

Tilak Raj and ors. Vs. Rex

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Court : Allahabad

Decided On : Jun-11-1948

Reported in : 1949CriLJ94

Judge : Wanchoo J.

Appellant : Tilak Raj and ors.

Respondent : Rex

Judgement :

ORDER

Wanchoo, J.

1. This is an application under Section 491, Criminal P. C., by 37 persons who have been ordered to be detained by the District Magistrate of Muzaffarnagar under U. P. Act (IV [4] of 1947). Ten of them namely Sheetal Prasad, Maheah Dutt, Bali Earn, Uttam Singh, Daya Bam, Birbal Singh, Amir Singh, Bhanwar Singh, Om Prakash and Eama however have been released. Their application has, therefore, become infructuous and is hereby dismissed. I proposed to deal with the application of the remaining 27.

2. The case of one of these 27, however, namely Ramgopal is slightly different from the case of the remaining 26. I shall first consider the general argument which has been advanced on behalf of 26 of the applicants and then deal

separately with the case of Ramgopal.

3. These 26 applicants were originally ordered to be detained on 6th February 1948 or within a few days thereafter for a period of three months. They were taken to the jail at Muzaffarnagar, A few days later they were transferred to the Central Jail at Agra where they have been detained ever since. When the first three months' period was about to expire the District Magistrate of Muzaffarnagar passed another order on 2nd May 1948 for the further detention of these 26 applicants for a period of three months. These applicants are therefore now detained in the Central Jail at Agra under this order extending the previous order.

4. The main contentions on behalf of these applicants are three-fold. In the first place it is urged that the District Magistrate had no power of extension. In the second place, it is urged that even if he had the power of extension, he could not exercise his power in the case of these applicants because on 2nd May they were not 'within his jurisdiction. Lastly, it has been urged that in any case, even if he could exercise that power with respect to persons who were detained in jail in another district, he could not do so in the present case because the first order of 6th February 1948 was illegal, inasmuch as the applicants could not be detained for more than fifteen days under that order.

5. In order to appreciate the first argument put forward on behalf of the applicants it is necessary to set out Section 4 as it now stands after the amendment of 6th April 1948 and two orders of the Provincial Government delegating its authority to the District Magistrate under Section 11. Section 4 reads:

An order made under Section 3 by the Provincial Government shall, unless revoked earlier, remain in force for a period not exceeding six months as may be specified in the order or if no period is specified, for six months from the date thereof.

Provided any such revocation shall not prevent the making under Section 3 of a fresh order, to the same effect.

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

6. On 1st August 1947 the Provincial Government delegated its authority under Section 8 (l) (a) to the District Magistrate in the Province by the following notification:

In exercise of the powers conferred by Section 11, United Provinces Maintenance of Public Order (Temporary) Act 1947 (IV [4] of 1947) the Governor is hereby pleased to direct that the powers exercisable by him under Clause (a) of Sub-section (1) of Section 3 of the said Act shall also be exercisable by all District Magistrates within their respective districts. An order made under the Said Clause of the said sub-section by the District Magistrate shall, unless revoked earlier, remain in force for a period not exceeding six months from the date of such order, at prescribed in Section 4 of the said Act.

After the amendment of 6th April 1948 another notification was issued by the Provincial Government on 18th April 1948 which reads as follows:

In exercise of the powers conferred by Section 11, United Provinces Maintenance of Public Order (Temporary) Act 1947, (IV [4] of 1947) as amended from time to time, the Governor is hereby pleased to direct that the powers exercisable by her under

(i) Clause (d) of subs. (1) of Section (3).

(ii) Clause (f) of sub. a. (1) of Section 3.

(iii) Sub-section (3) of Section 3.

and (iv) Section 4 of the said Act shall also be exercisable by all District Magistrates within their respective jurisdiction.

7. The contention on behalf of the applicant is that the extension that is provided for in the second proviso to Section 1 could only be of an order originally passed by the Provincial Government and not of an order originally passed by the District Magistrate. It is, therefore, urged that as the original order of February 1948 was

passed by the District Magistrate in this case there could be no extension of that order.

8. It is not possible to accept this argument. It seems to me that when the Provincial Government delegated its authority under Section 3 (l) (a) to District Magistrates in August 1947 and when it farther delegated to District Magistrates all the powers under Section 4 of the Act, the result was as if the words 'District Magistrate' were sub. stituted for the words 'Provincial Government' in Section 4 of the Act. As soon as one substitutes the words 'District Magistrate' for Provincial Government in Section 4, it will at once be obvious that the District Magistrate will have authority to extend the order passed by him under Section 3 (1) (a) under the authority delegated to him. Section 4 provides for three things:

(1) the period for which the order passed by the Provincial Government will remain in force; (2) the power to revoke that order earlier and in case of such revocation the power to pass a fresh order later on; (8) the power to extend the order.

It seems to me that on a proper interpretation Of the two notifications delegating the authority of the Provincial Government to the District Magistrate, all these three powers must be held to have been delegated to the District Magistrate with respect to orders passed by him under the delegated authority. I, therefore, hold that the District Magistrate has power in case of an order passed by him under Section 3 (l) (a) under his delegated power to extend that order under the Second proviso to B. 4 of the Act.

9. The next point that has been urged is that even if the District Magistrate has this power he could not exercise it where the person detained is not within his jurisdiction. In this connexion stress is laid on the words of the two notifications where in the first notification the power of the District Magistrate is confined to 'within his district' and in the case of the second notification to within 'his jurisdiction.' It is urged that as the applicants were detained in Agra which is not within the district of Muzaffar nagar or within the jurisdiction of the District Magistrate of Muzaffarnagar, no order of extension could be passed by the District Magistrate of Muzaffarnagar. On the superficial view it certainly looks, as if the District Magistrate of Muzaffarnagar cannot have jurisdiction to pass an order of

extension where the detenu has been transferred from the jail in that district to another jail in another district under Section 3, sub. a. (5) of the Act. But going deeper into the matter, it seems to me that the mere transfer of the detenu from the jail where he was first detained by the order of the District Magistrate to another jail under Section 8, Sub-section (5) of the Act should not take away the jurisdiction of the District Magistrate who passed the order of detention originally. The detenu even when he is being held in another jail is so held under the order of the District Magistrate who passed the original order and he may in a sense be called a 'prisoner' of that District Magistrate. It is obvious that if that order has to be revoked before the period fixed in it expires, it Can only be revoked by the District Magistrate who passed it and by no other authority.

10. Similarly, if the order has to be extended there is no reason why it should not be possible for the District Magistrate who passed it to extend it, even though the detenu is not in the jail in his district but in another jail in another district. As I have indicated, the detenu is a 'prisoner' of the District Magistrate who passed the original order and must be held to remain within the jurisdiction of the District Magistrate, so far as the matter of detention is concerned, even though he may have been kept in jail in another district.

11. It cannot, therefore, be said that there will be any violence to the provision in the notification dated 13th April 1948 if it is held that such detenu is within the jurisdiction of the District Magistrate who passed the original order. It may be stressed that the words in the notification of 13th April 1948 are slightly different in this matter from the words in the notification of 1st August 1947. In the first notification the words were 'within their districts' and it might have been argued with some show of reason that the man not being within the district no order could be passed with respect to him. But in the second notification of 13th April 1948 the words used are 'within his jurisdiction.' Normally of course the jurisdiction of a District Magistrate is his district, but it seems to me that where a person is detained by the order of a District Magistrate in the jail in his district and is then transferred under Section 8 of Sub-section (5) to another jail in another district, the jurisdiction to deal with him under Section 4 must be held to remain with that District Magistrate. In this connexion reliance was placed on the case of Han-want

(applicant) v. Emperor : AIR1948 All185 ; that was, however, a case under s 110, Criminal P. C, and the person against whom proceedings were started under that section was not in jail and had removed himself from the jurisdiction of the Sub-Divisional Magistrate who was proceeding with the case even though he had gone there temporarily. In these circumstances it was held that the Sub-Divisional Magistrate could not initiate proceedings under Section 110, Criminal P. C, against him.

12. In the present case, however, the detenu had not removed himself voluntarily from the jurisdiction of the District Magistrate who passed the original order. What had happened was that he was taken away to be detained in another jail but the detention was still under the order of the District Magistrate who had originally detained him.

13. Under these circumstances, it seems to be reasonable to hold that, so long as the detention is under the order of the District Magistrate who had originally ordered the detention, the detenu concerned will be subject to the jurisdiction of that District Magistrate, even though he may be dily present in another jail in another district. I, therefore, hold that the District Magistrate has power even though the detenu might have been transferred to another jail in another district under Section 3, Sub-section (5), to pass an order of attension under Section 4.

14. The last question that has been urged is that in any case, as the original order against the applicants could only remain valid for fifteen days, the 26 applicants in this case could not be called the 'prisoners' of the District Magistrate of Muzaffarnagar on 2nd May 1948, and therefore, no order of extension could be passed by the District Magistrate of Muzaffarnagar, even though they might have been detained under a misapprehension of law in the Central jail at Agra.

15. In this connection, I may set out the original order that was passed in these cases. The language of that order is the same in the ease of all the 26 applicants whose cases I am considering and so it will be enough to set out one of these orders which runs as follows:

Whereas from a report of the police I am satisfied that in order to prevent him from acting in a manner prejudicial to the public safety and the maintenance of public order it is necessary that so and so be detained in Mussaffarnagar jail, I, B. P. Sahai, District Magistrate of Muzaflarnagar, by powers vested in me under Section 3 (2), T.J. P. Maintenance of the Public Order Act, 1947 hereby order the arrest and detention of the said so and so under Section 3 (1) (a), U. P. Maintenance of Public Order Act for a period of three monthb. 3 from the date of this order.

Now under Section 3 (2), the District Magistrate has no power to detain a person for a period exceeding fifteen days. In the case of these applicants it is definitely in the order stated that it was being passed under Section 3 (2). The limit, therefore, of fifteen days provided therein came into force. The District Magistrate could not extend that limit of fifteen days to three months by saying so in the order. It is true that the District Magistrate had power under the delegation made to him on 1st August 1948 to detain a person for more than 15 days, but if the District Magistrate was acting under that delegated power he should have said so, or, at any rate, it should have been clear from the order without any ambiguity that the delegated power was being exercised. No doubt the mention of a period of three months in the order might, in a proper case, lead to the inference that the dele-gated power was being exercised; but in this case that inference is not possible when the District Magistrate says definitely that he is acting under the powers vested in him under Section S (2) of the Act. In such a ease it must be held that the period of three months mentioned in the order was a mistake and that the order could only be valid for 16 days: vide the decision of this Court in the case of D. B. Shesh (Cri. Misc. No. 876 of 1948, d/- 37-7-1948 by Wanchoo J.) from the District of Jaunpur

16. Under these circumstances, the order under which these 26 persons were detained expired after fifteen days, It is true that they continued to be held in the Central jail, Agra, under & mistaken belief that that order could be valid for three months. But, under such circumstances when the order could only be valid for 15 days the further detention of these 26 applicants could not be as prisoners of the District Magistrate of Muzaffarnagar as the orders expired on 21st February 1948 or soon thereafter. Therefore, when the applicants were detained illegally thereafter, they could not be held to be within the jurisdiction of the District

Magistrate on 2nd May in the sense which I have indicated when dealing with the second point raised or) behalf of the applicants. If, for. example, the District Magistrate instead of saying three months in the original order had said six months and then an application had been made to this Court under Section 491, Criminal P. C, the detenu would immediately have been released because the original order would only be valid for 15 days. To hold, therefore, that such an order which would be only valid for 15 days could be extended after the period of 15 days had expired, would be unjust under the circum-stances.

17. I am, therefore, of opinion that where the original order of detention is an illegal order and could not remain in force for the period mentioned in the order, it is not possible to extend that order after the period for which it could legally remain in force. So far, therefore, as these 26 applicants, namely, Tilakraj, Rameshwarnath, Bhupendra Kumar, Moolchandra, son of Raghubir Singh, Parmeshwar Dayal, Shripal, Moolchand, son of Sarda Ram, Sarva Krishna, Maharaj Singh, Anandpal, Tri-lokohand, Ved Prakaah, Hari Krishna Das, Satya Prakaah, Makut Beharilal, Bhishan Singh, Rajendra Prasad Tandon, Dipchand, Chatter Sen, Jadoram, Surendra Pratap, Bhikambar Singh, Kishanlal, Jai Prakash, Parmeshwar Swarup, and Triloknath are concerned, the order of extension passed against them on 2nd May is an invalid order and they must be released, unless the order can be justified as a fresh order.

18. However, the order cannot be justified as a fresh order because it suffers from the defect that it was passed against persons who were not within the district at the time it was passed. As I have already pointed out, a fresh order which is passed under the authority, delegated under the notification of 1st August 1947, has to be passed against persons within the district. These 26 applicants were certainly not within the district of the District Magistrate of Muzaffarnagar on 2nd May 1948, If the order has, therefore, to be treated as a fresh order, it is beyond the competence of the District Magistrate of Muzaffarnagar.

19. I, therefore, release all these 26 applicants, whose names are mentioned above under Section 491, Criminal P. C.

20. I now come to the case of Ramgopal. In his case the order under which he is now being detained was passed on 11th April. At that time he was in the district jail at Muzaffarnagar having been transferred therefrom to Agra. No documents have been produced to show when this applicant was originally ordered to be detained. The order under Section 3 which was passed against him is as follows:

Whereas from a report of the police I am satisfied that in order to prevent him from acting in a manner prejudicial to the public safety and the maintenance of public order it is necessary that Ramgopal son of Kalumal resident of Shahpur, district Muzaffarnagar, be detained in jail, I, B. P. Sahai, District Magistrate, Muzaffarnagar by powers vested in me under Sections 3 (1) (a) and 4, U. P. Maintenance of Public Order Act, 1947, hereby order further detention of the said Ram-gopal under Section 3 (1) (a), U. P. Maintenance of Public Order Act. for a period of three months from the date of this order.

It should be mentioned that the section mentioned originally was 's. 8 (2)'; it was at borne later stage amended into 'ss. 3 (l) (a) and 4.' There is, however, no signature to validate this cutting. In any case accepting the cutting as correct, it has to be considered whether the District Magistrate could pass an order of extension as this purports to be on 11th April 1948. Section 4 was amended by the Legislature on 6th April 1948 and proviso 2 giving power of extension was added. But Section 4 as it stands, gives power of extension to the Provincial Government. The District Magistrate can get that power only by delegation. The delegation in this respect in favour of the District Magistrate was made on 13th April 1948. Therefore, the District Magistrate had no power of extension on 11th April 1948.

21. It is urged on behalf of the Crown that the notification of 1st August 1947, must be held to have given the power of extension because it mentions Section 4. I cannot accept this argument because that notification clearly shows that Section 4 was mentioned in it merely to specify the period for which the order would remain in force. Therefore, that notification did not give any power of extension which was conferred only by the notification dated 15th April 1948. Consequently, an extension by the Distriot Magistrate on 11th April 1948,. was beyond his powers. As held by this Court in the case of Zamir Qasim V. Rex, 1948 A. L. J. Rule 169 :

A.I.R. (35) 1948 ALL. 386: 49 Cr. L. J. 868), there could be no extension without there being an express provision to that effect in the Act. It is true that on 6th April, such an express provision was made but that was in favour of the Provincial Government and that power was conferred on the District Magistrate on 18th April 1948.

22. Under these circumstances, the further detention of the applicant by the District Magistrate on 11th April 1948, without releasing him first, was illegal, in view of the authority quoted above.

23. I, therefore, order the release of Ramgopal also under Section 491, Criminal P. C.

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