

Habiram Deka Vs. State

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Court : Guwahati

Decided On : Jun-05-1952

Judge : Thadani, C.J.

Appellant : Habiram Deka

Respondent : State

Judgement :

Thadani, C.J.

1. On 29.5.52, I issued a Rule calling upon the authorities concerned to show cause (1) why the petitioner should not be set at liberty forthwith, and (2) why contempt proceedings should not be drawn up against them for not abiding by this Court's order, dated 22.5.52. On 22.5.52, I set aside the order of detention passed against the petitioner and directed that the petitioner be released unless he was otherwise liable to be detained. It appears that the order of detention was served upon the petitioner when he was undergoing trial for an offence alleged to have been committed under Section 2(7), Assam Maintenance of Public Order Act, 1947.

2. At the heaving of the petition against the order of detention under the Preventive Detention Act (Act IV [4] of 1950 as amended by Act IV [4] of 1951), it was contended on behalf of the petitioner that the case against the petitioner under Section 2(7), A.M.P.C. Act was withdrawn in January 1952. The decision of this

Court on the petition made against the order of detention was that as the petitioner was in custody, he was not liable to be detained under the Preventive Detention Act for the reasons stated in my order, dated 22.5.52, passed in crl. Mis. case No. 9 of 1952.

3. Mr. Sen for the petitioner strongly relies upon the fact that on 12.1.52 the case pending, against the petitioner under Section 2(7), A.M.P.C. Act of 1947 was withdrawn, and that as the case had been withdrawn, the petitioner was not liable to be detained. If this allegation is right, the petitioner, certainly, was not liable to be detained for a moment longer. It was for this reason that I issued a Rule upon the Deputy Commissioner to show cause why the petitioner should not be set at liberty forthwith, and also issued a Rule to show cause why contempt proceedings should not be drawn up against the authorities concerned. The Deputy Commissioner has now submitted an explanation which shows that the order purporting to withdraw the case in January 1952, was communicated by mistake which was discovered later and the mistake was brought to the notice of the Government by a wireless message, dated 13.4.1952, saying that the case against the petitioner under Section 2(7), A.M.P.C. Act, 1947, had been withdrawn by a mistake.

4. Mr. Sen contends that this is an afterthought, and not a mistake, and is the result of the authorities' realizing that the petitioner might be released in view of the decision of this Court in a similar matter. I am not prepared to attribute any mala fides to the authorities concerned, for, there is scarcely any material to justify it. The Additional Deputy Commissioner of Kamrup has pointed out that as far back as 16.4.1952, in the matter of the application made by the petitioner under Article 32 of the Constitution of India to the Supreme Court of India, he filed an affidavit in which he stated that the case filed against the petitioner under Section 2(7), A.M.P.C. Act, 1947, was still pending. All that Mr. Sen can urge with any degree of propriety is that the discovery of the mistake in regard to the communication of the withdrawal of the case against the petitioner in January 1952, was not brought to my notice when the petitioner's petition was being heard by this Court against the order of detention, but I do not think the omission is necessarily evidence of mala fides. Mr. Sen has also relied upon the alleged

refusal of the trying Magistrate to release the petitioner on bail - the offence under Section 2(7), A.M.P.C. Act being a bailable offence. Assuming that the learned Magistrate has declined to enlarge the petitioner on bail in a bailable offence, the proper course for the petitioner is to move the appropriate Court by an application under the Code of Criminal Procedure.

5. The result is that so far as the order of this Court, dated 22.8.1952, is concerned, it has been carried out, for, the Additional Deputy Commissioner, Kamrup, states in his explanation that the order, dated 22.5.1952, of this Court was respected and the petitioner was released from detention under the Preventive Detention Act (vide report of Superintendent, Special Jail, dated 24.5.1952.) As the petitioner was released in conformity with my order dated 22.5.1952, the question of drawing up any contempt proceedings does not arise. As regards the continued detention of the petitioner in the matter of his trial for a bailable offence under Section 2(7), A.M.P.C. Act, 1947, the petitioner is at liberty to take such steps as he is advised, not under Article 226 of the Constitution of India but under the Criminal P.C.

6. The result is that the petition is dismissed, and the Rule discharged.

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