

Sushil Kumar Vs. U.P. State and ors.

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Court : Allahabad

Decided On : Sep-16-1982

Reported in : 1982CriLJ2130

Judge : P.N. Goel and ;M. Wahajuddin, JJ.

Appellant : Sushil Kumar

Respondent : U.P. State and ors.

Judgement :

P.N. Goel, J.

1. Sushil Kumar has moved this application to review the judgment dated 12-4-1982 : Reported in 1982 Cri LJ 1992 (All) in his habeas corpus petition under Article 226 of the Constitution. The District Judge, Allahabad by order dated 3-11-1981 directed the detention of the petitioner Sushil Kumar in Central Prison, Naini under Sub-section (2) of Section 3 of the National Security Act, 1980. The Bench constituting of myself and Hon'ble S. J. Hyder, J., after hearing the parties counsel and carefully considering the cases cited found that the order of detention was not in any way bad in law. The writ petition was, therefore, dismissed,

2. Sri D. S. Misra, Advocate for the applicant has been heard at length.

3. In the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* : 1979 CriLJ908 it was held that the power of review inheres in every High Court and there is nothing in Article 226 of the Constitution to preclude a High Court for exercising the power of review to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Supreme Court then indicated the limits of the exercise of power of review in the following words (at p, 1048):

The power of review may be exercised on the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal, A power to review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the subordinate Court.

It is evident that the conditions in which power of review can be exercised are the same as mentioned in Rule 1 of Order 47 of C.P.C.

4. Sri D.S. Misra has attempted to bring the case of the petitioner in the ground that there is some mistake or error apparent on the face of the record.

4A. The contentions of Sri D. S. Misra may now be analysed.

(1) As stated above the District Magistrate, Allahabad passed the order of detention on 3-11-1981. On that date the petitioner was in jail in connection with a case under Section 307 I.P.C. A copy of the detention order was sent to the Superintendent, Central Jail, Naini on the same day. The Superintendent Naini Jail offered a copy of the detention order to the petitioner on the same date but he refused to accept the same. In the case under Section 307 I.P.C. the petitioner was ordered on 5-11-1981 to be enlarged on bail. The warrant of release reached the Jail Superintendent on Nov. 7, 1981. The Superintendent did not release the petitioner from jail because of the order under Section 3 of the National Security Act, 1980 passed by the District Magistral. A fresh order of detention was served

on the petitioner on Nov. 20, 1981. The petitioner accepted the copy of the order. It was urged on behalf of the petitioner that he would be deemed to be in detention under Section 3 of the Act with effect from 3-11-1981. On behalf of the State it was urged that the petitioner would be deemed to be in detention from Nov. 20, 1981, the date on which the petitioner accepted the copy of the order.

Taking into consideration the view expressed by the Supreme Court in the case of State of Gujarat v. Adam Kasam Bhaya : 1981 CriLJ1686 , we held that the petitioner would be considered in detention with effect from Nov. 7, 1981, Sri D. S. Misra has urged that the case of State of Gujarat v. Adam Kasam Bhaya was wrongly relied upon and that then detention of the petitioner should have been taken with effect from 3-11-1981.

(2) The grounds of detention communicated to the petitioner were 4 in number. The first ground was general. Therefore it can also be characterised as vague. In view of the decision in the case of Smt. S. Gayathri v. the Commr. of police : AIR 1981 SC1672 . We read all the 4 grounds conjointly and not separately or individually. In case the grounds had been taken individually or separately, it is obvious that as ground No. 1 was general and consequently vague, the writ petition should have been allowed. Sri D. S. Misra contended that reliance was wrongly placed on the case of Smt. Gayathri (supra). He cited two cases to indicate that the grounds should have been individually taken:

(a) Ram Bahadur Rai v. State of Bihar : 1975 CriLJ269 and

(b) Mohd, Yousuf Rather v. State of Jammu and Kashmir : [1980]1SCR258 .

We must at the outset mention that these cases were not relied upon by the petitioner's counsel at the time of helping of the habeas corpus petition, We have carefully gone through the two cases now cited by Sri Misra. In the first case of Ram Bahadur Raj, the order of detention was passed on 8 grounds. The first 7 grounds mentioned specific instances on different dates. On the basis of these, instances, the District Magistrate stated the 8th ground reading-

I am, therefore, satisfied that in the circumstances mentioned above if you were allowed to remain at large, you will indulge in further activities prejudicial to the maintenance of public order. I, V. S. Pubey, District Magistrate, Patna. therefore, consider it necessary to detain you in custody with a view to preventing you from acting in any manner prejudicial to the maintenance of the public order.

The Patna High Court held that the grounds of detention supplied to the petitioner 'are not absolutely independent and unconnected and that none of the grounds are vague so as to affect the petitioner's right to make representation against the order of detention'. The Supreme Court observed-

We find it impossible, by merely reading these particulars, to decipher the connection between grounds 1 and 2. In the second case of Mohd. Yousuf Rather : [1980]1SCR258, the grounds of detention were indicated in 7 separate paragraphs. In the first paragraph there was general allegation that the petitioner was a die-hard Naxalite and notorious for activities which were proving prejudicial to the maintenance of the public order etc. Then in paragraphs 2, 3 and 4 specific instances were mentioned. In paragraph 3 there was vague allegation that you were also noticed instigating the educational unemployed youth who had recently gone on a hunger strike at Anantnag. In para 6 specific allegations in respect of 2 dates were made. In the last paragraph it was stated that the activities of the petitioner were "highly prejudicial to the maintenance of public order... resulting in wide spread loss to the public and private property and to the safety of peaceful citizens.' The Supreme Court dealt with each of the paragraphs separately and held that the allegations were vague and as such the detention of the petitioner was illegal.

Each case depends on its own facts. There is no rule of law that all the grounds should necessarily be read together. There can be cases in which the grounds can be read together. The Court placed reliance on the Supreme Court decision in the case of Smt. Gayathri 1981 Cri LJ 1272 (supra).

In this connection Sri D. S. Misra urged that as ground No. 1 was vague, the detention of petitioner Sushil Kumar should have been held illegal. Sri Misra has referred to 3 cases of black marketing:

(i) Rameshwar Lal Patwari v. State of Bihar : [1968]2SCR505 ;

(ii) Moti Lal Jain v. State of Bihar : 1969 CriLJ33 ;

(iii) Decision of this Court dated 22-7-1980 in Habeas Corpus Writ Petition No. 4626 of 1980. Jokhu Lal Yadav v. State of U.P. and Ors. Sri. Misra also referred to the case of Chaju Pam v. State of Jammu and Kashmir. : 1971 CriLJ281) relating to Jammu and Kashmir preventive Detention Act.

In all these cases it was held that the grounds Of detention should not be vague. In case the grounds of detention are vague, the petitioner cannot appropriately and successfully, meet them. There is no dispute to this principle. In the instant case we read ground No. 1 conjointly with the other 3 grounds.

(3) Sri Misra next urged that the grounds of detention related to the expression 'law and order' and not public order'. He placed reliance on 2 decisions of this Court:

(i) Judgment dated 31-3-1982 in Habeas Corpus Petition No. 13840 of 1981, Satya Prakash v. Adhikshak Janpad Karagar, Gorakhpur.

(ii) Judgment dated 6-4-1982 in Habeas Corpus Writ Petition No. 1939 of 1982, Balister v. District Magistrate Moradabad and Ors.

We have carefully gone through these cases. The ratio in this case was that as the police party was threatened and fired at a lonely place, it did not affect public order. There is no dispute to this view. In the case before us the activities of Sushil Kumar, petitioner, complained of were alleged to have taken place in the crowded locality of Meerganj, red light area in the heart of the city of Allahabad.

In the case of Babul v. State of West Bengal : 1974 CriLJ395 , the grounds of detention related to a police station and a public institution. The targets of violence were public servants. It was held that it was a case of 'public order' and not 'law and order': The view expressed by the Supreme Court in this case supports our view taken in the case of the petitioner.

5. It is apparent from the contentions of Sri. D. S. Misra that the judgment in the habeas corpus petition of the petitioner was not correct and was erroneous in law: It has been indicated above that the view which the Bench took was based on the decisions of the Supreme Court. A court may take a right view of the legal points, involved or may take a wrong view of the said points. Even if the Court takes a wrong view of the legal points involved, it cannot be said that the judgment suffers from some mistake or error apparent on the face of the record. The remedy of the aggrieved petitioner is, in our opinion, not by moving a review application, but by preferring an appeal in the appellate court.

6. To indicate that the present review petition is, maintainable, Sri D. S. Misra, invited our attention to the case of Smt. Kavita v. State of Maharashtra AIR 1981 SC 2084 : 1981 Cri LJ 1703. In this case the detenu, Sender Shankar Das Devidssani was detained under the provisions of the COFEPOSA. An application under Section 32. of the Constitution for the issue of a writ of Habeas Corpus was rejected by the Supreme Court on 28-7-1981 : Reported in 1981 Cri LJ 1262 (SC) after full hearing. Another writ petition was moved by another counsel on almost the same grounds. It was urged that the principle of res judicata was not applicable. The Supreme Court held that they were unable to find any ground justifying the admission of the writ petition. Some Constitutional matters in other cases were pending before the Constitution Bench. The Supreme Court then observed.

We have expressed our view on the question raised before us and if our view is later found to be wrong in the light of what may be said by the Constitution Bench it will be open to the petitioner to seek a review of our judgment or file another writ petition, as he may be advised.

At the end the Supreme Court observed.

We may add that we are also not satisfied even prima facie how the basic structure of the Constitution is affected'. We, however, leave it open to the petitioner to file an application for review or file an independent writ Petition as he may be advised, after this Court decides in other cases, the question now posed before us. The application, is dismissed.

7. The observations reproduced above in our opinion are not sufficient to hold that the present review application is maintainable on the grounds taken therein. We have dealt with the grounds urged by the petitioner's counsel. In our view the remedy of the petitioner is by way of an appeal against the order dated 12-4-1982 and not by means of a review application. We have indicated above the grounds upon which a review application can lie. In the present case none of the said, grounds are applicable.

8. For what has been discussed above, this application for review cannot be admitted. It is rejected.

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