

Emperor Vs. Bashan Madar Korbu

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Court : Mumbai

Decided On : Feb-04-1948

Reported in : (1948)50BOMLR290

Judge : Sen and ;Jahagirdar, JJ.

Appeal No. : Criminal Revision Application No. 20 of 1948

Appellant : Emperor

Respondent : Bashan Madar Korbu

Judgement :

Jahagirdhar, J.

1. This is an application made under Section 491 of the Criminal Procedure Code by the brother-in-law of the detenu Shaikhlal Shamsoddin Kotwal praying that the order of detention passed against him by the District Magistrate of Sholapur on November 25, 1947, be set aside and that he be ordered to be released. The facts of the case are briefly these:

2. The detenu is a resident of Tadavale, in taluka Barsi, District Sholapur. He was arrested on November 22, 1947, at Tadavale, was brought to Sholapur and was kept in Sholapur jail from November 25, 1947, to December 2, 1947. It is the case of the detenu that no order of any detention was shown to him at the time when

he was arrested or when he was kept in Sholapur Jail. Then on December 2, 1947, he was removed to Yeravda Central Prison. About December 8, 1947, a copy of the notice of the grounds of detention under Section 3 of the Public Security Measures Act dated November 25, 1947, was served upon him. The notice, after setting out the grounds for detention, stated that he had a right to make a representation to/the District Magistrate of Sholapur through the Superintendent of Yeravda Central Prison. The present application is filed praying that he may be set at liberty.

3. Two points have been made out by Mr. Peerbhoy, the learned Counsel for the petitioner, viz. that the order of detention by the learned District Magistrate of Sholapur requiring him to be detained at Yeravda is beyond his jurisdiction and therefore null and void, and, secondly, the order is bad because the order passed under Section 2 says that 'he is acting in a manner prejudicial to the public safety, the maintenance of public order, the tranquillity of the Sholapur City. But the grounds mentioned in the notice served upon him under Section 3 have nothing to do with the Sholapur City. The grounds mentioned in that notice are:

Your village is the last village of the border of this district. Your movements have been very suspicious. Your activities these days have been prejudicial to the public peace, safety and convenience of this District.

4. So his contention is that the ground mentioned in the order of detention under Section 2 is at variance with the grounds that are mentioned in the notice served upon him under Section 3, that the grounds are vague and that the learned District Magistrate has not properly applied his mind to the facts of the case.

5. Now, as regards the first point, about the order of detention being ultra vires and beyond his jurisdiction, the contention is that the learned District Magistrate has passed an order under Section 2(1)(a) on November 25, 1947, that the detainee may be detained. On the same day he passed another order purporting to be passed under Section 2, Sub-section (4), directing that the detainee shall be detained, in Yeravda Central Prison. A third order is passed on the same day under Section 3 intimating to him the grounds of detention and informing him that he has a right to make a representation to him against that order through the

Superintendent of Yeravda Prison. So, if these orders are read together, it is clear that the District Magistrate of Sholapur has ordered the detention of the detainee at Yeravda which is outside his jurisdiction. The Notification No. 671 dated April 26, 1947, under which the powers under Section 2 have been delegated to the District Magistrate states that 'the power shall be exercised by the District Magistrate within his own jurisdiction.' So under the Notification the District Magistrate gets his authority to pass an order under the section and he has got to act within his own territorial jurisdiction. It is therefore clear that he cannot pass an order requiring the detainee to be de-tained at Yeravda which is in Poona District. But it is contended by the learned Assistant Government Pleader that the order passed under Section 2(1)(a) is separable from the order passed under Section 2(4) and that the order passed under Section 2(1)(a) is a valid order, though his order passed under Section 2(4) may be an invalid order, and that at a time when the order passed under Section 2(1)(a) was still in force, the Government have by a later order validated the detention of the detainee at Yeravda Jail, that this last order is a perfectly valid order. But we think that this argument cannot be accepted. It is true that Section 2(i)(a) does not require the District Magistrate to pass an order that he shall be detained at any specified place. It merely states that the District Magistrate, provided the circumstances justify it, shall make an order directing that he be detained. But Section 2(4) provides that 'so long as there is in force in respect of any person an order under Clause (a) of Sub-section (1), he shall be liable to be removed to, and detained in, such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline as the Provincial Government may from time to time by general or special order specify.' So Sub-section (4) of Section 2 has got to be read with Section 2(i)(a). An order passed under Section 2(2)(a) if it merely says that he be detained would be incomplete and unenforceable unless some place of detention is mentioned therein, and though under Section 2 the two orders can be separately passed, still we think that the orders passed under Section 2(1)(a) and Section 2(4) have got to be read together and they form one order, and, if that be so, the intention is perfectly clear that the District Magistrate, Sholapur, purported to pass the order detaining him not in Sholapur Jail but in Yeravda Jail. Mr. Peerbhoy has invited our attention to *In re Baburao Shripat Deshmukh* (1947)

Criminal Application Nos. 660 to 662 of 1947. In that case the order of detention was passed by the District Magistrate of East Khandesh and a copy of the order of detention was sent to the Superintendent of Nasik Jail, and the detinue was detained in Nasik Jail, and their Lordships held that such an order was beyond his jurisdiction and he had no power to detain him outside the territorial limits of his District. Their Lord-ships observe as follows:

In all these three cases the detenues have been detained by an order of the District Magistrate at the Nasik Jail. Nasik is not within the jurisdiction of the District Magistrate, East Khandesh, and therefore in ordering their detention outside his jurisdiction he has exercised a power which was not delegated to him under the notification of April 26, 1947. There is no doubt that the Provincial Government can detain a detinue anywhere within the province, but when that power. is exercised by an authority to whom that particular power is delegated, the delegation is circum-scribed by territorial considerations and the detention can only be within his own jurisdiction.

6. So, following this case, we hold that the order of detention passed by the District Magistrate on November 25, 1947, is illegal. As we hold that the original order passed by the District Magistrate, Sholapur, was illegal, the Government have no power to revalidate the same under Section 2(4) of the Act.

7. The second point urged is that the order passed under Section 2 states that the detinue was acting in a manner prejudicial to the public safety, etc. of the Sholapur City.. Now, the order, excepting the name of the detinue, is typed, including the place, 'Sholapur City'. But if we turn to the order passed under Section 3, the grounds mentioned therein have no connection whatsoever with the tranquillity of the City of Sholapur. This itself clearly shows that the learned District Magistrate had not, even applied his mind to the facts of this case at the time when he signed the order of detention under Section 2(i)(a). For this reason also the order has got to be held to be bad.

8. It has been brought to our notice that the order of detention under Section 2(1)(a) has not been served upon the detinue at any time and he was detained without being shown any order of detention from November 28, 1947, to

December 8, 1947, and on December 8, 1947, what was served upon him was not the order of detention under Section 2(1)(a) but a notice under Section 3 setting forth the grounds of his detention. These allegations have been made in the sworn application before us and they have not been contradicted in the affidavit of the District Magistrate, Sholapur, and we think that this is not a very satisfactory position. The attention of the Government is invited to this unhappy position and it is hoped that such a thing will not occur again.

9. We, therefore, allow the application, make the rule absolute, and order that the detainee be released forthwith.

10. The detainee is entitled to his costs from the Government.

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