

Kumar Chandra Bajpai Vs. Rex

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Court : Allahabad

Decided On : Nov-21-1949

Reported in : AIR1950All376

Judge : Malik, C.J. and ; Raghubar Dayal, J.

Acts : Uttar Pradesh Maintenance of Public Order (Temporary) Act, 1947 - Sections 3(1)

Appeal No. : Criminal Misc. Nos. 1018 to 1020 of 1949

Appellant : Kumar Chandra Bajpai

Respondent : Rex

Advocate for Def. : D.P. Uniyal, A.G.A.

Advocate for Pet/Ap. : V. Mitra and ; Shiva Charan Lal, Advs.

Judgement :

Malik, C.J.

1. These are three applications under Section 491, Criminal P. C. filed on behalf of Kumar Chandra Bajpai, Shaukat Ali Khan and Ram Bharosey Lal. Kumar Chandra Bajpai and Shaukat Ali Khan were detained for fifteen days under orders passed by the District Magistrate on 19th February 1949, under the U. P. Maintenance of Public Order (Temporary) Act 1947. On 28th February 1949, the U. P.

Government passed an order under Section 3 of the aforesaid Act detaining them for a period of six months. ON 21st June 1949, the District Magistrate purported to pass an order under Section 3, Sub-section 1 (f) preventing them from taking part in any activities subversive of law and order and requiring each of them to execute a bond for Rs. 500 under Sub-section (3) of Section 3. The facts are exactly similar; in the case of Ram Bharosey Lal only the dates are different. He was detained by an order of the District Magistrate dated 21st February 1949, the order of the Provincial Government was passed on 5th March 1949, and the subsequent order under Section 3 (1) (f) was passed by the District Magistrate on 21st June 1949, the same date on which he passed the order under the aforesaid section in the other two cases. The three applicants having failed to execute bonds as required by the order dated 21st June 1949, under Sub-section (3) to Section 3 they were directed to be kept in detention for a further period of six months under Section 123A, Criminal P. C.

2 The point for consideration in these cases is whether the applicants could be detained for a period longer than six months from 28th February 1919, in two cases and from 5th March 1943, in the third case.

3. Section 3, U. P. Maintenance of Public Order (Temporary) Act, 1947, provides that the Provincial Government, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the public safety, or the maintenance of public order or communal harmony it is necessary so to do, may make an order either directing that he be detained, or directing that, except in so far as he may be permitted by the order or by such authority or persons as may be specified therein, he shall not remain in any part of the United Provinces as may be specified in the order, or pass an order restricting his activities as mentioned in Clauses (c), (d), (e) and (f) of Sub-section (1) of Section 3. Section 4 of the Act is as follows :

'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 that any such revocation shall not prevent the making under Section 3 of a fresh order, to the same effect:

Provided farther that the period specified may be extended from time to time so as not to exceed six months:'

It would appear, therefore, that for the activities of a person which might be considered prejudicial to public safety etc., the Provincial Government may either keep him in detention or extern him outside the Province, or if such severe steps are not necessary pass an order regulating or restricting his movements or his conduct, But such an order can remain in force for a period not exceeding six months. In the three-cases before us, the Provincial Government had considered it necessary to detain the applicants under Clause (a) of Sub-section (1) of Section 3. In case during the period of detention, the Provincial Government was of the opinion that it was no longer necessary to detain them but that their movements might be restricted under one of the Clauses (c) to (f) of Sub-section (1) to Section 3, the Provincial Government could direct their release and could pass an order restricting or regulating their movements or their activities. But this must to our minds be for the remaining part of the period of six months that might be left after the detention order. It was on this principle that a learned Judge of this Court had held in *Zamir Qasim v. Emeror* : AIR1948 All285 that an order of detention once passed could not be extended while the man was in custody and had not been released. By an amendment to Section 4, U. P. Maintenance of Public Order (Temporary) Act, 1947, this has now been made possible. The Act has to be strictly construed as it interferes with the liberty of the subject and the result of interpreting the Act differently would be that for the same prejudicial act done prior to his detention a person could be first detained for six months, then externed for six months and then successive orders passed against him under Clauses (c), (d), (e) and (f) which might ultimately mean interference with his liberties for a period of three years. It must be conceded that successive orders under Clause (a) of Sub-section 1 of Section 3 cannot be passed to extend the period of detention beyond six months. We do not see why any different principle should be applied for successive orders under Clauses (a) to (f) of Sub-section (1) of Section 3. This could not have been the intention of the legislature when the Act was passed. If a

person after he was released did anything which made it necessary to pass a fresh order against him a fresh order could be passed, but the authorities would have to wait to watch his activities after he was once released before they could pass a second order directing his detention for breach of an order under Sub-section (3) of Section 3 of the Act. The order passed by the District Magistrate under Section 123A, Criminal P. C., could, therefore, remain operative only upto 28th August 1949, as against Kumar Chandra Bajpai and Shaukat Ali and upto 5th September 1949, as against Ram Bharosey Lal, Their detention thereafter was clearly illegal and they must, therefore, be immediately released.

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