

S.S. Yusuf Vs. Rex

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Court : Allahabad

Decided On : Aug-11-1949

Reported in : AIR1950All69

Judge : Kidwai, J.

Acts : U.P. Maintenance of Public Order (Temporary) Act, 1947 - Sections 3, 3(1), 3(7), 4 and 5; Government of India Act - Sections 59(2) and 59(3)

Appeal No. : Criminal Misc. Appln. No. 195 of 1949

Appellant : S.S. Yusuf

Respondent : Rex

Advocate for Def. : Nasirullah Beg, Govt.-Adv.

Advocate for Pet/Ap. : B.K. Dhaon, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Kidwai, J.

1. On 31st March 1948, an order was issued under Section 3(1) (a), U. P. Maintenance of Public Order Act for the detention of Shri Santa Singh Yusuf, a

communist leader of Kanpur. He could not, however, be found till 28th May 1948, when he was arrested and incarcerated in the Naini Central prison at Allahabad. He moved an application under Section 491, Criminal P. C., and, by its order dated 24th September 1948, the Allahabad Bench of the High Court held the detention to be illegal and directed the petitioner's release.

2. The petitioner was actually released from confinement on 29th September 1948, but on the same day, on coming out of jail, an order under Section 3 (1) (b), (c) and (f) was served upon him prohibiting his entry into certain districts and directing him to proceed along a particular route and by a particular train to Sitapur where he was to remain within the confines of the Municipality and was to report himself to the Deputy Commissioner, or his nominee, once every week. It was further directed that the petitioner should not participate in any subversive activities nor should he disseminate news or propogate opinions prejudicial to the maintenance of public safety.

3. This order is dated 25th September 1948, i. e., the day after the order of the Court holding Shri Yusuf's detention to be illegal. In an affidavit filed by the Home Secretary in this Court in proceedings questioning the validity of the order, it is, however, stated that it had been decided sometime earlier to issue such an order at the time of the detenu's release in due course (an event which would take place by 30th September) and the order had actually been signed but, before it could issue, information was received of the High Court's decision and the order had to be modified. Thus it came about that the order was issued the day after the High Court's order.

4. In pursuance of the order the petitioner proceeded to Sitapur and on 7th December 1948 he filed, through an advocate, an application under Section 491, Criminal P. C., before the Lucknow Bench. That application came up for hearing before me on 8th February 1949, but since I considered that some important questions of law were involved, I referred the case to a Bench. Accordingly, a Bench took up the case on 18th February. On that day the Government Advocate intimated to the Court that the order which was being challenged had been revoked. On the same day he filed an application in which it was stated:

'That during the period of his stay in Sitapur, the said Shri Santa Singh Yusuf abused the liberty granted to him within the area of Sitapur Municipality and has indulged in activities highly prejudicial to public safety and maintenance of public order.

That as a result of reports received and fresh material that has come to light during the period of his stay at Sitapur the Government are satisfied that it is absolutely necessary to pass an order of detention under Section 3 (1) (a) against the said Shri Santa Singh Yusuf.'

5. A copy of this application was served upon the counsel for the detenu on the same day. Judgment was not pronounced by the Court on that day but five days later since a question of costs and also a matter of contempt, which the detenu alleged had been committed, required consideration and arguments on these points were heard. With regard to the main relief under Section 491, Criminal P. C., the Bench stated:

'When the matter came before us for hearing on the 18th February 1949, the learned Government Advocate intimated to us that the order of 25th September 1949, complained of by the applicant had been revoked on 17th February 1949, by the Provincial Government in exercise of its powers under Section 4, U. P. Maintenance of Public Order Act. A copy of the revoking Order was produced before us. In these circumstances the application under Section 491, Criminal P. C., is infructuous and must be dismissed and it is hereby dismissed.'

6. The order under Section 4 is dated 17th February 1949. On 18th February 1949, before the above order of this Court was pronounced, the accused was arrested again under a new order for detention dated the same day. He has been confined in the Lucknow Jail. The intimation of the grounds for detention required by Section 5 of the Act to be served on the detenu is dated 19th February and was served on the petitioner in jail, He made a representation to the Government, as he was entitled to do, on 29th April 1949. That representation alleges substantially the same fact, as were later alleged in the petition to this Court, though it is more argumentative and more detailed. The Government rejected the representation and informed the detenu of this rejection by a letter dated 21st May 1949,

addressed to the District Magistrate of Lucknow. On 10th June 1949 the present application under Section 491, Criminal P. C., was filed.

7. The original petition was not accompanied by any affidavit since the petitioner was under detention but two affidavits have been filed by the petitioner during the course of arguments and the learned Government Advocate claimed, and was allowed, the right of cross, examination in respect of these affidavits. I have heard arguments, ranging over a wide field, at considerable length and the learned counsel for the petitioner as well as the learned Government Advocate placed practically every reported decision of this Court and its predecessors as well as some unreported decisions of the Chief Court dealing with Sections 3 and 5 of the Act. Reliance was also placed upon some English decisions and decisions of the Judicial Committee and of the Federal Court.

8. The petitioner's learned counsel contended (1) That the order for detention is ultra vires inasmuch as it was issued under instructions from the Hon'ble Police Minister and not of the Governor; that is the recital that the Governor was satisfied is incorrect. (2) That the order is mala fide, the tactics adopted by the Government being intended to circumvent the powers conferred upon the High Court by Section 491, Criminal P. C. The exercise of the power by the Government was, therefore, a fraud upon the Statute and must be deemed to be illegal. (3) That the grounds given in the notice under s. 5 are vague and indefinite and are not sufficient to enable the petitioner to submit an adequate reply. (4) That the allegations made in the notice evidence an infringement of the previous order which has been revoked and that action could, and should, have been taken under Section 3 (7). A failure to do so indicates that the Government was doubtful of the position and was not in fact satisfied of the correctness of the allegations made (5) That the second proviso added later to Section 4 fixes six months as the maximum period for which detention can be ordered and, consequently the detention of the petitioner after 26th March 1949, is illegal.

9. On the other hand, the learned Government Advocate urged that there is no defect, formal or otherwise, in the order and that the order is clear and explicit and supplies all the materials required : to enable the petitioner to show cause against

his detention. He also urged that there was no mala fides or fraud in the promulgation of the order nor did it infringe the provisions of Section 4.

10. With regard to the first point it must be remarked that what the Public Safety Act requires is not the satisfaction of the Governor but of the Provincial Government. Section 59 (1), Constitution Act, however, requires that:

'All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.'

Consequently if the Government was satisfied of the necessity of the action contemplated by Section 3 in this case the order had to contain a recital that the Governor was satisfied and there would be no wrong recital if this was what was actually stated; it would merely be a recital in a form prescribed by Statute.

11. Further, Section 59 (2), Constitution Act provides: 'Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.'

Sub-section (3) empowers the Governor to make rules for the more convenient execution of business and for the allocation among Ministers of the said business. The Governor has made rules empowering among others, the Home Secretary to the Government to authenticate: Vide *Permanand Gaur v. Rex*, A.I.R. (36) 1949 ALL. 128 at p. 132 : (50 Cr.L.J. 138) and *Dr. Rashid Jehan v. Rex*, Cri. Miscs. Appln. No. 108 of 1949. It is not disputed that Shri Govind Narain I. C. S. is the Home Secretary to the U. P. Government and that he has authenticated the order. In view of Section 59 (2), Constitution Act, it is not permissible to call into question the validity of the order on the ground that it was not made by the Governor.

12. In *Emperor v. Sibnath Banerjee*, the Hon'ble the Chief Justice thus propounds the law:

'The first question which arises is whether, having regard to the recital contained in these orders, which on the face of them appear to be validly made, it is permissible for the truth and accuracy of the recital to be inquired into by this Court. It was suggested that Section 59 (2), Constitution Act made it impossible for any such inquiry to take place. In my judgment, however, Section 59 (2) prohibits a duly authenticated order being called in question on one ground and one ground only, namely, that it is not an order or instrument made or executed by the Governor. It is quite a different thing to question the accuracy of a recital contained in a duly authenticated order, particularly where that recital purports to state as a fact the carrying out of what I regard as a condition necessary to the valid making of that order. In the normal course the existence of such a recital in a duly authenticated order will in the absence of any evidence as to its inaccuracy be accepted by the Court as establishing that the necessary condition was fulfilled. The presence of the recital in the order will place a difficult burden on the detenu to produce admissible evidence sufficient to establish even a prima facie case that the recital is not accurate. If, however, in any case a detenu can produce admissible evidence to that effect, in my judgment the mere existence of the recital in the order cannot prevent the Court considering such evidence and, if it thinks fit, coming to the conclusion that the recital is inaccurate.'

13. On appeal, their Lordships of the Judicial Committee approved of the principles enunciated by the Chief Justice and quoted the later portion of his remarks: *Vide Emperor v. Sibnath Banerjee* : See also *Nek Mohammad v. Province of Bihar* A. I. R. (26) 1949 Pat. 1 at p. 8 : (50 Cr. L. J. 44 F. B.)

14. Thus in the present case it is not permissible to enquire into the question whether it was the person holding the office of Governor that was satisfied or not, though an enquiry may be made to determine whether the authority concerned was 'satisfied' or not.

15. In the affidavit filed by the detenu it is stated that the Hon'ble Shri Lal Bahadur Sastri, Police Minister, directed the issue of the order. Under the rules made by the Governor under Section 53 (3), Constitution Act, it is the Minister-in-charge of the portfolios of Police and Transport, consisting of the departments of Police, Home

Affairs and Confidential matters relating to the Police and there is no doubt that Shri Lal Bahadur Sastri is in charge of those portfolios -- who is primarily responsible for tendering advice to the Governor for the disposal of business pertaining to his departments. Thus it was for Shri Lal Bahadur Sastri to tender advice. The question then arises whether he did in fact tender such advice and whether the advice was accepted by the Governor. Here we are again faced with a statutory bar since Section 51 (4), Constitution Act provides;

'The question whether any and, if so what, advice was tendered by Ministers to the Governor shall not be inquired into by any Court.'

16. Thus, in view of the provisions of the Constitution Act the first point raised by the petitioner's learned counsel is barred. I may, however, point out that even if such an enquiry were permissible the evidence adduced in the case--the affidavit filed by the petitioner is not sufficient to discharge the onus which rested upon him to show that recitals in the order were wrong. The statement in the affidavit that the orders were passed by Sri Lal Bahadur Sastri purport to be verified from personal knowledge but the petitioner can have had no personal knowledge of what happens at the Secretariat or the Government House at Lucknow and quite apart, from the legal bar, it was in any case not possible to say the advice was not tendered by Shri Lal Bahadur Sastri and was not accepted by His Excellency the Governor. A similar allegation was fully discussed by my learned brother Desai J. in Cri. Misc. Appln. No. 108 of 1949 *Dr. Rashid Jehan v. Rex*, decided on 2nd June 1949, and for the same reasons as there elaborated in that judgment I have come to the conclusion that it is not proved that it was not the Governor who was satisfied even if it is competent to the Court to make such an inquiry. The first contention must, therefore, be overruled.

17. The second contention was that the order passed was mala fide and is a fraud upon the Statute inasmuch as the facts proved indicate that the Government was bent upon detaining the petitioner by all means and no material exists upon which the Government could reasonably be satisfied as to the necessity for detaining the prisoner. In the course of his rejoinder, the learned counsel developed another point in this connection, namely, that the order was beyond the scope of the Act

because no question of public safety or public order or communal harmony was involved and, at the most, the question of the safety of private property--the Plywood Factory at Sitapur -- or what the learned counsel called 'private order' (which he explained as the maintenance of order within the bounds of a private property) were involved. This was a new point taken for the first time in rejoinder but I allowed it to be taken because it went to the root of the matter. Nevertheless, after hearing the petitioner's learned counsel, I did not feel it necessary to call upon the Government Advocate to reply on this point.

18. With regard to the intentions of Government as regards the petitioner, the facts have already been stated earlier in this judgment. All that those facts show is that there was a delay of five days in carrying out the High Court's order directing the release of the petitioner and that during the course of that delay a fresh order under Section 3 (1) (a) was prepared and served upon the petitioner. The affidavit of the Home Secretary explains that the order of 25th September 1948, was not a new thing considered necessary as a result of the decision of the High Court but had already been decided upon much earlier. Neither from the record of this case nor from the record of the previous application under Section 491, Criminal P. C., filed in this Court can it be ascertained how the delay in the petitioner's release came about. It must be remembered that in respect of this very delay the petitioner, in his previous application to this Court, complained that a contempt of Court has been committed. The Bench disposing of the case, however, felt that all the particulars necessary to enable it to dispose of the contempt matter had not been supplied. It accordingly directed the petitioner to file a separate application for action in contempt giving the necessary particulars. This has, however, not been done and the reason for the delay has never been ascertained. It cannot be assumed that it was deliberate in order to enable the Government to prepare and serve a new order.

19. The second occasion on which the Government is said to have attempted to circumvent the powers of the High Court under Section 491, Criminal P. C., is when it revoked the order under Section 3 (1) (b) and (c), U. P. Maintenance of Public Order Act and then substituted another order under Section 3 (1) (a) of the Act on the day that the petition under Section 491, Criminal P. C., with regard to

the former order was to come up for hearing before this Court. The record of the earlier application discloses that the Government did not resort to any subterfuge in this matter and that there was no attempt to circumvent the powers conferred upon this Court by Section 491, Criminal P. C. On the very day on which the case was heard apart from any oral intimation that may have been given about which there is some conflict between the recollection of the petitioner's counsel and that of the Government Advocate, an application was presented on behalf of the Government giving all the facts and stating that the Government was revoking its previous order merely in order to issue the order, which is challenged by the present application. A copy of that application was served on the petitioner's counsel and it is agreed that the petitioner himself was arrested in pursuance of that order before the Bench concerned had pronounced judgment. It was thus still open to bring all the facts to the notice of the Bench and to pray for its orders. This was, however, not done nor did the Court itself consider that any further orders were required as it would certainly have done had it felt that the substitution of one order by another was merely an effort to circumvent its orders and was consequently a fraud upon the Statute. It is difficult to understand how, in these circumstances, it can be held that the Government had attempted to render nugatory the power of this Court under Section 491, Criminal P. C.

20. The next line of argument in this connection was that the Government could not on the material mentioned in the notice under Section 5 of the Act, be satisfied that the detention of the petitioner was required in the interest of public safety or public order or communal harmony. In support of this contention, it was strongly urged that the law infringed drastically upon the liberty of the subject and that special vigilance by the Court was called for to protect that liberty. This proposition is undoubted and in such cases not only must the law be strictly construed but the Courts must take care to see that every condition which the law lays down has been fulfilled before the liberty of the subject is curtailed.

21. At the same time, it must be remembered that the liberty of the subject is not so sacred that it cannot be curtailed if the legislature in its discretion considers it necessary to do so. Indeed the Indian Penal Code and all penal laws curtail the liberty of the subject if certain conditions are fulfilled, because the interests of the

State require that if these conditions occur, the subject should be deprived of his liberty or even of his life. Similarly, if a competent Legislature considers that circumstances exist which require the curtailment of individual liberty by reason of certain other considerations, there is nothing to stand in its way in passing appropriate legislation. After all liberty is itself the creature of law and depends for its maintenance upon the stability of the State. It is, therefore, quite permissible for the law to take away or curtail what it has given or guaranteed.

22. Furthermore the Courts themselves are creatures of the law and must carry out that law no matter how unreasonable or how tyrannical it might appear to them. For instance, if the Legislature enacted that all members of a particular class or community or family should be deprived of their liberty without trial by the Courts, it might be an unreasonable enactment and might quite possibly provoke a rebellion but nevertheless the Courts would be bound, if such a matter were placed before them, to carry out the law. The functions of the Court are not to circumvent or render nugatory any provisions of the law but to see them carried out. If, therefore, the effect of the words of the enactment are ascertained they must have effect given to them. It is only if the meaning is doubtful that the Court will adopt that construction which is favourable to the subject rather than the one which is unduly severe.

22a. It was contended that the words of Section 3 (1) are doubtful and they should be construed in such a way as to enable the Courts to judge whether reasonable grounds existed for the satisfaction of the Government. He placed great reliance on the judgment of Lord Atkin in *Liversidge v. Sir John Anderson*, 1942 A. C. 206: (1942-1 ALL E. R. 373) in which he held that when an Act of Parliament stated. 'If the Secretary of State has reasonable cause to believe,' it was open to the Courts of law to scrutinize the material available to the Secretary of State and find whether in fact reasonable cause existed. The other Lords present disagreed with this view and held that the satisfaction was that of the Secretary of State and the Court could not substitute its judgment for that of the Secretary of State. That decision related to a different enactment passed in different conditions but the same view has been taken by this Court in a Full Bench decision vide *Durgadas v. Rex* A.I.R. (36) 1949 ALL. 148: (50 Cr. L. J. 59 (F.B.)). In that case my Lord the

Chief Justice states at p. 156 :

'Subject to what I have said above, I am of the opinion that it is not open to the Court to question the reasonableness or otherwise of the satisfaction of the detaining authority.'

The only limitation that learned Chief Justice placed was on the following words :

'If the word 'satisfied' is interpreted to mean the 'subjective satisfaction' or 'the state of mind of the detaining authority' then obviously it is not possible for the Courts to interfere. For, however flimsy, if there is some material it cannot be said that there was absolutely no ground for satisfaction. To my mind 'satisfaction' only means that 'he must be in fact satisfied' or in other words honestly satisfied and not a 'dishonest satisfaction, which will be no satisfaction at all. We have to remember that the satisfaction has to be on the consideration of the materials available to the detaining authority which may not be legal evidence.'

23. The other learned Judges composing the Bench, Raghubar Dayal and Wanchoo JJ. agreed with this view.

24. Similarly in a case decided by a Bench of the Chief Court of Avadh by my brothers Ghulam Hasan and Misra JJ.--vide Ghulam Hussain v. Rex, Cri. Misc. Appln. no. 47 of 1948, decided on 20th April 1948 : (A. I. R. (36) 1949 Oudh 20: 50 Cr. L. J. 260)--among the other principles laid down the following :

'(3) That the satisfaction required under the section must be the satisfaction of the authority issuing the order and it will not be open to the Court to determine the sufficiency of the reasons which induced the aforesaid authority to issue such an order nor to investigate into the evidence upon which that authority was satisfied that it was necessary to detain the person concerned against whom such an order is made.

(4) That the Court in the exercise of its exceptional powers under Section 491 will be competent to determine whether such an order could have been made by a person acting reasonably and in good faith 'and if it be found that the order was made in bad faith or that the authority did not apply its mind in passing the order, it

will set it aside.'

25. Quite apart from the fact that I respectfully agree with the decisions which I have quoted, I sitting as a single Judge am bound by them. It must, therefore, be held that it is only if the material at the disposal of the Government is such that no reasonable person could be satisfied (that is to say there could not be 'honest satisfaction') that the detenu would act in a manner prejudicial to public safety, public order or communal harmony that the Court will interfere and will hold the detention to be illegal.

25a. It was next contended that even if the detenu has done something which is not proper, the notice itself discloses that it is only private rights and private property that is involved and not the public safety. Consequently, it was contended, no reasonable person could be satisfied that the Act was prejudicial to public safety or public order and the order is beyond the scope of the Act and is ultra vires. It is true that the acts mentioned are all acts which primarily endanger the proper working of the Plywood Factory at Sitapur but it does not follow that their repercussions will not extend beyond. The learned counsel for the petitioner was constrained to admit that if for instance, a strike was advocated in all the mills at Kanpur or in all the mills belonging to a particular group of private mill owners, it might well be considered that it was prejudicial to the public safety or public order and an order might well be passed under Section 3 (1) of the Act. The distinction thus is not between the protection of private property and the maintenance of public safety.

26. Further the section does not authorise the detention of any person who has acted in a manner prejudicial to public safety etc. but only of a person who is to be prevented from acting in a prejudicial manner. Thus even if a man has acted in a manner prejudicial to the public safety in the past but the circumstances disclose that there is no likelihood of his acting in such a manner in the future, there will be no justification for his detention. If on the other hand he has not so acted in the past but his conduct is such that it is apprehended that he will so act in the future his detention will be proper. The enactment is not penal but preventive and the past conduct of a person is only to be considered in so far as it provides a clue to

what is expected of him in the future. If the authority to be satisfied is convinced that the actions of the detenu, though they relate to private property in the past, give an indication that he will so conduct himself in the future as to cause prejudice to public safety or public order, it is not for the Court to sit in judgment over this.

27. Further, as has been remarked in the Full Bench case the satisfaction may depend upon materials available to the detaining authority which may not be legal evidence at all. Thus it might well be that the Government has in its archives materials for showing what the repercussions of actions such as those complained of will be upon the economic stability of the State and might form its opinion upon material, upon which Courts of law are not expected to act.

28. Again the decision in *Liversidge v. Sir John Anderson*, 1942 A. C. 206 : (1942-1 ALL. E. R. 373), clearly negatives the contention because in that case the order refusing to allow the detenu to summon evidence in possession of the Secretary of State upon which he had come to the conclusion that the detention was necessary was upheld. If it was for the Court to enquire whether any particular act had a prejudicial effect upon public safety all the evidence on the point should be before the Court and the refusal to summon that evidence would be unjustified.

29. The petitioner's learned counsel relied upon the interpretation placed by the Madras High Court in *re. Appalaswamy*, A. I. R. (29) 1942 Mad, 735 : (44 Cr. L. J. 143) on R. 38 of the Rules framed under the Defence of India Act: In that case Horwill J. held that action under Section 38 in respect of a strike brought about in a mill providing war material to get redress for a supposed wrongful dismissal of a worker, was not justified although such a strike had the effect of impeding the war effort. The words of Section 38 were, however, different and they justified the doing of a 'prejudicial act' if it was with 'lawful authority or excuse'. The High Court held that the conduct of the persons responsible for the -strike, although it was a prejudicial act, had a lawful excuse, namely, the redressing of the legitimate grievances of the workers and was not an offence. The authority, therefore, is not applicable to the present case. The second contention of the petitioner's learned advocate must also, therefore, be overruled.

30. On the third point, a large number of decisions were placed before me by the learned counsel for the parties but it is not necessary for me to consider them all because in *Durgadas v. Rex*, A. I. R. (36) 1949 ALL. 148 : (50 Cr. L. J. 59 F. B.), a Pull Bench of this Court has held that the question has to be decided upon the basis of particulars supplied in each case and it has laid down the following principles for deciding whether the particular supplied are sufficient or not:

'(b) The grounds and particulars must not be vague, indefinite or incomplete and must convey sufficient information to the detenu to enable him to make a representation that the detaining authority was wrong in its belief that his detention was necessary in the interest of public safety etc.

(c) the grounds and particulars supplied under Section 5 should show that the detention is within the scope and object of the Act. If the detention is beyond the scope and object, of the Act the detention must be held to be illegal;

(d) the detenu is not bound to complain first to the detaining authority that the information supplied is vague and indefinite before he can come to the Court;

(e) if, in the opinion of the Court, the grounds supplied are vague, indefinite and insufficient, the Court must hold that further detention is illegal or improper, except in such cases where the Court can come to the conclusion that the order under Section 3 was itself bad;

(f) if, in the opinion of the Court, such grounds and particulars have been supplied as enable the detenu to make an effective representation, so that the provisions of Section 5 have been substantially complied with, the detention would not be deemed to be illegal or improper merely because of the omission of some particular which has not prejudiced the detenu; and

(g) the provisions of Section 5 are mandatory and the detaining authority must, therefore, strictly comply with them.'

It is true that in *Inder Prakash v. Emperor*, A. I. R. (36) 1949 ALL. 37 : (50 Cr. L. J. 34) my brother Raghubar Dayal J. said :

'In my opinion so far as practicable the grounds and particulars furnished should not give, in any case, facts less precise or less in ingredients than a charge sheet gives.'

On the basis of these remarks, it was contended that the time and place of all the acts complained of should be given but in Durgadas' case, A. I. R. (36) 1949 ALL. 148 : (50 Cr. L. J. 59 F. B.) this was not the view which the Full Bench, including Raghubar Dayal J. himself, took and in that case, although no date, time or place of the alleged recovery of unlicensed fire-arms from the custody of the detenu was given in the notice under Section 5, the order of detention was held valid because an affidavit filed at the hearing showed that the detenu was aware of the incident to which reference was made.

31. After the decision of Durgadas' case, (A. I. R. (36) 1949 ALL. 148 : (50 Cr. L. J. 59 F. B.) the same matter came up for consideration before my brother Bindbasni Prasad J. in Nawabzada Mahmud Hasan Khan v. Rex : AIR1949 All406 and he held:

'As observed in Durgadas v. Rex A. I. R. (36) 1949 All. 148 : (50 Cr. L. J. 59 F. B.) the recent Full Bench case of this Court.... the particulars in the grounds communicated under Section 5 need not contain the particulars-required in a charge framed under the provisions of the Code of Criminal Procedure in a criminal trial.'

Thus the fact that the date, time and place of all the particulars are not given would not make the order defective provided that sufficient particulars were given in order to enable the petitioner to make an adequate representation against his detention. Indeed some of the grounds are very definitely stated and, even if one or two grounds are vague, that would not affect the validity of the order if some of the grounds are clear, definite and precise. It is true that all the material, in the possession of the Government has not been mentioned in the order but there is nothing in law which compels the Government to give all the materials available if the grounds are such as to enable the detenu to make his representation. Even a charge-sheet in a criminal case does not narrate all the materials on the record of the Court.

32. Thus the notice under Section 5 is not defective for vagueness or indefiniteness.

33. The fourth contention is that a substantive offence having been committed, the failure of the Government to prosecute leads to the inference that the satisfaction required by Section 3 (1) did not exist. As I have already stated, the object of Section 3 (1) is not punitive but preventive. Further, as has been laid down in Durgadas' case, A. I. R. (86) 1949 ALL. 148 : 50 Cr, L. J. 59 F.B.) the Government may even be satisfied upon evidence which is not legal evidence. It might well be that the Government is satisfied from the conduct of the accused in the past that it is necessary to detain him in order to avoid mischief in the future but it is not in a position to prove the past act by legally admissible evidence. There is nothing in the act to preclude action by the Government in such an even, tuality. Thus the mere fact that action could be taken under Section 3 (7) of the Act but has not been taken--either because the evidence is of such a nature as to exclude its consideration by a Court of law or for any other reason--does not take away the power of taking action under Section 3 (1) of the Act.

34. Lastly comes the question as to whether the Government can make orders under the Act the total period of whose duration is over six months. The petitioner's learned counsel contended, on the basis of the. second proviso added to Section 4 that it could not. The proviso reads as follows:

'Provided further that, the period specified may be extended from time to time so as not to exceed six months.'

35. This proviso was added in order to meet the situation created by the decision in Zamir Qasim v. Emperor : AIR1948 All285 in which it was laid down that a fresh order of detention after the expiry of the period mentioned in the original order was merely an extension of that order and was not contemplated by the Act.

36. The proviso does not take away the effect of the first proviso which enables the Government to issue a fresh order after revoking a previous order. In such a case the Government must serve a fresh notice under Section 5 and must furnish fresh materials for detention in order not to render illusory the detenu's right of

making a representation. Further, the time limit imposed is only on an extension and does not relate to a fresh order passed after a revocation of a previous order. If the order challenged in these proceedings is merely an extension of the previous order, then, of course, the proviso will forbid the detention of the petitioner beyond the period of six months which expired on 25th March 1949. If, however, this order is a fresh order altogether then the proviso cannot apply.

37. In the present case, the previous order was one prohibiting the petitioner moving out of the limits of a particular area, within that area he had perfect control over his actions--except in so far as he was not entitled to disseminate news or propagate views or carry on subversive activities. By the order now challenged he is confined within a jail and is no longer free to lead a normal life. It cannot possibly be said that the order which has such an effect is in extension of the previous order.

38. Further, the grounds mentioned in the notice are all fresh grounds based upon the actions of the detenu after the previous order was passed. The detenu is, therefore, given a real opportunity (and not merely an illusory one as happened in Zamir Qasim's case : AIR1948 All285 to make a representation against his detention. It cannot, therefore, be said that the order in question infringes the provisions of the second proviso to Section 4.

39. The result, therefore, is that the detention of the petitioner cannot be said to be illegal or improper and this application must be and is hereby dismissed.