

Jamil Ahmad Vs. Emperor

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Court : Allahabad

Decided On : Nov-17-1947

Reported in : AIR1948All225

Appellant : Jamil Ahmad

Respondent : Emperor

Judgement :

ORDER

Sankar Saran, J.

1. This is an application under Section 491 Criminal P.C., by one Sheikh Jamil Ahmad who has been ordered to be detained under the U.P. Maintenance of Public Order (Temporary) Act, 1947.
2. He was arrested on 28th September 1947. It appears he is a contractor who used to supply bamboo poles to Government for the use in tents and even now, according to his allegations, carries on that business.
3. After his arrest an application for bail was moved on his behalf, which was opposed by the police in their report, D/- 4-10-1947. On 6th October 1947, the Prosecuting Sub-Inspector in opposing the bail reported that the offence was a non-bailable one and that the applicant was being detained under the 'Ordinance'. A day later, on 7th October, the Prosecuting Inspector reported that he was

detained under Section 3, Maintenance of Public Order (Temporary) Act, 1947, by the District Magistrate and that the matter could be 'only dealt with by this Court under Section 491, Criminal P.C. Upon this report the District Magistrate refused the bail application.

4. In the affidavit that has been filed on behalf of the applicant in this Court, it was urged that the applicant did not think he was detained by the District Magistrate under Section 3, U.P. Maintenance of Public Order (Temporary) Act, IV of 1947. He further alleged that he had not been informed about the grounds upon which his detention was based as required under Section 5 of the said Act, nor had he been afforded an opportunity to make any representation against the order of his detention.

5. This application was made on 15th October 1947 and the learned Government Advocate prayed for two weeks time which he was allowed. On 27th October 1947, the Government Advocate prayed for three days time to enable him to receive instructions. On 31st October the case was ordered to be listed on 3rd November and on 3rd November the case was again adjourned and it was fixed for 7th November.

6. A counter affidavit on behalf of the Government was filed on 3rd November 1947 in which a general denial of the applicant's affidavit regarding the nature of his business was made and it was asserted that orders under Sections 3 and 5, U.P. Maintenance of Public Order (Temporary) Act, iv of 1947, had been served on the applicant Sheikh Jamil Ahmad On 7th November 1947 a rejoinder was filed. In para. 2 it was alleged:

That though an order purporting to be under Section 3(1)(A), United Provinces Maintenance of Public Order (Act IV) of 1947 was served upon the applicant Jamil Ahmad on 30th October 1947 at 10 15 p.m. yet he has not been informed of the grounds upon which the order of his detention has been based nor has been informed of his right to make a representation against the said order as required under Section 5 of the Act.

7. Subsequently on the same day a supplementary affidavit by the Government was filed in which it was clearly stated that

On his premises were found three stocks of lathis which are generally used as offensive or defensive weapons in a fight which are not even remotely connected with tent bamboos. They were roughly about 6 inches long and an inch in circumference and according to the information they were stocked there in view of the tense communal situation and to be illegally used by the applicant.

8. It thus appears that even though originally the applicant was not arrested and detained under Section 3, Maintenance of Public Order (Temporary) Act by 7-10-1947 the local authorities had decided to detain him under Section 3 of the said Act. It, however, appears that no action was taken by the local authorities till 30-10-1947 even though on the 15th of that month the applicant had made an application to this Court against his detention by the local authorities. It was not till after the case had been listed twice in this Court that action was taken under Section 5 of the Act. I have before me the notice under Section 5 given to the applicant. It is a brief one and runs as follows:

That you had imported a large number of lathis on 28-9-1947 with the view to engineer a riot. That you often incite Muslims to commit breach of peace.

9. Section 5 of the Act reads as follows:

As soon as may be after an order in respect of any person is made under Clause (a) of Sub-section (1) of Section 3, the officer or authority making the order shall communicate to the person affected thereby the grounds on which the order against him has been made and such other particulars as may in the opinion of such officer or authority, be sufficient to enable him to make a representation against the order and such person may at any time thereafter make a representation in writing to such officer or authority against the order. It shall be the duty of such officer or authority to inform such person of his right of making such representation and to offer him the earliest practicable opportunity of doing so. If the Government is satisfied on considering the representation made that it is no longer necessary to maintain the order, the order made under Section 3 shall

be cancelled.

10. It will thus appear that there was considerable delay in compliance of the provisions of Section 5 of this Act, and even though the applicant had mentioned in his affidavit to this Court dated 15-10-1947, that he had not been informed of the grounds of his detention nor had he been afforded an opportunity to make any representation, the learned District Magistrate complied after considerable delay with only one part of Section 5 of the Act. He gave him notice and supplied him with such particulars as in his opinion were sufficient to enable the applicant to make the representation against his order, but he omitted to observe the mandatory provision of the law and inform the applicant that he could make such representation as he chose against the order passed by him. It was his duty to have informed the applicant of his right to make such representation and indeed to have afforded him the earliest practicable opportunity of doing so.

11. I am conscious of the fact that these are extraordinary times and the legislature has thought it right to give very wide powers to the executive, but it has to be remembered that those who have to exercise the powers which are given to them are charged with a grave responsibility. The law provides certain safeguards and over and above that those responsible for the exercise of powers under the law ought to remember that the subject with which one is dealing in this case is something affecting the liberty of the subject and there ought to be direful observance of the procedure and the safeguards that are enacted by the legislature.

12. On behalf of the Crown it has been argued that this is after all a mere slip and the applicant has not been prejudiced thereby. I am afraid, I am unable to accept this view. I cannot ignore the fact that this enactment is a serious encroachment upon the liberty of the subject and although it might have been enacted to meet an extraordinary and abnormal situation, it is the business of this Court to see that the terms of the statute are strictly construed and as far as may be in favour of the subject. In this case, however, there has been a violation; of the mandatory provision of the law. The language of the section leaves no room for doubt that the applicant was entitled to be informed to make his representation and was to be

afforded the earliest opportunity practicable. Paragraph 7 of the affidavit filed on behalf of the applicant runs as follows:

That in any case Jamil Ahmad has not been informed about the grounds upon which his detention has been based as required under Section 5 of the said Act nor has he been afforded an opportunity to make a representation against the order of his detention.

This was an invitation to the authorities to take all the steps that were necessary under Section 5 of Act 4 of 1947.

13. In the circumstances of the case, therefore, consider this is a fit case where this Court should interfere. I am of opinion that any further detention of the applicant would be improper. I, therefore, direct that the applicant be set at liberty forthwith. I am informed that Sheikh Jamil Ahmad is in the Naini Central Jail. This order will be sent to the Superintendent, Naini Jail, for compliance.

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