

Haridas Deka Vs. State

Haridas Deka Vs. State

SooperKanoon Citation : sooperkanoon.com/135616

Court : Guwahati

Decided On : May-22-1952

Judge : Thadani, C.J.

Appellant : Haridas Deka

Respondent : State

Judgement :

Thadani, C.J.

1. This is a petition by one Haridas Deka under the provisions of Article 226 of the Constitution of India directed against an order of detention passed by the learned District Magistrate, Kamrup, dated 8.1.52, in the exercise of the powers conferred by Sub-section (2) of Section 3 read with Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 3, and Section 4, Preventive Detention Act of 1950 (Act IV (4) of 1950), as amended by the Preventive Detention Act of 1951 (Act IV [4] of 1951) The grounds of detention as communicated to the petitioner are these:

That you were an active member of the revolutionary students front. You were arrested 5 times for your subversive activities and convicted thrice for violating the restriction orders-vide Government order No, 11659.H, dated 3.12.40, 2481.H, dated 24.3.41.

That in the early part of 1947, you enlisted yourself as a member of the R.C.P.I. and took leading part in organizing the Krishak Banua Panchayat, and allied

organisation of the R.C.P.I. in this district, yourself being the General Secretary of the same.

You along with your associates Upen Das, Arabinda Ghose, Haren Kalita, Tarun Sen Deka and others took active part in starting no.rent campaign amongs the cultivators for establishing the Krishak Banua Raj in the State.

That in the later part of 1947 and early part of 1948 you, with your said associates, moved about in the villages under Beltola area and organised a number of meetings at Abomgaon on 9.7.47, 22.3.47, 29.9.47, at Korakuohi on 3.7.47, 12.8.47, at Kotakibari on 15.8.47, 11.10.47, and 23.12.47, Garoghuli on 13.2.48, 14.3.48 and 20.4.48, at Maina kurung on 5.1.43, 16.2.48 and 18.3.43, and in all these meetings, you delivered highly prejudicial speeches urging upon the innocent cultivators to violate the existing law in the state by stopping payment of the contracted paddy to the land owners and land revenue to the Government. You also incited them to use violence even by assaulting the land owners or their agents who happened to visit the localities for collecting dues. As a result of your activities lawlessness prevailed in Beltola and Government was compelled to declare that, area as a disturbed area.

That on 16.8.48 you were detained under A.M.P.O. Act, 1947 for your aforesaid activities and subsequently released on 15.2.49 and interned at your house at Gauhati town. You went underground on 2.3.49 violating the internment order and continued to do so till your arrest on 21.11.51.

That remaining underground, you moved about in the villages under Rangia, Nalbari and Boroma P.Ss elaka on the North Bank and under Gauhati, Palasbari, Choygaon and Boko P.Ss elaka in the South Bank, making anti-Govt. propaganda and organised the village cultivators. In so doing, you organised a number of meetings with your associates named above at Gopalpur on 15.3.49, 25.3.49 and 28.3.49 at Pitambarh at on 18.3.49 and 2.4.49 at Musalpur, on 6.4.49, 8.7.49 and 13.11.49 at Doomuni, on 12.6.49, 15.8.49 and 21.9.49 at Batahbari, on 2.8.49, 17.7.49 and 28.8.49 at Baghamara, on 4.5.49, 8.8.49, 23.12.49 and 30.12.49, at Tihu on 8.1.60, 19.1.50, and 29.1.50, at Belsor on 16.5.49, 6.6.49, 4.12.49, 9.2.50, 17.8.50, 10.4.61 and 15.6.51 at Bonda 19.5.49, 5.6.49, 16.8.50, 9.4.51 at Barduar

Lahanghat area on 22.5.49, 9.6.49, 20.8.50, 15.4.51, in all these meetings you delivered highly prejudicial speeches inciting the cultivators to violence and lawlessness, urging upon them to defy Adhar Protection Bill.

That you, along with your associates, Tarun Sen Deka and others, organised Ganabahini, a militant organisation of the party, collected arms and ammunitions, secretly recruited young men of the villages Under Rangia, Nalbari, Baruma, Gauhati, Palasbari, Choygaon and Boko P.S. elakas and gave them training secretly in the hill camps of the party, with a view to starting an armed revolution for overthrowing the present Government. You also encouraged the villagers to collect party funds by committing dacoity, robbery etc, and if needed, murdering the capitalists, the owners of his firms. You also instigated them to murder the suspected police informer.

That, as a result of your such activities, the cultivators of the tribal area came out in an unlawful assembly and committed outrages at Tihu - vide Boroma Cases No. 7(2) 50 under Section 397, Penal Code, Section (2)50 under Section 426/398, Penal Code, 9(2)50 under Section 395/426, Penal Code, 10(2)50 under Section 436, Penal Code, 11(3)50 under Section 436/395, Penal Code, 12(2)50 under Section 395/426, Penal Code, 13(2)50 under Section 436/148, Penal Code, and Case No. 14(2)50 under Section 436, Penal Code. On secret inquiry, it revealed that you were concerned in all these cases, but there was inadequate evidence against you to support a conviction.

It is not disputed by the State that at the date of the order of detention, namely, 8.1.52, the petitioner was in custody as an under.trial prisoner accused of an offence under the Assam Maintenance of Public Order Act of 1947, According to the petitioner, he was arrested in respect of the alleged offence under the A.M.P.O. Act 1951 on 27.11.51, and confined in a solitary cell in the Gauhati Jail; although the offence of which the petitioner was accused was aailable offence, he was not released on bail and the case was adjourned from time to time. Some 52 days later on 17.1.52, an order of detention passed by the learned District Magistrate of Kamrup, was served upon him while he was in jail custody. The question arises, whether an order passed in these circumstances can be

sustained.

We had occasion to consider this aspect of the case in a case reported in *Labaram v. The State* A.I.R. 1951 Assam 43. The facts in that case were similar to the facts in this case. This Court observed:

When a person is already in detention, it is obvious that another order of detention is not necessary. He is not in a position to act in a manner prejudicial to the maintenance of public order. The detaining authority, in these circumstances, cannot feel satisfied that an order of detention is necessary for any of the purposes mentioned in Section 3 of the Act, for by serving the order of detention on him, the situation does not improve at all, the person on whom the order is served being already in confinement.

2. I cannot regard the present order of detention as having been passed in pursuance of the satisfaction of the learned District Magistrate with respect to the petitioner that it was necessary to pass an order of detention with a view to prevent him from acting in any manner prejudicial to any of the purposes mentioned in Section 3 of the Act. It seems to me that when a person is not free to act at all, as when he is in Jail custody, the question of satisfaction in terms of Section 3 of the Act does not arise. By reason of his confinement as an under trial prisoner in Jail custody, the petitioner was already prevented from acting in any manner prejudicial to the purposes mentioned in Section 3 of the Act. When a person is already prevented from so acting by reason of his detention in Jail custody, it is, I think, futile to say that the detaining authority is satisfied with respect to the petitioner that it is necessary to pass an order of detention against him. The element of satisfaction must necessarily relate to a point of time when a person has freedom of action. If he has no freedom of action as for instance, when he is in Jail custody, as I have said before, the question of satisfaction does not arise.

3. If the detaining authority, by reason of the past or contemplated activities of the petitioner in the future is satisfied that his detention is necessary, then it must give expression to that satisfaction, not when the petitioner is already in Jail custody but after his release. In this view, the petitioner was not liable to be detained on

8.1.1952 or on 17.1.52 when the order of detention was served upon him. If and when he is released from Jail custody and the State Government is still satisfied that it is necessary to make an order of detention so as to prevent the petitioner from acting in a manner prejudicial to the purposes mentioned in Section 3 of the Act, it can if it thinks fit pass a fresh order of detention.

4. Accordingly, I set aside the order of detention passed against the petitioner and direct that he be released and set at liberty forthwith, unless he is otherwise liable to be detained.

5. The rule is made absolute.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com