

Amir Singh Vs. Emperor

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Court : Punjab and Haryana

Decided On : Apr-01-1948

Reported in : AIR1949P& H17

Appellant : Amir Singh

Respondent : Emperor

Judgement :

ORDER

Teja Singh, J.

1. This is a habeas corpus petition by one Amir Singh in respect of L. Ram Saran Das, an advocate of Bhiwani, who was arrested under Section 3, Punjab Public Safety Act, on 5-2-1948. Originally L. Ram Saran Das was ordered to be detained for a period of one month, but subsequently the Provincial Government extended his detention to six months. The order extending the period of detention which has been placed on record is dated 4-3-1948 and is signed by the Home Secretary to the East Punjab Government. A number of questions, both of fact and law, have been raised by the petitioner, and it has been contended on his behalf that the orders both of arrest and detention of L. Ram Saran Das were illegal and accordingly L. Ram Saran Das must be released. It has also been asserted that there were no grounds for the arrest of L. Ram Saran Das, since he was a peaceful citizen and had never taken any part in any kind of subversive activities

and the provisions of the Punjab Public Safety Act did not justify his arrest.

2. As regards the justification of the arrest and the question, namely, whether or not L. Ram Saran Das was a person against whom action could be taken under Section 3, Punjab Public Safety Act, I am afraid, this Court has no jurisdiction to go into them. It is now well settled that the justification of a particular arrest is a matter which the authority directing or making the arrest has to decide, and provided the provisions of the Act regarding the arrest and detention are strictly complied with the Courts cannot go into it. I shall, therefore, confine myself to the question whether the arrest and the detention in question were legal and were in conformity with what is laid down in Sub-sections (1) and (2) of Section 3. Sub-section (1) reads as follows:

The Provincial Government, the District Magistrate or any servant of the Crown authorised in this behalf by general or special order of the Provincial Government if satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the public safety or the maintenance of public order it is necessary so to do, may arrest such person without warrant, or may direct the arrest without warrant of such person and in making such arrest any means that may be necessary may be used.

The arrest in this case was made by L. Harish Chander Sethi who was then acting as a temporary Magistrate exercising first class powers and was posted at Bhiwani as a Resident Magistrate. According to one of the notifications issued previously all Magistrates of first class in the Province were empowered to make or direct arrests under this sub-section and without doubt they could be regarded as persons 'authorised in this behalf by general or special order etc.' That notification was, however, superseded by notification No. 4264-H. G-47/40770 dated 2nd July 1947, and the authority to make arrests was given only to District Magistrate and Superintendent of Police. In the original order of detention passed by L. Harish Chander Sethi, which has been produced before me, it is mentioned that he was duly authorised by the Provincial Government to make the arrest. This statement is wrong, and as the notification in force at the time L. Ram Saran Das's arrest was made was that of 2nd July 1947. L. Harish Chander Sethi had no power to make

the arrest.

3. This does not, however, afford any difficulty, because in the evidence that L. Harish Chander Sethi gave before me on 23rd March 1948, and it may here be mentioned that his statement was taken at the instance of the petitioner's counsel, he stated' that he merely acted under the orders of the Superintendent of Police and it was the latter who ordered L. Ram Saran Das's arrest. There is no reason whatsoever to disbelieve L. Harish Chander Sethi on this point. It being clear from the notification of 2nd July 1947, that the Superintendent of Police was a person authorised to direct or make arrest I hold that L. Ram Saran Das was properly arrested.

4. The provision relating to the detention of a person arrested under Sub-section (1) of Section 3 is contained in Sub-section (2). The words of the subsection are:

Any arrest made by or on the direction of any authority under this section other than the Provincial Government, shall be reported forthwith to the Provincial Government, by the authority so making or so directing the arrest as the case may be, and the authority making the report may by order in writing commit any person so arrested to such custody as the Provincial Government may by general or special order specify in this behalf.

5. As I read the sub-section it lays down the following: (1) That an arrest made under Sub-section (1) shall be reported to the Provincial Government forthwith; (2) that the report could be made either by the authority who makes the arrest or who directs the arrest; (3) that it is the authority who reports the arrest to the Provincial Government that can make an order committing the person arrested to such custody as the Provincial Government may specify; (4) that the order of detention must be in writing. Since the arrest in this case was made by L. Harish Chander Sethi under the directions of the Superintendent of Police it was open to either of them to report it to the Provincial Government. L. Harish Chander Sethi's statement is that no report was made by him. This means that the Superintendent of Police must have made the report and so he alone could make the order of detention. In any case L. Harish Chander Sethi, who did not report the arrest, could not make such order. The order produced before me, however, shows that it

was made by L. Harish Chander Sethi. For the real sons given above it is clear that the order was not made by the proper person and is illegal. As regards the order of the Provincial Government extending the period of detention, all that I wish to say is that when the original order of detention is illegal extension of period of detention cannot legalise it.

6. In the result, I accept the petition, set aside the order of L. Ram Saran Das's detention and set him at liberty. L. Ram Saran Das was released by me on bail on one of the previous dates. I direct that his bail bond shall stand discharged.

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