

Dinakar Vs. District Magistrate

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Court : Karnataka

Decided On : Aug-20-1992

Reported in : ILR1992KAR3255

Judge : K.A. Swami, Ag. C.J. and ;A.B. Murgod, J.

Acts : Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985 - Sections - 2, 3(1), 3(2) and 6A; Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers (Amendment) Act, 1985

Appeal No. : W.P. No. 156 of 1992 (HC)

Appellant : Dinakar

Respondent : District Magistrate

Advocate for Def. : P.P. Muthanna, Adv. General and ;B.J. Somayaji, Government Adv.

Advocate for Pet/Ap. : T.J. Chouta, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

K.A. Swami, Ag. C.J.

1. In this Petition under Article 226 of the Constitution filed by the brother of the detenu, the order of detention dated 18th March 1992 bearing No. MAG.II/CR 1373/91-92 passed by the District Magistrate, Dakshina Kannada, Mangalore, Annexure-A and the order dated 8.5.1992 bearing No. HD 278 SST 92 Annexure-B passed by the State Government approving the order of detention at Annexure-A are challenged.

2. Sri T.J. Chouta, learned Counsel appearing for the petitioner has put forth three contentions: (1) that the grounds of detention contain several non-existing grounds and incorrect facts; therefore, the detaining authority was misled by the grounds; as such there was no proper application of mind in passing the order of detention; (2) that the detention order could not have been passed for a period of more than three months having regard to the proviso to Sub-section (2) of Section 3 of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (hereinafter referred to as the 'Act'); and (3) that the incidents mentioned in the grounds of detention covered the period from 13.6.1988 to 16.9.1990 whereas the order of detention was passed on 18.3.1992; as such there was a gap of 1 1/2 years; hence there was no nexus between the grounds of detention and the order of detention. The gap of 1 1/2 years itself would be sufficient to invalidate the order of detention. The learned Counsel for the petitioner also placed reliance on the definition of the expression 'acting in any manner prejudicial to the maintenance of public order' as defined in Section 2 of the Act.

3. Per contra, the learned Advocate General appearing for the State contended that though some of the grounds mentioned in the order of detention were not existing in the sense those cases were decided in favour of the detenu, but nevertheless out of the 15 grounds mentioned in the order of detention, 8 grounds were existing and having regard to the provisions contained in Section 6-A of the Act, the order of detention cannot be held to have been vitiated. It is next contended that the interpretation tried to be placed on Sub-section (2) of Section 3 of the Act by the learned Counsel for the petitioner that the order of detention

cannot be made for a period of more than three months is not warranted because the proviso only empowers the District Magistrate to exercise the power under Sub-section (1) of Section 3 of the Act. In relation to the last contention of the learned Counsel for the petitioner it is contended by the learned Advocate General that from 20.10.1990 to 20.2.1992 the detenu was in judicial custody, as such there was no necessity to pass any order of detention and it became necessary because he was released on bail on 20.2.1992. This fact has also been stated in paras 3(3) and 4 of the grounds of detention. Therefore, the time-gap between the order of detention and the acts alleged to have been committed by the detenu cannot be computed from 20.10.1990 and it has to be computed only from 20.2.1992.

4. We shall now examine the correctness or otherwise of these rival contentions.

5. It is true that out of the 15 grounds stated in para 3(a) to 3(o) of the grounds of detention, ground Nos. 3(c), (f), (i), (j), (l), (n) and (o) were not available on the date the order of detention was passed because in the cases mentioned in those grounds, the detenu was acquitted. However, ground Nos. 3(a), (b), (d), (e), (g), (h), (k) and (m) were available because the criminal cases filed against the detenu for various offences were pending on the date the order of detention was passed.

6. Section 6A of the Act specifically provides that where a person has been detained in pursuance of an order of detention under Sub-section (1) or Sub-section (2) of Section 3, which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are (i) vague, (ii) non-existent, (iii) not relevant etc. Therefore, having regard to the provisions contained in Section 6A of the Act, we are of the view that the contention of the learned Counsel for the petitioner has to be rejected.

6.1. As a part of this contention, it is urged by Sri Chouta, learned Counsel for the petitioner that mentioning of non-existing grounds not only misled the detaining authority but it also demonstrated non-application of the mind, therefore, the order should be held to have been vitiated. Acceptance of this contention would amount

to ignoring the provisions contained in Section 6A of the Act. To avoid such a contention only, Section 6A came to be inserted by Karnataka Act 22 of 1987. Therefore, we are of the view that the fact that some of the grounds mentioned in the grounds of detention are found to be non-existing, is not sufficient to hold that the detaining authority was misled in this regard, as long as the law provides that the detention order must be deemed to have been passed separately on each one of the grounds mentioned therein and some of the grounds, as pointed out above, did exist on the date the order of detention was passed.

7. It is also not possible to accept the contention of the learned Counsel for the petitioner based on Section 3(2) of the Act. Section 3 provides for passing orders detaining certain persons. Sub-section (1) of Section 3 of the Act empowers the State Government to pass an order of detention. Sub-section (2) empowers the State Government to confer its powers under Sub-section (1) of Section 3 of the Act on a District Magistrate. Sub-section (2) of Section 3 with the proviso reads thus:

'If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the 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.'

Thus it is clear that the aforesaid provision only enables the State Government to empower the District Magistrate to exercise the powers conferred upon it under Sub-section (1) of Section 3 of the Act. The proviso thereof provides that such empowering shall not exceed three months in the first instance. Thereafter, if the State Government is satisfied that it is necessary to continue such authorisation, it

may extend such period from time to time but not exceeding three months at one time. Hence the contention based on Sub-section (2) of Section 3 of the Act that the order of detention could not have been passed for a period of more than three months is rejected.

8. It is true that the last act committed by the detenu was on 16.9.1990 as disclosed from the grounds of detention. Several acts of the detenu relied upon by the detaining authority for the purpose of passing the order of detention covered the period from 13.6.1988 to 16.9.1990. During this period of 2 years three months, the detenu, it was alleged, had committed 15 offences. On 20.10.1990, pursuant to a case registered against him in Cr. No. 210/90 of Mangalore East Police Station for the offences punishable under Sections 143, 147, 148, 324, 326, 448, 506 and 307 read with Section 149 I.P.C., the detenu was taken into custody. He continued in judicial custody till 20.2.1992 on which date the learned Sessions Judge, Mangalore, released him on bail. As long as the detenu was in judicial custody, there was no necessity to pass any order of detention. The order of detention came to be passed within one month from the date he was released on bail inasmuch as the order of detention was passed on 18.3.1992 whereas, he was released on bail on 20.2.1992. In the grounds of detention, in para 3(o) and 4, the detaining authority has stated thus:

'3(o) You were arrested on 20.10.90 by police and since then you were in judicial custody till 20.2.1992.

4. Because of the detention in judicial custody, you could not indulge in your habitual goonda activities. Now you have been released on bail by the Hon'ble District and Sessions Court, Mangalore. Based on the material mentioned above which show a continuous habit of committing offences under Chapter, XVI, XVII and XXII of Indian Penal Code right from 13.6.1988 upto 16.9.1990, I am satisfied that if you are allowed to be at large, you will continue to indulge in such activities which will be prejudicial to the maintenance of public order.'

Thus from what is stated above, it is clear that the detaining authority was aware of the fact that there was a time-gap from the date of alleged commission of the last offence and the date on which the order of detention was passed. Therefore,

the detaining authority being aware of the time-gap specifically stated that during that period, the detenu was in judicial custody. The detaining authority further stated that because the detenu was in judicial custody, he could not indulge in habitual goonda activities. Based on the material before it and also having regard to the continuous conduct of the detenu, the detaining authority has opined that the detenu is likely to commit offences as he has been released on bail. The detaining authority has further stated that it is satisfied that if the detenu is allowed to be at large, he will continue to indulge in such activities which will be prejudicial to the maintenance of public order. We are of the view that the satisfaction as recorded by the detaining authority cannot be held to be capricious, unreasonable and without any basis. As such it cannot be held to suffer from any infirmity so as to vitiate the order of detention.

9. Sri Chouta, learned Counsel for the petitioner placed reliance on a Decision of the Supreme Court in HARNEK SINGH v. STATE OF PUNJAB AND ORS., : 1982 CriLJ420 In that case, the time gap between the offences committed by the detenu and the order of detention was from 27.2.1980 to 10th July 1991. During that period, the detenu was on bail and he was all the while attending the criminal cases on the basis of which the order of detention was passed. The relevant portion of the Judgment reads thus:

'The main ground urged in support of the petition is that there is no nexus between the unlawful activities attributed to the detenu and his incarceration. That ground we do not find to be without substance. A case covering offences under Sections 307, 411 and 414 of the I.P.C. amongst others, was registered against the detenu at Police Station, Lopoke in Amritsar District on 27th February 1980 and those offences are the only acts which form the basis of the impugned order. Those acts are also the subject matter of a prosecution launched against the detenu, proceedings in relation to which have been going on in the Court of an Amritsar Magistrate. During those proceedings the detenu was on bail and was appearing in court on every hearing right from January 2, 1981 till he was put behind the bars on 10th July 1981 in pursuance of the impugned order. We are clearly of the opinion that offences which are said to have been committed by the detenu as far back as on 27th February 1980 could hardly form a ground for his detention on a

date as late as 10th July 1981, the gap between the two being well-nigh a year and a half.

No explanation at all has been furnished on behalf of the State as to why action under the Act was not taken at the earliest possible after the alleged commission of the offence which are the foundation of the grounds for detention, In our opinion, the charge is so stale in relation to the detention as not to have any real connection with it. It is further noteworthy that no reason is put-forward for the detenu not being taken in custody in pursuance of the impugned order (for which the detaining authority was moved in the first instance by the Senior Superintendent of Police, Amritsar) right from January 2, 1981 till July 10, 1981 although he appeared in court on all the dates of hearing fixed by the Magistrate during that period. In these circumstances, the detention takes the character of punitive rather than preventive action and is therefore, violated. Accordingly, we strike down the impugned order and direct that the detenu be released from custody forth with.'

Thus it is clear that the facts of that case are quite different from the facts of the present case inasmuch as in the instant case, the detenu was not on bail during the period from 20.10.1990 to 20.2.1992 as he was in judicial custody. Therefore, there was no necessity to pass any order of detention during that period. Hence we are of the view that the aforesaid Decision cannot be applied to the case on hand.

10. The learned Advocate General placed reliance on another decision of the Supreme Court in RAJENDRAKUMAR NATWARLAL SHAH v. STATE OF GUJARAT AND ORS., : 1988 CriLJ1775 In that case, the time-gap was from 2.2.1987 to 28.5.1987. In respect of that period, there was no explanation for the delay. Considering the question of delay, the Supreme Court observed thus:

'Even though there was no explanation for the delay between 2nd February and 28th May 1987, it could not give rise to a legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the grounds and the impugned order of detention. There is a plethora of decisions of

this Court as to the effect of unexplained delay in taking action. These are admirably dealt with in Durga Das Basu's Shorter Constitution of India 8th edition at page 154. We will only notice a few salient decisions. In *OLIA MALLICK v. STATE OF WEST BENGAL* : 1974 CriLJ883 it was held that mere delay in making the order was not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. Since the activities of the detenu marked him out as a member of a gang indulging systematically in the cutting of aluminium electric wire, the District Magistrate could have been well satisfied even after the lapse of five months that it was necessary to pass the detention order to prevent him from acting in a manner prejudicial to the maintenance of the supply of electricity. In *GOLAM HUSSAIN v. COMMISSIONER OF POLICE, CALCUTTA* : 1974 CriLJ938 , it was held that the credible chain between the grounds of criminal activity alleged by the detaining authority and the purpose of detention is snapped if there is too long and unexplained an interval between the offending acts and the order of detention. But no 'mechanical test by counting the months of the interval' was sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action like information of participation being available only in the course of an investigation. The Court has to investigate whether the causal connection has been broken in the circumstances of each case. In *ODUT ALI MIAH or MALWA SHAW v. STATE OF BENGAL* : 1974 CriLJ778 where the decision of the detaining authority was reached after about five months, Krishna Iyer, J. repelled the contention based on the ground of delay as a mere 'reed of straw' and it was held that the 'time-lag' between the dates of the alleged incident and the making of the order of detention was not so large that it could be said that no reasonable person could possibly have arrived at the satisfaction which the District Magistrate did on the basis of the alleged incidents. It follows that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. In *VIJAY NARAIN SINGH v. STATE OF BIHAR* : 1984 CriLJ909 , one of us, Sen, J. observed:

'On merits the impugned order cannot be said to be vitiated because of some of the grounds of detention being non-existent or irrelevant or too remote in point of

time to furnish a rational nexus for the subjective satisfaction of the detaining authority. 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.' (See also GORA v. STATE OF WEST BENGAL : 1975 CriLJ429 , RAJ KUMAR SINGH v. STATE OF BIHAR : 1986 CriLJ2042 and HEMLATA KANTILAL SHAH v. STATE OF MAHARASHTRA : 1982 CriLJ150 .')

Therefore, it is clear from the underlined portion of the Judgment of the Supreme Court that the question of delay cannot be applied mechanically. Whether the delay vitiates the order of detention has to be considered in the light of the facts of each case. The facts of the present case viewed in the light of the observations contained in para 12 of the Judgment in Rajendrakumar Natwarlal Shah's case as reproduced above, it is not possible to hold that there is no nexus between the grounds of detention and the order of detention,

11. It is also not possible to hold that the grounds of detention are stale and as such the definition of the expression 'acting in any manner prejudicial to the maintenance of public order as defined in Section 2(a)(iv) of the Act is not satisfied. The words occurring in Clause (iv) of Sub-section (a) of Section 2 of the Act viz.: 'is engaged or is making preparations for engaging' should not be literally interpreted. In a case where there is no explanation for the time-gap and the detenu is at large during the period when the order of detention is passed and that period is unduly long, it is possible to hold that the grounds of detention are 'stale' and they do not fall within the definition of the words 'acting in any manner prejudicial to the maintenance of public order' occurring in Section 2(a) of the Act. But that is not the position in the instant case. Therefore, we are of the view that the grounds of detention cannot be held to be 'state'.

12. It is also contended by the learned Counsel for the petitioner that it makes no difference whether the detenu is in jail or on bail, as long as the time gap is more than 1 1/2 years, it should be held that there is no nexus between the grounds of detention and the order of detention. It is not possible to accept this contention because during the period from 13.6.1988 to 16.9.1990 the detenu has committed

15 offences and as such the inference drawn by the detaining authority that if he is allowed to remain at large, the detenu will continue to indulge in such activities which will be prejudicial to the maintenance of public order, cannot be held to be without any basis. Therefore, we are of the view that this contention also cannot be accepted.

13. No other contention is urged. All the contentions of the petitioner fail.

14. For the reasons stated above, the Writ Petition fails and the same is dismissed.

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