

Vimala Bai Vs. District Magistrate

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Court : Karnataka

Decided On : Feb-12-1988

Reported in : ILR1988KAR648; 1988(3)KarLJ579

Judge : Prem Chand Jain, C.J. and Shivashankar Bhat, J.

Acts : Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 - Sections 3, 3(2), 3(3), 12 and 13

Appeal No. : W.P. (HC) No. 111 of 1987

Appellant : Vimala Bai

Respondent : District Magistrate

Advocate for Def. : N. Santosh Hegde, Adv. General

Advocate for Pet/Ap. : R.U. Goulay, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Shivashankar Bhat, J.

1. Petitioner challenges the detention of her husband under the provisions of Section 3 of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (Karnataka Act No. 12 of 1985) - hereinafter referred to as 'the Act'. The District Magistrate, Dharwad, made the impugned order which was approved by the State Government on 27-10-1987. The counter-affidavit filed by the District Magistrate states that the detenu was taken into custody on 16-10-1987 and ever since then, he is under detention.

2. The grounds of detention (Annexure-CI) refer to several instances of the detenu's alleged activities of conducting gambling, Mutka and receiving and disposing of theft properties. Several instances of prosecutions launched against the detenu in connection with these activities are cited in the grounds of detention. Out of the ten instances, one ended in the acquittal of the detenu by the Criminal Court and a few cases are pending trial and some are under investigation. These apart, 16 other cases were registered against him right from the year 1976 under the Karnataka Police Act, Excise Act and Immoral Traffic cases which are also listed in the grounds of detention. It is also stated therein that in all these cases, detenu was acquitted. Having regard to these instances, the District Magistrate stated that he was 'satisfied' that the detenu was a 'gambler' as defined in Section 2(f) of the Act and that he was acting in a manner prejudicial to the maintenance of public order as defined in Section 2(a)(iii) of the Act. The grounds further state that to prevent the detenu from committing further anti-social activities, the District Magistrate was compelled to pass the said, detention order, for preventing his antisocial activities through gambling and mutka. Detenu was given opportunity to make any representation against the order to the State Government, through the District Magistrate. It is also pointed out that the requisite material will be placed before the Advisory Board under Section 9 of the Act to enable it to opine as to whether there was sufficient cause for the detention of the detenu. The grounds also pointed out inter alia, that the detenu may, if he so wished, make any representation to the Advisory Board.

3. The above order of the District Magistrate was affirmed by the State Government under Section 3(3) of the Act on 27-10-1987.

4. Sri R.U. Goulay, learned Counsel for the petitioner, canvassed the following points in support of the Writ Petition and urged that the order of detention was invalid, -

(A): The order of detention does not mention the period during which detenu will be detained.

(B): The approval of the State Government was made after the period prescribed under Section 3(3) of the Act.

(C): The several instances referred in the grounds of detention are irrelevant to the making of the order of detention, since the detenu was not connected in any of those cases - either he had been acquitted or some of the cases are still pending. Further, the reference to the 16 cases launched against the detenu in the year 1976, leading to his acquittal, was entirely an irrelevant factor.

(D): The instances referred in the grounds of detention, and the allegations against the detenu, do not constitute such activities which can be termed as prejudicial to 'public order' ; at the most, they are activities touching the question of 'law and order'.

(E): There has been delay in considering the representation of the detenu.

(F): The order of detention cannot be valid beyond a period of 3 months, under Section 3(2) of the Act.

RE: 'A' :

5. It is not a statutory requirement that the period of detention should be specified in the order of detention. In the absence of such a specification Section 13 of the Act will operate, which states the period of detention to be twelve months from the date of detention, when the detention order is confirmed by the Advisory Board under Section 12. However, we may note that the State Government may revoke the order or release the detenu earlier, on a consideration of any representation received by it, or in case, the Advisory Board opines that there was no sufficient cause for the detention of the detenu.

RE: 'B' :

6. Sri Goulay urged that the State Government's order according approval under Section 3(3) was beyond the period of 12 days after the initial order of detention. The learned Counsel urged that the initial order made under Section 3(2) was dated 15-10-1987 which ceased to be effective on the lapse of 12 days i.e., on 26-10-1987 and therefore, there was nothing left for the State Government to approve on 27-10-1987.

7. Section 3(3) states that no order under Section 3(2) shall remain in force for more than 12 days 'after the making thereof. The normal rule as to commencement and termination of time is found in Section 9 of the Karnataka General Clauses Act, which however, excludes the first day in a series of days from consideration when the series of days commence with the word 'from'. Here, Section 3(3) of the Act uses the word 'after' - which is more explicit. The period of 12 days commences, 'after' the date on which the order is made. The date on which the order is made under Section 3(2) therefore is automatically excluded. The word 'after' with reference to a time, conveys the idea of being subsequent to the time when the period has to be computed.

8. In this case, the period of 12 days commences subsequent to 15th October. The first day subsequent to the 15th is 16th October and the 12th day is 27th October. Consequently, it is found that the approval was accorded under Section 3(3) within the prescribed period.

RE: 'C' :

9. Action under the Act is an act of preventive measure. Quite a wide latitude is given to the concerned authorities to take such a measure. The action is based on subjective satisfaction arrived at on a consideration of any relevant material. Detention which results from a conviction at a criminal Court is quite different from such a preventive detention under the Act. Punitive detention, following a criminal trial and conviction meted out by the Court is an aftermath to the crime already committed.

10. The basis for a preventive detention is not imposition of any punishment. The jurisdiction rests solely on a reasonable apprehension that, a person is likely to indulge in an activity, which has to be prevented, in the public interest - here, under the Act, it is to prevent an activity, which is prejudicial to the maintenance of public order. When there is an imminent threat to the maintenance of public order, as envisaged by the Act, the administrative machinery of the State, steps in, to prevent the dangerous activity. In such a situation, it is not possible to hold that, the person whose activity is reasonably suspected as causing prejudice to the maintenance, of public order, should first be convicted of an offence for an action under the Act. If such an argument is to be accepted, there is no need to have such an Act, at all in force, because, the situation will be covered by other legislations like the Indian Penal Code, the Code of Criminal Procedure or the Karnataka Police Act.

11. Nature of such a law has been explained by the Supreme Court in several cases and an extract from one such decision cited before us by the learned Advocate General, in HARADHAN SAHA v. THE STATE OF WEST BENGAL & OTHERS, : 1974 CriLJ1479 reads thus:-

'The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act, One is a punitive action and the other is a preventive act. In one case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section. 3 of the Act to prevent.'

'The power of preventive detention is qualitatively different from punitive detention, The power of preventive detention is a precautionary power exercised in

reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention, An order of preventive detention is also not a bar to prosecution.'

12. Regarding Sri Goulay's contention that reference to the 16 cases launched against the detention in 1976 as irrelevant, the following passage from FITRAT RAZA KHAN v. STATE OF UTTAR PRADESH & OTHERS, : 1982 CriLJ338 may be quoted as an answer :-

'.....The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order.'

RE: 'D' :

13. The learned Counsel for the petitioner further contended that, the entire activity or the series of activities alleged in the grounds of detention may pertain to the question of maintenance of 'law and order' and not 'public order' and therefore question of preventing any activity prejudicial to the maintenance of public order does not arise. Sri Goulay referred the decision in STATE OF U.P. v. HARI SHANKAR TEWARI, : 1987 CriLJ840 to elucidate his proposition. The learned Counsel reasoned that gambling activity does not touch any 'public order', the said activity, at the most, is only a crime, governed by the relevant penal law. The ratio of the aforesaid decision of Supreme Court, is summarised in the head-note thus:

'Conceptually there is difference between law and order and public order but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. Therefore, one has to turn to the facts of each case to

ascertain whether the matter relates to the larger circle (public order) or the smaller circle (law and order). An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquility. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. No hard and fast rule can really be evolved to deal with problems of human society. Every possible situation cannot be brought under watertight classifications and a set of tests to deal with them cannot be laid down. As and when an order of detention is questioned, it is for the Court to apply these well-known tests to find out whether the impugned activities upon which the order of detention is grounded go under the classification of public order or belong to the category of law and order.'

Particular emphasis was laid by Sri Goulay on the observations made in *KANU BISWAS v. THE STATE OF WEST BENGAL*, : 1972 CriLJ1006 quoted by the Supreme Court in the above decision, reads thus :-

'The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the breach of the act upon the society. Public order is, what the French call, something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order as laid down in the above case *Arun Ghosh v. State of West Bengal*, : 1970 CriLJ1136 is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of public order or does it affect merely an individual leaving the tranquility of society undisturbed?'

14. To complete the setting in which the contention has to be appreciated, we also refer to the observations in *ASHOK KUMAR v. DELHI ADMINISTRATION*, : 1982 CriLJ1191 extracted, again by Supreme Court in the above *Hari Shankar Tewari's* case, : 1987 CriLJ840 :-

'The true distinction between the areas of public order and law and order lies not in the nature or quality of the act but in the degree and extent of its reach upon society. The distinction between the two concepts of law and order and public

order is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order while in another it might affect public order. The act by itself therefore is not determinative of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of the public order.'

15. As is clear from the above observations of Supreme Court, the distinction between the area of law and order, and the area of 'public order' is a very fine one. It is also possible for one area to stretch itself into the other area. An activity, normally considered as the one affecting law and order may have its impact on the public order also. A systematic and persistent gambling activity affects the social behaviour of those who indulge in it, having an adverse impact on others. It erodes the human character, it incites the delinquent to theft or begging, it encourages idleness and spreads the lure for easy money, and it certainly attacks the civilised structure of human society.

16. In all those cases before the Supreme Court the statute involved did not define the concept of 'public order' and hence the Supreme Court had to consider the said concept jurisprudentially. However, in the Act before us, the legislature has defined the concept for its purposes. The clauses so far as it is relevant read thus -

2. 'Definitions - In this Act, unless the context otherwise requires, --

(a) 'acting in any manner prejudicial to the maintenance of public order' means, --

(iii) in the case of a gambler when he is engaged or is making preparations for engaging in any of his activities as a gambler which affect adversely or are likely to affect adversely the maintenance of public order;

(f) 'gambler' means a person, who commits or abets the commission of any offence punishable under Chapter VII of the Karnataka Police Act, 1962 (Karnataka Act 4 of 1964) including an offence of gambling relatable to 'matka' and punishable under the said Chapter;

Section 3 reads.

'Power to make orders detaining certain persons - (1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or gambler or goonda or immoral traffic offender or slum-grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such persons be detained.'

17. When the State Government is satisfied about a person being a gambler and the need to prevent him from indulging in the gambling activity, the Act empowers the State Government to take preventive measure by ordering the detention of such a person. Gambling activity, is legislatively recognised, as an activity prejudicial to the maintenance of public order. The constitutional validity of this law has not been questioned. The law, obviously, finds its source, in Entry 3 of List III of Schedule VII to the Constitution. Since the grounds of detention bring the case within the provisions of the Act. and no contention was urged that those grounds are outside the scope of its provisions (apart from relying on the general concept of 'public order' stated in the above referred decisions of Supreme Court) we have no hesitation to reject this contention also.

RE: 'E' :

18. Sri Goulay argued that the order of detention dated 15-10-1987 was served on the same day. The detenu with the help of his Advocate made his representation on 24-10-1987, addressed to the District Magistrate. The State Government, while making its order of approval on 27-10-1987, did not consider this representation at all. This representation was considered and an order rejecting the same was made only on 19-11-1987 which was received by the detenu on 25-11-1987. Thus, there has been nearly a month's delay in considering the representation, apart from the failure of the State Government to consider it before according its approval to the order on 27-10-1987.

19. Question of affording an opportunity to the detenu before the State Government considers the question of according approval to the detention order, does not arise at all. Under Section 3(1), power is conferred on the State

Government to make the order of detention. However this power also may be exercised by such District Magistrate or Commissioner of Police, who is directed to exercise the power by the State Government in a particular area during the specified period, under Section 3(2) of the Act. Proviso thereto restricts the State Government's power to entrust this jurisdiction to the District Magistrate or the Commissioner of Police to a period of three months in the first instance and thereafter, if the situation warrants to extend such period from time to time by any period not exceeding three months at any one time. Section 3(3) requires the approval of the State Government to any order of detention made by these subordinate authorities, which reads thus :-

'When any order is made under this Section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.'

20. Purpose of Section 3(3) is not to afford an opportunity to the detenu to make any representation against the order of detention. Primarily the power of making an order of detention vests in the State Government. However, in respect of a particular area, during a limited specified period, District Magistrate or Commissioner of Police (as the case may be) may be empowered to exercise this power of detention under Section 3(2). This provision enables the State Government to vest an additional jurisdiction during specified periods, obviously, to enable those authorities to take prompt preventive action in those particular areas, without awaiting for the State Government to take a decision. In particular areas, situation may be such that, a constant, vigilant preventive measure may be necessary to achieve the objects of the Act. If in every situation, authorities had to send reports to the State Government and await the orders of detention to be made by the State Government, the delay involved may defeat the very purpose of the Act, i.e., to prevent the dangerous activities prejudicial to the maintenance of public order. Therefore, the Act envisages, entrusting of these jurisdictions in the two high ranking authorities stated in Section 3(2). The order made under Section

3(2) is effective immediately, subject to the approval of State Government. Act has provided for the State Government to be notified of the order made under Section 3(2) expeditiously, so that, within 12 days of the making of the order, State Government may either approve or disapprove the action. This is purely an administrative safeguard provided by the Act, to see that all orders of preventive detention under the Act, ultimately, are to bear the stamp of authenticity of the State Government. At this stage of according approval, the State Government has to consider the report sent to it and the grounds on which the order of detention has been made. State Government may also consider such other particulars which have a bearing on the matter before it. But the approval has to be accorded within 12 days as otherwise, the order issued under Section 3(2) ceases to be operative thereafter. Having regard to the limited objective sought to be achieved by Section 3(3) and the limited period within which, the State Government has to decide the matter, it is not possible to hold that the State Government is under a statutory obligation to consider any representation that may be made or sent by the detenu, immediately on his detention under Section 3(2).

21. Detenu is entitled to make a representation against the detention under Article 22(5) of the Constitution, which is reflected in Section 8 of the Act. Under Article 22(5) of the Constitution it is mandatory that the detenu shall be afforded the earliest opportunity of making a representation against the order of detention. Similarly under Section 8 of the Act such an opportunity is provided to the detenu to make a representation to the State Government. This opportunity is independent and operates entirely at a different level. It does not control the working of the provisions of Section 3(3) of the Act.

22. When a representation is made against an order of detention, State Government has to get clarifications in respect of various statements and allegations found in such a representation. This may require seeking explanations or clarifications from the relevant authorities. To expedite consideration of the representation, normally, the representation of the detenu is to be routed through the authority who made the order of detention. This process of considering the representation may not be complete within the period prescribed under Section 3(3), Hence the first limb of the argument advanced by Sri Goulay has to be

rejected.

23. The second limb involves the question whether, there was delay in considering the representation made by the detenu. Representation is dated 24-10-1987. In paras 3 and 4 of the counter-affidavit, the detaining authority has explained the various stages involved in forwarding the representation and its consideration by the State Government on 19-11-1987 (within about 26 days). The concerned Minister had made the order rejecting the representation. Endorsement to the said effect was sent to detenu on 20-11-1987, which was received by the detenu at Hubli on 25-11-1987. The various dates in respect of different levels of processing the representation, explained in paras 3 and 4 of the counter-affidavit amply justifies the plea taken by the respondents that there has been no delay at all in considering the representation. Consequently this contention of the petitioner fails. The decision in *PIARA SINGH v. STATE OF PUNJAB*, : 1988 CriLJ164 in no way helps Sri Goulay.

RE: 'F' :

24. Petitioner's contention is that under Section 3(2) read with its proviso, the power given to a District Magistrate, to make an order of detention is only for a period of 3 months and thereafter, the said period requires to be extended by specific order of State Government. Section 3(2) with its proviso reads thus :-

3. Power to make orders detaining certain persons, --

(2): If, having regard to the circumstances prevailing or likely to prevail in any area within the local limit of jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (1), exercise the powers conferred by the sub-section;

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do,

amend such order to extend such period from time to time by any period not exceeding three months at any one time.'

25. Section 3(1) vests the power, to make an order of detention, in the State Government. Already, we have explained the purpose behind Section 3(2). It is to enable another authority also to make an order of preventive detention in particular areas without waiting for an order to be made by State Government. Such a power may be vested in the District Magistrate or Commissioner of Police, as the case may be. However, the proviso restricts the period during which the vesting will operate. In other words, under Section 3(2) State Government may say that, in a particular area the District Magistrate may exercise the power of detention under the Act. But the District Magistrate will have the said power initially for three months only (unless State Government restricted this period further). After the initial period, the State Government may extend the period for further period not exceeding three months at any time.

26. When the District Magistrate exercises his power duly vested in him during this period, he exercises the full power of detention vested in the State Government under Section 3(1) - subject to the approval needed for the particular order of detention under Section 3(3). If on the day, the order is made by the District Magistrate, he had the jurisdiction to make the order by virtue of the entrustment by the State Government, the order of detention is as effective as that of an order made under Section 3(1), provided the said order of detention is approved under Section 3(3). The order thus made does not cease to be effective after 3 months. The period of 3 months referred in the proviso has nothing to do with the period of detention. Said period governs the entrustment or competence of District Magistrate to make an order of detention. There is no merit in this contention advanced by Sri Goulay.

27. It was also contended that the order of detention was the result of ill-will developed by some police officials against the detenu. This has been controverted in the counter-affidavit. It cannot be said that the District Magistrate will be swayed by the alleged ill-will of subordinate police officials, - one of whom is stated to be the rank of a Dy.S.P. Further, the State Government has put its seal of approval

under Section 3(3) and it is not possible to attribute any mala fides to the State Government.

28. For the foregoing reasons, we see no merit in the contentions advanced. Consequently the Writ Petition fails and is dismissed.

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