

Ashok Kumar Singh Vs. Superintendent, Central Jail and ors.

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Court : Allahabad

Decided On : Sep-18-1985

Reported in : 1986CriLJ1751

Judge : S. Saghir Ahmad and ;Brijesh Kumar, JJ.

Appellant : Ashok Kumar Singh

Respondent : Superintendent, Central Jail and ors.

Judgement :

S. Saghir Ahmad, J.

1. This petition was allowed by us by a short order passed yesterday i.e. 18-9-85 which is quoted below.

For the reason recorded later, the writ petition is allowed and the impugned order dt. 18-10-84 contained in Annexure-1 is hereby quashed. The petitioner shall be released forthwith unless his detention is required in some other case. There will be no order as to costs.

2. We now proceed to give our reasons.

3. The petitioner have been detained under the National Security Act (hereinafter referred to as the Act) by an order passed by the District Magistrate, Varanasi on 18-10-84. The order is annexure-1 to the writ petition.

4. The ground of detention indicates that on 18-9-84 at about 9.30 p.m. the petitioner along with his four other associates (all armed with revolvers and pistols) had gone to house No. C-21/9A-1 in Mahamandal Nagar, P.S. Chetganj, Varanasi and committed the murder of Faujdar Misra and Amolak Singh and injured Akhilesh Misra, who was admitted in the hospital.

5. The report of the incident was lodged at Police Station Chetganj where Crime Case No. 314/84 was registered against the petitioner and others under Sections 148/149/307/302 I.P.C. Mahamandal Nagar is said to be a densely populated area the manner in which petitioner and his associates had entered into the above house and committed the murder of two persons at the spot had created panic and generated tension, as a result of which the shops were not opened on 19-9-84 and a demonstration was held at police station Chetganj by a large segment of the public.

6. The investigation of the case was immediately taken up by the police who recorded the statement of Akhilesh Misra under Section 161 of the Cr. P.C. (Annexure Ra-3 to the rejoinder affidavit). His dying declaration (Annexure Ra-2) was also recorded. The police also recorded the statement of Akhilesh Misra's mother (Smt. Kameshwari Devi) under Section 161 of the Cr. P.C. and also made a number of reports in the General Diary. These reports are G.D. entry No. 38 made on 19-9-84 at 15.30 hours, G.D. entry No. 41 made on 19-9-84 at 10.20 p.m., G.D. entry No. 46 made on 19-9-84 at 18.20 hours and G.D. entry No. 49 made at 22.30 hours on 20-9-84. The incident was also reported in several newspapers including the daily newspaper 'Aaj' on 19-9-84. This news item published in 'Aaj' prompted the S.I. Sri B.N. Singh Baghel to investigate the matter. He made a report in the G.D. on 23-9-84 at Sl.No. 52 at 21.35 p.m. that the incident reported in the press was correct. It was stated that the incident had taken place late in the evening on 18-9-84 Mahamandal Nagar which was close to the main Lahura Bir Crossing. The incident had created panic amongst the public and the people had run away from the place. Within minutes the whole of the 'Bazar' as also the entire mohalla was enveloped by complete silence. The degree of fear that the incident had generated was reflected in the conduct of the cine-goers who immediately after the cinema show of the Prakash Talkies, started running away in

all directions with the result that the law and order situation was disturbed. The people lost courage to come out of their houses and on account of fear and tension, they did not open their shops on 19th and 20th Sept. 1984. Even the noon show of Prakash Talkies was not held on 19-9-84 as nobody had come to see the cinema show. It was stated in the report that the student leader, Ram Iqbal Singh, was tried to be abducted from Benaras Hindu University Hostel which had disturbed the law and order situation in the BHU and the students and proctorial staff had demanded police protection.

7. In view of the above situation, Senior Superintendent of Police, Varanasi wrote to the District Magistrate, Varanasi on 11-10-84 that the petitioner may be detained under the National Security Act. The following documents were annexed to the letter of S.S.P., Varanasi for the perusal of the District Magistrate.

1. Copy of the report of P.S. Chetganj, Varanasi, dt. 30-9-84.
2. Copy. of the FIR of Crime No. 314/84 under Sections 148/149/307/302 IPC registered at P.S. Chetganj, Varanasi.
3. Copy of G.D. Entry No. 38 dt. 19-9-84,
4. Copy of G.D. Entry No. 41 dt. 19-9-84.
5. Copy of G.D. Entry No. 46 dt. 20-9-84
6. Copy of G.D. Entry No. 49 dt. 20-9-84.
7. Copy of G.D. Entry No. 55 dt. 23-9-84.
8. Copy of the extract published in daily Newspaper of different dates regarding 'Mahamandal Nagar Hatyak and:
9. Copy of the Statement of. Smt. Kameshwari Devi recorded under Section 161, Cr. P.C.
10. Copy of the photos published in 'Aaj' Newspaper dt. 20-9-84 and 21-9-84.

8. The District Magistrate, as stated above, passed an order of detention under Section 3(3) of the Act on 18-10-84. It has been stated in the counter-affidavit that the copies of all above documents including the copy of letter of S.S.P., Varanasi dt. 11-10-84 have been supplied to the petitioner along with the grounds of detention.

9. The petitioner has filed a rejoinder affidavit with which he has annexed a number of documents including the copy of the dying declaration of Akhilesh Misra (Annexure Ra 2), copy of Statement of Akhilesh Misra recorded under Section 161, Cr. P.C. (Annexure Ra-3) and copy of news item published in the daily newspaper 'Aaj' on 19-9-84.

10. We have heard the learned Counsel for the petitioner as also the Additional Government Advocate on behalf of opposite parties 1 to 3 and Senior Standing Counsel for the Central Government on behalf of opposite party No. 4.

11. Learned Counsel for the petitioner has raised several contentions all of which need not be considered except the submission that the order of detention is vitiated by reason of non-compliance of the provisions of Section 3(4) of the Act inasmuch as the District Magistrate who had passed the impugned order had sent to the State Government only the order as also the grounds on which it was passed but not the 'other particulars' which, in his opinion, had a bearing on the matter.

12. The Additional Government Advocate, who has attempted to defend the order with great vehemence has, on the other hand, contended that even if there were 'other particulars' which were available for being placed before the District Magistrate or for that matter, before the State Government, non placement of those documents will not vitiate the order, as it has not been shown by the petitioner that he has in any way suffered any prejudice.

13. Under Section 3 of the Act, the order of detention can be passed either by the Central Government or by the State Government. The power can also be exercised by the District Magistrate under Sub-section (3) of Section 3, if he is so authorised by the State Government. In either case the detaining authority has first

to be satisfied that the detention of the person concerned was necessary in order to prevent him from acting in a manner which was prejudicial to the maintenance of public order. Sub-sections (2), (3) and (4) of Section 3 may be reproduced below:

3(3)...

2. The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation - For the purposes of this Sub-section 'acting in any manner prejudicial to the maintenance of supplies and services essential to the community' does not include 'acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community' as defined in the Explanation to Sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

3. If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not

exceeding three months at any one time. 4. When any order is made under this section by an officer mentioned in Sub-section (3), he shall report the fact to the State Govt. to which forthwith he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under Section 8 the grounds of detention are communicated by the Officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words 'twelve days', the words 'fifteen days' shall be substituted.

A perusal of the above provisions would indicate that an order of detention can be passed only when the detaining authority is satisfied that the activities of the person concerned are prejudicial to the maintenance of public order. The satisfaction has to be based on all relevant facts and circumstances. The subjective satisfaction, formation of which is a condition precedent to the passing of the detention order, will get vitiated if vital material or facts which could have influenced the mind of the detaining authority one way or the other are either ignored or not placed before him (See *Chitranjan Dass v. State of U.P.* AIR 1974 SC 53 (*Sk. Nizamuddin v. State of W.B.* : 1975 CriLJ12 , *Asha Devi v. K. Shiv Raj* AIR 1979 SC 447 : 1979 Cri LJ 203 : *Anil Kumar Sharma v. State of U.P.* 1983 All LJ 693 : *Nanha v. Superintendent Central Jail Kanpur*, 1984 All LJ 898 : *Kailash Chand Goyal v. State* 1984 Cri LJ 1039 (Delhi) and *Shri Ram Goyal v. Union of India* 1984 Cri LJ 1048 (Delhi)).

14. The order of detention passed under Sub-section (3) of Section 3 has to be approved by the State Government under Sub-section (4).

Under Sub-section (4) of Section 3 of the Act, the District Magistrate is not only to send to the State Government the grounds on which the order has been made, he has also to send such 'other particulars' as, in his opinion, have a bearing on the matter. The phraseology of the language employed in this sub-section indicates that not only the documents which constitute the grounds of detention but also

other documents which may have a bearing on the matter to be placed before the State Government for obtaining its approval. The distinction between 'basic material' and 'other particulars' have already been indicated by the Supreme Court in *Khudi Ram Dass v. State of West Bengal* : [1975]2SCR832 . It is obvious that 'other particulars' are material other than those which constitute the grounds of detention but before those 'other particulars' are required to be sent to the State Government, they should, in the opinion of the District Magistrate, have a bearing on the matter. This clearly implies that those 'other particulars' are to be first considered by the District Magistrate himself because then alone it would be possible for the District Magistrate to decide whether or not they have a bearing on the matter so that they may or may not be placed before the State Government for compliance of the statutory requirement of Sub-section (4) of Section 3.

15. It has been contended on behalf of the opposite parties that Sub-section (4) of Section 3 deals only with the procedural aspect of the matter and non-compliance thereof will not in every case vitiate the order. It is contended that although at one point of time the consensus of the judicial opinion was that non-compliance of the procedural requirement will invalidate the order, there has been a shift in the recent decisions of the Supreme Court which is particularly reflected in *Prakash Chand Mehta v. Commr. and Secretary Government of Kerala*, 1985 SCC (Cri) 332 : 1986 Cri LJ 786 in which it was observed as under:

Preventive detention unlike punitive detention which is to punish for the wrong done, is to protect the society by preventing wrong being done. Though such powers must be very cautiously exercised not to undermine the fundamental freedoms guaranteed to our people, the procedural safeguards are to ensure that, yet these must be looked at from a pragmatic and commonsense point of view...It is necessary to protect therefore the individual rights insofar as practicable which are not inconsistent with the security and well being of the society. Grant of power imposes limitation on the use of the power. There are various procedural safeguards and we must construe those in proper light and from 'pragmatic commonsense point of view.' We must remember that observance of written Jaw about the procedural safeguards for the protection of the individual is morally the high duty of public official but in all circumstances not the highest. The law of self-

preservation and protection of the country and national security may claim in certain circumstances higher priority.

16. Our attention has also been invited to another decision of the Supreme Court in *Satpal v. State of Punjab* : 1981 CriLJ1867 in which it was laid down that the Court must look at the substance of the matter and not act on mere technicality. The representation which was made, in that case, by the detenu against the order of detention to the Central Government was not forwarded by the State Government for about two and a half months and the unexplained delay on the part of the State Government was held to be not sufficient, by itself, to invalidate the order of detention as the representation had, after all, been considered by the Central Government. It was also held that the detenu had not only the right of making a representation against the order of detention to the detaining authority, he had also a simultaneous right of making an application for revocation of the order to the appropriate Government. But this view has not been taken in a later decision in *State of U.P. v. Javed Zamakhan* : 1984 CriLJ922 in which simultaneous right was held to be NOT available to a detenu. Relying upon this decision Brother Mathur, J, in his separate Judgment in *Raghvendra Singh v. State of U.P. Writ Petn. No. 1518 of 1985*, decided on 21-8-85, has held that all previous decisions in which it was laid down that a detenu had a right of making a representation not only under Section 8 but also under Section 14 of the Act, stand overruled. But Brother Brijesh Kumar, J. who constituted the Bench with Brother Mathur, and who wrote out a separate Judgment, has not subscribed to this view though both of them were unanimous that the petition was liable to be dismissed.

17. The Additional Government Advocate then cited *State of Gujarat v. Adam Kasam* : 1981 CriLJ1686 in which it has been laid down that the High Court in its writ jurisdiction under Article 226 of the Constitution can only examine whether the order of detention has been passed on the materials before it and if it is so found, then the Court cannot go further and examine whether the material was adequate or not which is the function of the appellate authority. This has been followed in *State of Gujarat v. Ismail Juma AIR 1982 SC 683* : 1982 Cri LJ 421.

18. But we are not enquiring into the sufficiency of material. What we are considering is entirely a different question, namely : whether the provisions of Sub-section (4) of Section 3 were, in the instance case, complied with and, if not, whether the order was vitiated.

19. The Additional Government Advocate then invited our attention to a decision of this Court in *Ajit Kumar Bajpai v. State of U.P.* (Writ Petn. No. 186 of 1985 (HC) decided on 13-9-85) in which the Supreme Court decision in *Prakash Chand Mehta's case* 1986 Cri LJ 786 (supra) has also been considered and it has been laid down by brothers B. Kumar and G. B. Singh, JJ. that the Court has to examine, even if some relevant material is ignored, whether there still remains some material from which an inference could possibly be drawn or reasonable belief or conviction could be entertained by the detaining authority that an order under Section 3 of the National Security Act has to be passed. It has been further laid down that in view of the Supreme Court decision in *Prakash Chand Mehta's case* (supra), the mere fact that some relevant material was not taken into consideration will not be sufficient, by itself, to invalidate the order of detention automatically.

20. The impact of this decision is that the order of detention will not become invalid merely on the ground that some material was not placed before the detaining authority for his consideration. The material has to be a relevant material and the Court can go into the question whether the document or the material which was not placed before the detaining authority was relevant in the sense that its non-consideration will have the effect of vitiating the order. This is also the ratio of the Full Bench decision of this Court in Writ Petn. No. 12439 of 1984 (HC), *Manni Lai v. Superintendent, Central Jail Naini*, decided on 1-8-85-in which it has been laid down by H. N. Seth, J. (who delivered the majority judgment) that all relevant material, whether for or against the detenu, has to be placed before the detaining authority.

21. The question which we are considering is, as pointed out earlier, a little different, as, in the instant case, we are basically concerned with the question of non-compliance of the statutory requirements of Section 3(4) of the Act.

22. In this connection we may point out that although Brother Mathur, J. has held in Raghvendra Singh's case (supra) that an individual citizen has the right of personal liberty, the society has also the collective right of personal liberty and that when there is a conflict between the two rights, the former must give way to the latter, he has, while considering the statutory requirements of Section 3(5) under which a report about the detentions is to be forthwith sent by the State to the Central Government, also held that :

This is, of course, a statutory requirement and if there is violation in its compliance, the detention will be vitiated but where there is no violation of any statutory requirement, the order cannot be faulted.

23. While dealing with ground No. 5 relating to the question of basic facts and basic material, it was observed by brother Mathur, J. that 'no such basic fact or material could be pointed out which was required to be placed before the detaining authority and the State Government but was not placed.'

24. We, no doubt, while considering the question of statutory compliance, have also to consider the relevancy of documents which, according to the petitioner, should have not only been considered by the detaining authority, they should have also been placed before the State Government.

25. In Writ Petition No. 1194 of 1985, Narendra, Singh v. Superintendent, Central Jail Varanasi, decided by us on 8-5-85 (reported in 1986 All LJ 899), which had arisen out of the same incident giving rise to an identical order of detention, we have already held that the Statement of Akhilesh Misra recorded under Section 161 Cri. P.C. was an extremely material document inasmuch as the details of the incident, the motive and the role played by each of the accused were given in that statement subject to our observation quoted below :

We may clarify that the relevancy of this document has been considered by us in respect of the petitioner and we should not be understood to say that this document was relevant in the case of all other co-accused who, we are informed, have also been detained under the Act.

26. The details of motive, though not the details of incident, have also been stated by Smt. Kameshwari Devi (mother of Akhilesh Misra) in her statement under Section 161, Cr. P.C. This statement was placed before the District Magistrate. It may be mentioned that there does appear to be some contradiction, though of a minor nature, in Akhilesh Misra's statement under Section 161, Cr. P.C. and his dying declaration inasmuch as in the dying declaration it is the mother who is said to have become annoyed, it is the father who is shown to have been annoyed in the 161 statement. But even if these two documents are excluded, the significance of press report appearing in the daily 'Aaj' on 19-9-84 cannot be lost sight of which contains a story which, in material particulars, is different from the story given out in the F.I.R. or in Akhilesh Misra's statement under Section 161, Cr. P.C.

27. It is stated in the press report that two persons had earlier come and given threats to Faujdar Misra and others. Thereafter two persons, both armed with revolvers, came on a motor cycle and shot dead two persons inside the house. This report, as pointed out earlier, was investigated by S.I. Sri B.N. Singh Baghel and was found to be correct vide G.D. report No. 55 dt. 23-9-84 which was placed before the District Magistrate but the news item which was the subject matter of investigation was significantly not placed before him. It is stated in the G.D. report No. 55 itself that the news item appearing in the daily 'Aaj' on 19-9-84 was found to be correct. What was published in the newspaper and what story was mentioned therein was not brought to the notice of the District Magistrate. This document had therefore to be placed before the District Magistrate, In any case, the three documents i.e. Akhilesh Misra's statement under Section 161, Cr. P.C. his dying declaration as also the press report were definitely 'other particulars' within the meaning of Sub-section (4) of Section 3 of the Act and they had, therefore, to be placed before the State Government. The order of detention was thus approved by the State Government without the 'other particulars' having a bearing on the matter being placed before it.

28. It has been contended on behalf of the opposite parties that the 'other particulars' cannot be read in isolation and they have to be read along with the phrase 'as, in his opinion, have a bearing on the matter and, therefore whether 'other particulars' are to be placed before the State Government or not will depend

upon the descretion of the District Magistrate and since the District Magistrate, in the Instant case, has not considered it necessary to send those 'other particulars' to the State Government, the petitioner cannot legally raise a grievance about it. We are not prepared to accept this contention.

29. We have already pointed out above that those documents which constitute the 'other particulars' were not placed before the District Magistrate and he was not aware of its existence. If 'other particulars' are not brought to the notice of the District Magistrate and he is not aware of the existence of those 'other particulars', there is no question of choice or discretion being exercised by him in respect of those documents which constitute 'other particulars'.

30. In the instant case existence of 'other particulars' is not disputed. Those documents should have, therefore, been placed before the District Magistrate for the purpose, at least, of deciding whether or not to send those documents to the State Government as required by the provisions of Sub-section (4) of Section 3.

31. In our opinion, there has been a complete non-compliance with the provisions of Sub-section (4) of Section 3 which, in the particular circumstances of the case has the effect of vitiating the impugned order.

32. The above are the reasons for allowing the Writ Petition and quashing the impugned order dt. 1840-85 contained in Annexure-1 by our short order dt. 18-9-85.