get over the plea of the detenu in the writ petition in this regard for the first time in the counter, the Detaining Authority is giving a varying statement as if he knew about the acquittal of the detenu in both the cases. As ruled by this Court in Shiv Ratan Makim v. Union of India, AIR 1986 SC 610 at page 613 "even if a criminal prosecution fails and an order of detention is then made, it would not invalidate the order of detention" because as pointed out by this Court in Mohammad Subharti v. State of West Bengal, (1973) 3 SCC 250 "the purpose of preventive detention being different from conviction and punishment and subjective satisfaction being necessary in the former while proof beyond reasonable doubt being necessary in the latter", the order of detention would not be bad merely because the criminal prosecution has failed. In the present case, we would make stress, not on the question of acquittal but on the question of non-placing of the material and vital fact of acquittal which if had been placed, would have influenced the minds of the Detaining Authority one way or the other. Similar questions arose in Sk

Nizamuddin v. State of West Bengal, AIR 1974 SC 2353 in which the detention order was passed under the provisions of Maintenance of Internal Security Act. In that case, the ground of detention was founded on a solitary incident of theft of aluminium wire alleged to have been committed by the detenu therein. In respect of that incident a criminal case was filed which was ultimately dropped. It appeared on record that the history sheet of the detenu which was before the Detaining Authority did not make any reference to the criminal case launched against the petitioner, much less to the fact that the prosecution had been dropped or the date when the petitioner was discharged from the case. In connection with this aspect this Court observed as follows:

"We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. That circumstance might quite possible have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate."

It is true that the detention order in that case was set aside on other grounds but the observation extracted above is quite significant. The above observation was subsequently approved by this Court in Suresh Mahato v. The District Magistrate, Burdwan and Others, AIR 1975 SC 720 and in Asha Devi v. Additional Chief Secretary to the Government of Gujarat and Anr., AIR 1979 SC 447. In the latter case (i. e. Asha Devi), it has been pointed out:

" ..... if material or vital facts which would influence the minds of the Detaining Authority one way of the other on the question whether or not to make the detention order, are not placed before or are not considered by the Detaining Authority it would vitiate its subjective satisfaction rendering the detention order illegal."

12. In Sita Ram Somani v. State of Rajasthan and others, (1986) 2 SCC 86 certain documents which were claimed to have been placed before the Screening Committee in the first instance were not placed before the Detaining Authority and consequently there was no occasion for the Detaining Authority to apply its mind to the relevant material. In the circumstances of that case, a principal point was raised before this Court that there was no application of mind by the Detaining Authority to those vital materials which were withheld. This Court, while answering that contention observed thus: "No one can dispute the right of the Detaining Authority to make an order of detention if on a consideration of the relevant material, the Detaining Authority came to the conclusion that it was necessary to detain the appellant. But the question was whether the Detaining Authority applied its mind to relevant considerations. If it did not, the appellant would be entitled to be released." From the above decisions, it emerges that the requisite subjective satisfaction the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the Detaining Authority one way or the other and influenced his mind are either withheld or suppressed by the Sponsoring Authority or ignored and not considered by the Detaining Authority before issuing the detention order. It is clear to our mind that in the case on hand, at the time when the Detaining Authority passed the detention order this vital fact, namely, the acquittals of the detenu in case Nos. mentioned at Serial Nos. 2 and 3 have not been brought to his notice and on the other hand they were withheld and the Detaining Authority was given to understand that the trial of those cases were pending. The explanation given by the learned counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material factnamely the acquittal of detenu in the abovesaid two cases resulting in nonapplication of minds of the Detaining Authority to the said fact has vitiated the requisite subjective satisfaction, rendering the impugn ed detention order invalid. The Hon'ble Division Bench of this Court in the case of Geeta Sahu v. District

Magistrate, Shahdol and others 2000 (2) MPLJ 618, has held as under with regard to nonmentioning the factum of acquittal or detention in criminal case by the Superintendent of Police in his memorandum sent to the District Magistrate.

13. In the matter of Dharamdas Shamlal Agarwal v. Police Commissioner and another (supra), it is held that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order, will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the Detaining Authority one way or the other and influenced his mind are either withheld or suppressed by the Sponsoring Authority or ignored and not considered by the Detaining Authority before issuing the detention order. In the present case, it is not in dispute before us that the fact regarding acquittal of the petitioner in as many as 13 cases was not brought to the notice of the Detaining Authority. The stress is not on the question of acquittal but on the question of non-placement of the material and vital fat of acquittal which if had been placed, would have influenced the mind of the Detaining Authority one way or the other. The fact of acquittal quite possibly have an impact on the decision of the Detaining Authority whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since the person sought to be detained was acquitted in 13 out of 14 cases and only one criminal case is pending against him, no order of detention should be made for the present and the criminal case should be allowed to run its full course. In the matter of Abdul Razak Nannekhan Pathan v. The Police Commissioner, Ahmedabad, Judgments Today 1989 (3) SC 231, the Supreme Court observed that the cases which were not proximate to the date of the order of detention and were stale could not be taken into consideration and where the person sought to be detained was acquitted of the criminal charges such cases also could not be taken into consideration.

14. From the aforesaid, it is clear that it is mandatory for the Superintendent of Police to mention correct facts in recommending a case of detenu for detention and particularly whether the person has been acquitted in certain criminal case or non-mentioning of the aforesaid facts is fatal in detention of the person. In such circumstances, we are of the opinion that there was no subjective satisfaction of the District Magistrate in ordering the detention of the petitioner, which is necessary as per Section 3 (2) of the Act. Hence, the detention of the petitioner under the provisions of Section 3 (2) of the Act is against the law laid down by the Apex Court as well as by this Court and against the provisions of Section 3 (2) of the Act.

15. Consequently, the writ petition of the petitioner is allowed. The impugned orders dated 12.09.2014 (Annexure P/1), 14.11.2014 (Annexure P/3) and 29.11.2014 (Annexure P/4) are hereby quashed. The petitioner be released forthwith, if his detention is not required in any other offence.

16. A copy of this order be sent to the Chief Secretary of the State of Madhya Pradesh so that necessary directions may be given to the concerned officer for taking appropriate action at his end.

Petition allowed.