

Ram Khiladi Gurjar Vs. State of M.P. and anr.

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Court : Madhya Pradesh

Decided On : Apr-16-2008

Reported in : 2008(3)MPHT74

Judge : S.C. Sharma, J.

Appellant : Ram Khiladi Gurjar

Respondent : State of M.P. and anr.

Disposition : Petition dismissed

Judgement :

ORDER

S.C. Sharma, J.

1. The present petition has been filed under Article 226 of the Constitution by the petitioner challenging an order dated 7th September, 2007 passed by the respondent No. 1, State of Madhya Pradesh so also order passed by the District Magistrate, Gwalior in Case No. NSA/13/07, dated 19th July, 2007 under the provisions of the National Section Act, 1980 (hereinafter referred to as the Act of 1980) detaining the petitioner for a period of one year.

2. The contention of the petitioner is that he was detained on 21st July, 2007 (Annexure P-3). As per the detention order dated 21st July, 2007, twenty one cases have been detailed in the order. The petitioner in this petition has stated that in most of the cases which has been listed in the detention order, he has been acquitted and after the year 2003 only three cases have registered against him. In the year 2003 a case was registered on 14-10-2003 at Crime No. 336/03 under Sections 302,341,120B of IPC. After the year 2003 it was only 18th May, 2007 a case has been shown in the list to have been registered against the petitioner and the contention of the petitioner is that this case does not relate to the petitioner but is related to one Ram Khiladi s/o Shri Kartar Singh, resident of Morena. It is further contended by the petitioner that thereafter a case has been shown to have been registered on 1st July, 2007 at Crime No. 158/07 under Sections 294 and 507 of IPC, and another case has been registered against him on 3rd July, 2007 at Crime No. 647/07 for offences under Sections 336 and 347 of IPC.

3. The grievance of the petitioner is that the case which has been registered on 3rd July, 2007 has been registered on account of political influence exercised by one Mr. Rakesh Shukla an Ex-M.L.A., belonging to the ruling party. The petitioner has assailed the order passed by the Competent Authority under the Act of 1980, on various grounds. The contention of the petitioner is that on account of political pressure, the order of detention has been passed against the petitioner under the Act of 1980. It has been further contended that political pressure has been exhorted by Mr. Rakesh Shukla, a member of the ruling party who was instrumental in getting the impugned order passed against the petitioner.

4. It is the contention of the petitioner that he belongs to Backward Class Community invoked in various social

work activities and in order to tarnish the reputation of the petitioner, the impugned action has been taken against him infringing the fundamental rights guaranteed under Article 21 of the Constitution, therefore, the action of the respondents deserves to be set aside.

5. The petitioner has further stated in the writ petition that out of 21 cases which have been listed against the petitioner, he has been acquitted in 13 cases and he was falsely implicated in two cases and some of the cases which are pending against him are triable by the Magistrate First Class. It is the contention of the petitioner that once he has been acquitted in most of the criminal cases, there is total arbitrariness and non-application of mind on the part of the District Magistrate, Gwalior in passing the order of detention which has been affirmed by the State Government.

6. The learned Govt. Advocate produced the record on the basis of which detention order has been passed. The detention order has been passed under the Act of 1980 and the petitioner has submitted an appeal before the State Government and after carefully considering the entire material available on record, the State Government has affirmed the detention order.

7. The matter relating to detention of the petitioner was also presented before the Advisory Board. The Advisory Board has also confirmed the detention of the petitioner and vide order dated 13th August, 2007 the Advisory Board has reported that there is sufficient cause for the detention of the petitioner under the provisions of the Act of 1980. The Counsel for the State has strenuously argued on behalf of the State Government that no ground is made out for interference with the order passed by the District Magistrate and the subsequent order passed by the State Government, as the petitioner has bad antecedents and is a history sheeter.

8. Section 3 of the Act of 1980 reads as under:

3. Power to make orders detaining certain persons.- (1) The Central Government or the State Government may,:

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

It is necessary so to do, make an order directing that such person be detained.

(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 Black-marketing 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 any officer mentioned in Sub-section (3), he shall forthwith report the fact to the State Government to which 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 detentions, this sub-section shall apply subject to the modification, that, for the words 'twelve days', the words 'fifteen days' shall be substituted.(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

9. In the present case, it is evident from the detention order passed under the Act of 1950 that as many as 21 cases were registered against the petitioner from 1995 onward though in respect of one case the contention of the petitioner is that it does not relate to him which was registered on 18th May, 2007 in Crime No. 265/07 for offence under Sections 392 of IPC and 11/13 of the Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981. The petitioner has stated that in most of the cases he has been acquitted but the fact is that there are 20 cases which were registered against the petitioner and in some of them trial has been taken place, though petitioner has been acquitted in 13 such cases, but by no stretch of imagination, it cannot be presumed that the petitioner enjoys a good reputation in the society. The petitioner, thus have a record of criminal antecedents. The contention of the petitioner that after the year 2003, only three cases have been registered and the one registered on 18th May, 2007 does not relate to him, does not wipe out the antecedents of the petitioner. A case was registered against the petitioner on 3rd July, 2007 at Crime No. 647/2007 which relates to a case in which the petitioner started indiscriminate firing and offence under Sections 336 and 347, IPC, has been registered against him. Indiscriminate firing, even if it taken as a single act is good enough to hold that public order was affected. The Apex Court in the case of State of U.P. v. Sanjai Pratap Gupta alias Pappu and Ors. : 2004CriLJ4600 , observed in Paragraphs 10 and 14 as under:

10. 'Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. [See Kishori Mohan Bern v. The State of West Bengal : AIR1972SC1749 ; Pushkar Mukherjee v. State of West Bengal : 1970CriLJ852 ; Arun Ghosh v. State of West Bengal : 1970CriLJ1136 ; Nagendra Nath Mondal v. State of West Bengal : 1972CriLJ482].

14. The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of acts that matters. What has to be seen is the effect of the act on even tempo of life, the extent of its reach upon society and its impact.

10. In the aforesaid case the Supreme Court has held that the stand that a single act cannot be considered sufficient for holding the public order was affected is without substance. It was observed by Their Lordship that it is not the number of acts that matters but what has to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact.

11. The argument of the learned Counsel for the petitioner that the question of firing is the only incident which has taken place after 2003 and the same could not have been made the basis for passing the order under the Act of 1980, as a sword of domicile. Indiscriminate firing in public is certainly an act which has got far reaching consequence upon the society. The neighbours and the people of the locality must have been terrorized by the anti-social activity of the petitioner because of indiscriminate firing, therefore, the District Magistrate, Gwalior has rightly considered the offence which took place after the year 2003 and passed the order of detention with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. Moreover, it is not a case that the petitioner is enjoying a clean record prior to the year 2003 as the total number of cases registered against the petitioner were twenty one in number. A person with 21 criminal cases can in no way say before this Court that he is having a clean record and he has been detained under the Act of 1980 only because of firing incident that took place on 3rd July, 2007. I do not find any reason to interfere with the order of the detention impugned in this petition.

12. The Apex Court in the case of Commissioner of Police and Ors. v. C. Anita (Smt) : (2004)7SCC467 , has held in Para 5 as under:

5. Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the concerned law. The action of Executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the Executive Authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would lose all their meanings provide the justification for the laws of preventive detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. 'To lose our country by a scrupulous adherence to the written law' said Thomas Jefferson 'would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the means'. This, no doubt, is the theoretical jurisdictional justification for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other. These aspects were highlighted in Union of India v. Amrit Lal Manchanda and Anr. : 2004CriLJ1426 .

13. In the present case there was enough material on record based on which the District Magistrate has passed the order of detention under the Act of 1980. The activities of the detenu were prejudicial to the public order and the public order as the French call 'orderpublique' is something more than ordinary maintenance of

law and order, as observed by the Apex Court in Paragraphs 8, 9,11,12,13 in the case of Sanjai Pratap Gupta (supra):

8. 'Public Order' is what the French call 'ordrepublique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order is : Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed [See Kanu Biswas v. State of West Bengal : 1972CriLJ1006].

9. 'Public Order' is synonymous with public safety and tranquility: 'It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State'. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to a public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. [See Dr. Ram Manohar Lohia v. State of Bihar and Ors. : 1966CriLJ608].

11. The distinction between 'law and order' and 'public order' has been pointed out succinctly in Aran Ghosh's case (supra). According to that decision the true distinction between the areas of 'law and order' and 'public order' is 'one of degree and extent of the reach of the act in question upon society'. The Court pointed out that 'the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different'. [See Babul Mitra alias Anil Mitra v. State of West Bengal and Ors. : 1974CriLJ395 , Milan Banik v. State of West Bengal : 1974CriLJ917].

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. 'Law and order' comprehends disorders of less gravity than those affecting 'public order' just as 'public order' comprehends disorders of less gravity than those affecting 'security of State'. [See Kuso Sah v. The State of Bihar and Ors. : 1975CriLJ543 , Harpreet Kaur v. State of Maharashtra : 1992CriLJ769 , T.K Gopal v. State of Karnataka : 2000CriLJ2286 , State of Maharashtra v. Mohd. Yakub : 1980CriLJ793].

14. In the present case it is evident from the detention order that the detenu was a history sheeter and against him 21 cases have been instituted and as rightly held by the Apex Court, this Court cannot substitute its own findings over the finding of the Detaining Authority as the District Magistrate has precisely enumerated the grounds in the detention order, therefore, this Court do-not find it to be a fit case for interference.

15. The learned Counsel for the petitioner during the course of argument has cited large number of cases relating to public order and public peace resulting in detaining a person under the Act of 1980. All those judgments have been discussed and the considered by the Apex Court in the judgment, which have been dealt with in this order, and therefore, they are not being dealt separately.

15. This Court is of the opinion that the District Magistrate, Gwalior has taken into consideration the entire material placed before him and has rightly passed the order of detention on his satisfaction as per the provisions of Section 3 of the Act of 1980. The State Government is also justified in approving the order passed by the District Magistrate, Gwalior. The Advisory Board has also considered the material placed before it and has rightly held that there is sufficient cause for the detention of the petitioner.

17. Keeping in view the fact that large number of cases have been registered against the petitioner and especially the reasons indicated in the order passed by the District Magistrate, the same has to be upheld by dismissing the petition.

18. In view of the above, petition stands dismissed. No order as to cost.

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