

Dilip Kumar Vs. Union of India and Others

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Court : Allahabad

Decided On : May-15-2000

Reported in : 2000(3)AWC2344

Judge : R.R.K. Trivedi and ;U.S. Tripathi, JJ.

Acts : [National Security Act, 1980](#) - Sections 3(2); [Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980](#) - Sections 3(1); [Essential Commodities Act, 1955](#) - Sections 2; [Drugs and Cosmetics Act, 1940](#)

Appeal No. : Civil Misc. Habeas Corpus Petition No. 42309 of 1999

Appellant : Dilip Kumar

Respondent : Union of India and Others

Advocate for Def. : S.C., A.G.A. and ;A.N. Pandey, Adv.

Advocate for Pet/Ap. : Nasiruzzaman, ;Jokhan Prasad Yadav and ;J.P. Misra, Advs.

Judgement :

R.R.K. Trivedi and U.S. Tripathi, JJ.

1. This writ petition has been filed challenging order dated August 4. 1999, passed by District Magistrate. Agra under Section 3(2) of the National Security Act. 1980

(hereinafter referred to as 'Act'), under which petitioner has been detained. Counter and rejoinder-affidavits have been exchanged between the parties.

2. We have heard Sri Nasiruzzaman along with Sri Jokhan Prasad Yadav. learned counsel for petitioner, Sri Mahendra Pratap. learned A. G. A. for respondent Nos. 2 to 4 and Sri K. N. Pandey for respondent No. 1.

3. Learned counsel for petitioner has challenged the legality of the order on a short ground that in view of the Explanation appended to subsection (2) of Section 3 of the Act. the impugned order of detention could not be legally passed by detaining authority. Learned counsel has submitted that as in the present case, the recovery of drugs allegedly spurious is involved, the action can only be taken under the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act. 1980.

4. Sri Mahendra Pratap, learned A. G. A., on the other hand has submitted that misbranded, adulterated, or spurious drugs cannot be treated as drugs as defined in the Drugs and Cosmetics Act. 1940 and Section 2(a)(iv-a) of the Essential Commodities Act. 1955, prohibition contained in Explanation has no application in the present case.

5. We have carefully considered the submissions of the learned counsel for the parties. In the present case, allegations against the petitioner are that on July 6. 1999. authorities conducted a raid and search in the shop of the petitioner and recovered 38 different kinds of medicines, which, according to the Drug Inspector, were spurious and not genuine and could be harmful to the patients. Sample of 19 medicines was taken and sent to Public Analyst for his report as to whether the drugs are genuine or not. it is not disputed that the report of the Public Analyst is still awaited- Explanation appended to sub-section (2) of Section 3 of the Act reads as under :

'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.'

Explanation appended to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act. 1980. reads as under :

'Explanation--For the purposes of this sub-section, the expression 'acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community' means :

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act. 1955 (10 of 1955). or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in. any commodity essential to the community ; or

(b) dealing in any commodity :

(i) which is an essential commodity as defined in the Essential Commodities Act. 1955 (10 of 1955). Or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a) ;

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.'

6. It is not disputed that the drugs as defined, has been included as one of the essential commodities under Section 2(a)(iv-a) of the Essential Commodities Act. 1955. As drugs are essential commodities and their production, supply and distribution and trade and commerce is controlled by the [Drugs and Cosmetics Act, 1940](#) and the Rules framed thereunder, there remains no doubt that the Explanation appended to sub-section (2) of Section 3 of the Act is attracted to the present case and the order of detention could not be legally passed. From a close reading of the Explanation to subsection (1) of Section 3 of Prevention of

Blackmarketing and Maintenance of Supplies of Essential Commodities Act. 1980, It is clear that the nature of the drugs whether spurious, mlsbranded. or adulterated is not the basis for passing the order but the requirement is that the trade and commerce or indulgence in the production, supply and distribution of the alleged drugs should with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law, which. In the present case, may be Drugs and Cosmetics Act. 1940. and the Essential Commodities Act. 1955. Allegation against petitioner is that he stored the spurious medicines for making gain which. If permitted, would defeat provisions of aforesaid Acts. In view of the aforesaid legal position, in our opinion, the detaining authority was not competent to pass an order of detention against petitioner in view of the clear prohibition contained in the Explanation to Section 3(2) of the Act.

7. For the reasons stated above, the writ petition is allowed. The impugned order dated 4.8.1999 (Annexure-2) is hereby quashed. The respondents are directed to set petitioner at liberty forthwith. If his detention is not required in any other case.

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