

Deepak Sharma Vs. District Magistrate, Aligarh and Others

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Court : Allahabad

Decided On : Mar-27-1998

Reported in : 1998(3)AWC1720

Judge : S.K. Phaujdar and ;N.S. Gupta, JJ.

Acts : [National Security Act, 1980](#) - Sections 3(2) and (4), 9, 10, 12(1) and (2) and 14; [Constitution of India](#) - Article 14; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 467, 468, 489A, 489B, 489C, 489D, 489E, 498A

Appeal No. : C.M.H.C.W.P. Nos. 32107 of 1997 and 32108 of 1997

Appellant : Deepak Sharma

Respondent : District Magistrate, Aligarh and Others

Advocate for Def. : Mahendra Pratap, Adv.

Advocate for Pet/Ap. : S.S. Rathore, Adv.

Judgement :

S.K. Phaujdar and N.S. Gupta, JJ.

1. The above two matters were heard together and are being disposed of by this single order, as the detention orders in both these cases are based on one and the same case and similar questions of law have also been raised to challenge the

detention orders.

2. Case Crime No. 105 of 1997 for offences under Sections 467. 468. 489A, 489B, 489C, 489D and 489E read with Section 120B of the I.P.C was initiated at police station. Civil Lines, Allgarh, on 15.4.97 at 6.20 a.m., upon a raid and recovery that took place on the previous night at about 11.00 p.m. It is stated that a printing press under the name and style Graphics & Printers Press, mohalla Mathura Nagar, was raided by the Circle Officer, Civil Lines, Allgarh on a source information. When the police party reached the press, they found the outer shutter partly open. People inside were talking among themselves. There was electric light inside the press. One of the inmates was heard uttering 'Deepak, the travellers cheque books have not been stapled nor have they been cut.' A second voice was heard saying 'Do not worry Banwari Lal, all the goods are ready, after print, cutting and stapling would be done by the night.' At that point of time, police party entered into the press. There were eight inmates who were apparently apprehensive. They were found cutting the traveller cheques to size, stapling them and counting them. These persons were surrounded. One Deepak Sharma son of Ramendra Pal Singh Sharma described himself as the partner of the press and disclosed that Banwari Lal and Pradeep Goyal had ordered printing of fake traveller cheques. Deepak further disclosed that his brother was another partner in the business while Dharmendra was his friend and was involved in the operation in the computer and helped him in printing. Ramendra Pal Singh Sharma father of Deepak also used to help him in printing and cutting. Mukesh and AJay were on the printing machine and they used to perform other Jobs also.

3. Deepak Sharma was found sitting on a chair and cutting the sheets of printed traveller cheques and checking each one. Prabhat Sharma was found stapling the cheques. Banwarl Lal allegedly admitted that he and Pradeep Kumar Goyal had ordered printing of these cheques to Deepak and all were involved in converting them by and by to cash. Banwari Lal was found packing the cheques in a piece of cloth. Ramendra Pal Singh, Dharmendra, Mukesh, AJay Kumar and Prabhat were engaged in counting the cheques. In the room itself, printing machines were there. In an attached room, there was a dark room and in another, there was a computer. The printed sheets, cut cheques and stapled bunches were seized which were of

one thousand rupees denomination. The printing materials were sealed and the accused persons were arrested and thereafter the F.I.R. was lodged.

4. Against the aforesaid Ramendra Pal Singh, a proceeding under the provisions of National Security Act was initiated by an order of the District Magistrate, Aligarh, on 17.8.97. This Ramendra Pal Singh moved a Habeas Corpus Writ Petition No. 29045 of 1997 and in the course of that proceeding, the result was communicated to Deepak on 21.7.97. After he was actually detained in terms of the detention order dated 21.6.97, the matter was referred to the Advisory Board on 30.6.97. He was given a personal hearing before the Board and the Board found there were good grounds for his detention. Accordingly, the Board sent a report, the Government considered the matter afresh and confirmed the detention order for a period of twelve months from the date of detention. This order was issued on 18.9.97.

5. In the cases of both the present petitioners as also in the case of Ramendra Pal Singh Sharma whose detention order has been revoked, the grounds for detention were common as the detaining authority was subjectively satisfied that with a view to preventing the detenus from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, it was necessary to detain the detenus. The detention orders were passed when the petitioners were in Jail and the first point on which the detention orders were challenged was that the State had not opposed the prayers for bail and, therefore, the District Magistrate had no authority to issue a detention order. Reliance was placed on a decision of the Supreme Court as in *Gulab Mehra v. State of U. P. and others*, (1987) 4 SCC 302. The learned counsel read out from paragraph 29 of this Judgment (as reported). It was observed 'It may also be stated in this connection that the respondents can very well oppose the bail application when it comes for hearing and if at all the appellant is released on bail the respondents are not without any remedy. They can also file application in revision for cancellation of the bail application. In such circumstances we cannot but hold that the passing of the order of detention of the appellant who is already in custody is fully bad and as such the same is invalid in law.' From this observation of the Supreme Court, the learned counsel proposed to say that it was the duty of the

State to oppose bail before making a detention order. This argument, to our mind, is not acceptable. The Supreme Court recorded the abovequoted observation after finding 'There is nothing to show that there was awareness in the mind of the District Magistrate, the detaining authority, of the fact that the appellant was in jail at the time of clamping of the order of detention, and the detaining authority was satisfied in considering his antecedents and previous criminal acts, that there is likelihood of his indulging in criminal activities Jeopardizing public order if he is enlarged on bail and that there is every likelihood that the appellant will be released on bail within a short time. On this ground alone, the order of detention is invalid.' The Supreme Court had never directed, even by suggestion that the bail prayer must be opposed or otherwise a detention order would be bad. The detention order was cancelled on the ground of lack of satisfaction of the detaining authority on a vital point and the observation relied upon by the learned counsel was but a directive to the respondents even after cancellation of the detention order.

6. A point was raised by the learned counsel for the petitioner that Sections 489A to 489E of the I.P.C. were not at all applicable to the present alleged facts as the allegedly forged traveller cheques were neither currency notes nor bank notes as defined in the law. In this regard, the learned counsel took us through a decision of the Punjab and Haryana High Court in the case of Yograj v. State of Haryana in Criminal Appeal No. 399 of 1970. It was held herein that a traveller cheque was not a bank note. The case stands reported in 1973 The Punjab Law Reporter at page 351. It is not necessary for us to go to the question if an offence under Section 498A and the following sections of the I.P.C. were made out. Section 3(2) of the National Security Act nowhere requires that the powers could be exercised only if an offence is committed and not otherwise. The language is plain and simple. The power of detention is to be exercised If the detaining authority is 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 the supplies and services essential to the community, it was necessary to detain that person. There could be a situation where a person by his act was likely to prejudice the maintenance of supplies and

services essential to the community. It would be the look out of the regular criminal court to see if and what offence was made out by such act. It is the only concern of the detaining authority to see, that the alleged acts prejudice the maintenance of supplies and services essential to the community. We are faced with a situation where the police found a huge number of fake and forged traveller cheques whose cash equivalent would have been twelve crore. It is true that a traveller cheque requires certain other formalities before being encashed, but that may not take away the present act out of the ambit of Section 3(2) of the National Security Act, for the simple reason that had these fake traveller cheques gone to the open market intending and conniving persons could have made the relevant forged entries therein and thereby could have drained out twelve crore of rupees from different banks affecting seriously the banking services which are, without any doubt, essential to the community in general. The learned counsel further submitted that in Section 3(2) of the National Security Act, a clause is there for prejudicial activities affecting public order and the Courts had made a distinction between law and order problems and public order problems arising out of an incident depending upon the impact of the incident on the society in general. The learned counsel wanted to draw an analogy of such an approach of the Courts towards cases of alleged prejudice to maintenance of supplies and services essential to the community. It was argued that there could be cases which really did not affect the even tempo of the society so far affecting services essential to the community is concerned and the instant case could be regarded as such an one. This argument, in our view, is also not acceptable as it is not just a case of fraud of a few thousand rupees. It is not also a fraud affecting a single bank at a single station. Allegedly forged traveller cheques had the potential of withdrawal of rupees 12 crore from public exchequer and the enormity of the amount certainly suggests prejudice to the maintenance of supplies and services essential to the community. The last argument that was advanced on behalf of the petitioner was that according to the F.I.R. Ramendra was also given a role in the alleged conspiracy for forgery and he too was detained under Section 3(2) of the National Security Act on grounds similar to those for which the present two petitioners had been detained. Once Ramendra had been set at liberty after revocation of the detention order, there is no reason for the State to continue to detain the present

two petitioners. It was urged that this action of the State is violative of Article 14 of the Constitution guaranteeing equal protection of law to every citizen. In answer to this argument, the learned State Counsel submitted that so far the State is concerned, there was no discrimination and Ramendra was also detained for the prejudicial activities alleged against him. It was contended, however, that the advisory board had thought it appropriate to direct revocation to the order of detention on Ramendra and under Section 12(2) of the National Security Act, the State had no option but to revoke the detention order. For the other two, the present petitioners, the advisory board had found the detention orders proper and the State had also considered them at its own level and confirmed them. There was thus no discrimination by the State and what prompted the advisory board to accept the contention of Ramendra and to reject that of the other two was a question of fact which could not be gone into by this Court.

7. We find sufficient force in the argument of the learned counsel. The advisory board is constituted under Section 9 of the National Security Act. Every order of detention is placed before the advisory board under the statutory direction of Section 10 of the Act. The board is required to look to the grounds of detention as also the representation made by the person as also the report of the District Magistrate made under Section 3(4) of the Act. The advisory board is authorised to call for further information from the appropriate Government and is also authorised to hear the detenus in person and the board is required to specify in a separate part of its report, its opinion as to whether or not there is sufficient cause for detention of the person concerned. Section 12(2) leaves no discretion to the State when the Advisory Board directs that there was no sufficient ground for detention of any particular person, the State had to revoke it upon such report of the advisory board.

8. As noted above, the petitioner, Deepak Sharma, was detained by an order dated 21.6.97, his detention order and representation were considered by the advisory board and the board's opinions were given prior to 19.8.97. The decision regarding Ramendra was taken by the Board long thereafter as Ramendra was detained by an order dated 17.8.97. On what materials, the advisory board had taken two views for Ramendra and Deepak Sharma are not Justiciable before this

Court. For Prabhat Sharma, the detention order is dated 17.8.97 and the board considered his case and representation in September, 1997. He had been given an opportunity of personal hearing before the board and what facts had prompted the board to justify his detention are not open to be looked into by a writ court. It is true that the State had the discretion to revoke the order in respect of Prabhat or Deepak, even after the reports of the advisory board in view of revocation of the order of Ramendra, if not under Section 12(1) of the National Security Act, but at least under Section 14(a) of the Act. But the State did have before it not only the F.I.R. but also the respective representations of the different detenus. In Ramendra Pal Singh's case, we do not have the representations before us in the record to know as to what special pleas were taken up by the detenu. So far the F.I.R. is concerned, Ramendra Pal Singh was attributed the role of counting the sheets whereas Deepak and Prabhat were given more active roles and the difference in the alleged role is not academic as suggested by the learned counsel. Whatever be the allegations in the F.I.R., we had called upon the learned A.G.A. to produce the records regarding Ramendra Pal Singh- The records were produced before us including the report of the advisory board and we have found that a specific plea of Ramendra Pal Singh on fact was accepted by the board upon which the revocation was ordered.

9. We are, therefore, unable to hold that there had been any discrimination on the part of the State not to revoke the order of detention simply on the ground that the order in respect of Ramendra Pal Singh was revoked. In this connection, reference could be made to a decision of the Supreme Court in the case of *District Magistrate and another*, 1990 SCC (Cri.) 538. It was observed by the Supreme Court that an order of detention could not be quashed merely on the ground that detention order in similar cases had been revoked. Each case was to be decided on its own facts. The judgment of the High Court quashing the order of detention was set aside and the High Court was directed to dispose of the writ petition within a particular time frame.

10. Upon the above discussion, we are of the view, that the detention order in respect of Deepak Sharma and Prabhat Sharma may not be interfered with. The present two writ petitions are, therefore, dismissed.

