

Mehar Chand Vs. Rex

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Court : Allahabad

Decided On : Jun-30-1948

Reported in : 1949CriLJ74

Judge : Raghubar Dayal J.

Appellant : Mehar Chand

Respondent : Rex

Judgement :

ORDER

Raghubar Dayal, J.

1. This is an application under Section 491, Criminal P. C. by Mehar Chand against his detention under the orders of the District Magistrate, Saharanpur, dated 12th February 1948, under Section 3 (1) (a), U. P. Act, IV [4] of 1947.
2. This order of detention was to remain in force for six months and unless revoked would have, therefore, remained in force till the 12th August.
3. On 30th April 1948, the District Magistrate, Saharanpur, passed another order, which is as follows:

Whereas I, Rameshwar Dayal, District Magistrate, Saharanpur, am satisfied with respect to the person named below that with a view to preventing him from acting

in a manner prejudicial to the public safety and the maintenance of public order and communal harmony it is necessary so to order:

Now, therefore, in exercise of the powers conferred by cl. (f) of Sub-section (1) of Section 3, U. P. Maintenance of Public Order (Temporary) Act, 1947 I Rameshwar Dayal, District Magistrate, Saharanpur, hereby order that the said person shall not take part in the activities of any communal organisation or do anything likely to disturb the public peace.

And also in exercise of the powers conferred by Sub-section (3) of Section 8 of the said Act, I Rameshwar Dayal, District Magistrate, further order that the said person shall enter into a personal bond of Rs. 500 with one surety in the like amount for the due performance of the restrictions and conditions specified above.

This order shall remain in force for a period of six months from the date of issue.

The person to whom this order was given was Mehar Chand.

4. This order appears to have been interpreted by the authorities as a conditional order of release. It appears from the papers received from Saharanpur that a surety appeared on nth June and that on that day an order was issued to the Superintendent, District Jail, that Mehar Chand had been ordered to be released on furnishing a personal bond with a surety and that he may, therefore, be released after taking a personal bond for the due performance of the restrictions and conditions specified above. It appears from the counter, affidavit filed on behalf of the Crown that probably the detenu Mehar Chand has not signed the bond and therefore he is still in detention. The assertion in the affidavit that Mehar Chand has failed to produce the required surety bond is not correct according to the papers received.

5. In view of the opinion I have formed of the effect of the subsequent order dated 80th April 1948, I need not discuss the merits of the original detention in pursuance of the order of detention dated 12th February 1948. I am of opinion that the passing of this order under Section 3 (l) (f) on 30th April 1948 amounted to the revocation of earlier order of detention dated 12th February.

6. Section 4, U. P. Act (iv [4] of 1947), provided that an order made under Section 3 by the Provincial Government shall remain in force for the period specified or for six months, unless revoked earlier. It does not provide any particular mode of expressing the revocation of an order. Of course in cases of express revocation, the revocation order will be mostly in ex-press terms and in writing. But at the same time revocation of a detention order can be implied from the subsequent orders of the authority concerned if the nature and effect of the subsequent orders require for their proper performance the revocation of the previous order and leave no manner of doubt that the authority concerned must have intended to revoke the previous detention order.

7. Section 3 (l) (f) of the aforesaid Act authorised the Provincial Government, whose powers have now been delegated to the District Magistrates as well, to regulate the conduct of a person whose activities led the authorities to arrive at a certain conclusion about his anticipated conduct in any Buck manner as may be specified in the order given by the authority concerned. Once this order is passed it becomes (comes?) in force. Such an order does not depend for its validity and enforcement on the conduct of the person against whom the order is directed. It requires no acceptance of his. Under Section 3 (S) of the Act the authority can pass a further order requiring the person concerned to enter into a bond for the due performance or the enforcement of Such restrictions or conditions as might be specified in the order, tout this flub-section or any provision in the Act does not - provide that in case the person concerned does not execute the bond the original order regulating his conduct would no more be valid or enforceable. On the other hand, Section 3 (7) provides for the contravention of the orders passed and makes the person contravening the orders liable to punishment. According to the provisions of the Act, therefore, this order of 30th April, become effective from that date irrespective of the fact whether Mehar Chand executed the bond or not.

8. One's conduct can be regulated only when one is free. When one is in jail one's conduct is subject to the rules provided for the inmates of a jail. I do not think that section 3 (1) (f) contemplated orders with respect to the regulation of the conduct of a person inside the jail. This means that by the mere fact the an order is passed under Section 3 (l) (f) it must be inferred that the District Magistrate was

contemplating Mehar Chand as a free person and not as a person in detention. This could be only after he would revoke the order of detention which was in force on 30th April, The omission of The District Magistrate to say in this order or on any other paper that he was revoking the previous order, therefore is not of much importance.

9. There is another aspect also. It is that this order also which, according to me, has come into operation on 30th April, was for six months and would continue upto 80th October 1948. The detention order passed on 12th February, would come to an end on 12th August, This means that Mehar Chand would be under a liability to obey this order for a longer period than he was liable originally under the detention order and which liability might not have arisen if this order had been meant to be a conditional order by the District Magistrate. As a conditional order it would have merely provided that in case Mehar Chand furnishes a bond to act in the manner prescribed, he should be released and therefore if he had not furnished the bond, he would not have been released, but at the same time he would not have become liable to obey the order after the expiry of to period of six months from the original detention order.

10. I am, therefore, of opinion that in view of the provisions of law with respect to this subsequent order and its practical results it must be held that the District Magistrate had revoked the order of detention on 30th April just prior to his passing this order regulating the conduct of Mehar Chand, and therefore it must be held that any detention of Mehar Chand subsequent to 30th April is not a lawful detention under the detention order of 12th February.

11. I have held in *Alla Mehar v. Rex*, Cri. Misc. case NO. 962 of 1948 : A.I.R. (36) 1949 ALL. 17) that under the law non-compliance by a person of an order under Section 3 (3) of the Act does not justify his detention for failure to furnish the necessary bond. It follows, therefore, that Mehar Chand's detention cannot be said to be lawful even if it was on account of his failure to enter into the bond required by the District Magistrate under Section 3 (3).

12. In view of the above, I order that Mehar Chand be released from custody forthwith if not required to be detained under any other process of law.

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