

Chacko Vs. State

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Court : Kerala

Decided On : Nov-27-1950

Reported in : 1951CriLJ1089

Judge : Kunhi Raman, C.J, and; Subramania Iyer, J.

Appellant : Chacko

Respondent : State

Judgement :

Kunhi Raman, C.J

1. This petn. which was originally brought as a Criminal Revn. Petn. has been subsequently permitted to be converted into a criminal misc. petn. on the appln. of the petnr. It purports to be presented under Section 402, Travancore Cr. P. G, for the issue of a writ of the nature of a Habeas Corpus- The Advocate-General appears on behalf of the State who is the resp.

2. The petnr. was ordered to be detained in the Central Prison at Trivandrum for a period of three months under the Preventive Detention Act (Act IV 4. of 1950). The order of detention was passed by the Dist. Mag. of Quilon on 21-10 1950. By a later order passed on 26th of October the grounds on which the detention order was made were communicated to petnr as required by Section 7 of the Act. The prayer in the present petn. is that this Ct. may be pleased to direct that the petnr. may be released from custody as the detention is not legal. The original order

passed by the Dist. Mag on 20-10-1950 is worded as follows:

Whereas I am satisfied from the Police report & the connected records that K. M. Chacko alias Chaokochi Kuliadal Veedu, Thazhekara Muri, Thazbekara Pakuthi, Wholesale Ration Dealer in Depot. No. 4 in Thazhekara Pakuthy, Mavelikara Taluk has been conducting regular black marketing of rationed articles (or the past five years & that with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies & services essential to the community, it is necessary that he should be detained.

Now therefore I, K. Kunjukrishna Pillai, Dist. Magi Quilon, in exercise of the powers vested in him Under Section 3 (2), Preventive Detention Act. (Act IV 4. of 1930) hereby order that the said K. M. Chacko alias Chackochi be detained in the Central Prison, Trivandrum, for a period of three months.

Given under my hand & the Seal of the Ct. this 24-10-1950,

Sd, K. Kunjvskrishna Pillai, Dist. Mag.

The amplified order issued on 26,10-1950 is worded as follows:

It is seen from the reports received that you have been conducting regular black marketing of rationed articles for the past about 5 years.

From investigation of certain crime cases also it has come out that you were involved in the black marketing of rice & wheat

In order to prevent you from acting in a manner prejudicial to the maintenance of supplies & services essential to the community, you have been ordered to be detained in the Central Prison, Trivandrum, under the Preventive Detention Act (Act IV 4. of 1950) for a period of three months by my order C. No 503/50/Magi, dated 24-10-1950.

You are entitled to make any representation against the Order of detention in writing before Govt. under Section 7 (i) of the Act.

Sd. K. Kunjukrishna Pillai, Dist. Mag.

3. It appears from these orders that the petnr. is a wholesale ration dealer. The license given to him for conducting his business has since been cancelled. In the affidavit filed on behalf of the petnr. by his brother K. M. Zacharia it is alleged that the petnr's. ration shop has been closed, taken possession of & sold under the orders of the Govt. In the memo, of grounds filed by the learned Counsel appearing for the petnr. it is set forth that immediately after his arrest when his depot & ration shop were taken over by the authorities it was found that the 'position of the stock was intact.' The learned Advocate-General states that he has not had sufficient time to take instructions & file an affidavit in reply to these averments.

4. Before dealing with the main contentions urged on behalf of the petnr. it would be convenient to advert to the relevant provisions of the Act under which action was taken by the Dist, Mag. of Quilon. The Preventive Detention Act, No. 4 of 1950, under which proceedings were taken In the present case, received the assent of the Honourable President of the Republic of India on 25-2-1950, It extends to the whole of India with the exception of the State of Jammu & Kashmir to which only some of the sections of the Act would apply. It is not necessary to refer to them when disposing of the present case. It is stated in S I(3) that the Act shall cease to have effect on 1-4-1951 save as respects things done or omitted to be done before that date. It will thus be seen that the legislature has passed this Act as a temporary measure in a state of emergency for the purpose of enabling the authorities mentioned in it to direct the preventive detention of persons who are likely to produce results which the Act considers dangerous to the defence of India, the relations of India with foreign powers, security of India, the security of the State or the maintenance of public order or the maintenance of supplies & services esseatial to the community. Section 3 lays down that the Central Govt. or the State Govt. may it satisfied with respect to any person that it is necessary to make an order for the detention of that person with a view to preventing him from acting in any manner prejudicial to the aforesaid objects make an order directing such detention. Sub.s. (2) confers a similar power to order the preventive detention of a person on Dist. Mugs. Sub-Divisional Magistrates & also the Comrs. of Polios in Presidency towns. Bat the power is restricted to cases which fall under Sub-clauses (ii) & (iii), Clause (a), Sub-section (1). These clauses refer to the

security of the State or the maintenance of public order & the maintenance of supplies & services essential to the community. The officers mentioned in subs, (2) can make an order of detention only if there is a danger of any person acting in a manner prejudicial to those objects. Sub-section (3) provides for a safeguard to prevent the arbitrary exercise of this jurisdiction by a subordinate authority like a Dist. Mag., Sub Divisional Magistrate or Comr. of Police, According to the Sub-section when an order is made Under Section (&) by one of these subordinate authorities, he shall forthwith report the fact to the State Govt. to which he is subordinate, together with the grounds on which the order has been made & such other particulars as in his opinion have a bearing on the necessity of the order. Section 7 imposes a duty upon the authority making the order of detention to communicate to the persons ordered to be detained the ground on which the order has been made & shall afford him the earliest opportunity of making a representation against the order in a case where such order has been made by the Central Govt. to that Govt. & in a case where it has been made by a State Govt. or an officer subordinate thereto, to the State Govt. Under Subs. (2) of the section, the authority concerned is not bound to disclose facts which it considers to be against the public interests to divulge, Section 8 provides for the constitution of an Advisory Board under the Act. Such Board shall consist of two persons who are or have been or are qualified to be appointed as Judges of a H, C. & such persons shall be appointed by the Central Govt. or the State Govt. as the case may be. Reference to the Advisory Board of orders of detention passed under this Act is provided for Under Section 9, which is worded as follows:

In every case where a detention order has been made under Sub-clause (iii), Clause (a), or Clause (b). Sub-section (1), Section 3, the Govt. making the order, or if the order has been made by an officer specified in Sub-section (2), Section 3 the State Govt. to which such officer is subordinate, shall, within six weeks from the date of detention under the order, place before an Advisory Board constituted by it a/a. 8 the grounds on which the order has been made & the representation, if any, made by the person affected by the order, & in case where the order has been made by an officer, also the report made by such officer under Sub-section (8) of B. 8.

The procedure to be followed by the Advisory Board is set forth in Section 10. Within a prescribed period, the Advisory Board after, considering the materials placed before it & such other material as it may think fit to call for either from the State or the person concerned, shall submit its report to the Central Govt. or the State Govt. as the case may be, within ten weeks from the date of detention under the detention order. In a separate part of that report the Advisory Board shall specify its opinion as to whether or not there is sufficient cause for the detention of the person, concerned. Should the Advisory Board report that in its opinion there is sufficient cause for the detention of the person, then it may report to the Govt. concerned to that effect & the Central Govt. or the State Govt, as the case may be may confirm the detention order & continue the detention of the person concerned for such period as it thinks fit. Section 12 prescribes the duration of detention in certain cases. It is not necessary to refer to it in detail. Under Section 13 a detention order may be revoked at any time. But such revocation shall not bar the making of a fresh detention order Under Section 3 against the same person.

5&6. It will be seen from these relevant provisions that although extraordinary jurisdiction is conferred upon States & certain subordinate officers of States in special cases the legislature has provided all reasonable precautions & safeguards for ensuring that the special jurisdiction conferred by the Act is not exercised arbitrarily. The Advisory Board & the Govt. concerned having been vested with the power of scrutinising the merits of each case, the chances of a wrongful exercise of jurisdiction by a subordinate authority under the Act is minimised. This coupled with the fact that the Act is to remain in force only for a limited period, indicates that it is an emergency legislation which provides for preventive detention of persons who are likely to cause incalculable harm to the State or its security by committing acts which are prejudicial to the interests of the State. Although liberty of the person is one of the fundamental rights recognised by the Constitution yet the safety of the State is of supreme or paramount importance & is properly given the prominence it deserves.

7. Two main grounds are addressed on behalf of the petitioner. although other grounds are also raised in the petition. which were not dealt with at the Bar, These are that the Dist. Mag. has acted arbitrarily in taking action under the Preventive Detention Act

& that the grounds which he was bound to furnish to the petnr. under the Act are stated in terms which are too vague to be answered effectively by the petr. We may state at once that these contentions urged on behalf of the petr. do not on a careful scrutiny seem to as to be well founded. The Dist. Mag. has complied with the provisions of the Act which prescribe the conditions which must be fulfilled before taking action & ordering the detention of any person. The relevant provisions of the Act dealing with the subject are the following:

3 (1) The Central Govt. or the State Govt. may-^{fa}) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

* * *(iii) the maintenance of supplies & services essential to the community,

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

(2) Any Dist. Mag...may if satisfied as provided in Sub Clauses (ii) & (iii), 01. (a) of Sub-a. (1), exercise the power conferred by the said Sub-section.

As already stated, the petnr. was holding a license for dealing in food grains as a wholesale dealer. From the orders passed by the Dist. Mag. which have already been read, it is clear that the information obtained by the Mag. was that acting in his capacity as such licensed wholesale dealer in food grains, the petnr. sold such grains in the black market which implies that he parted with grains in favour of persons who did not have permits for purchasing such grains from him or who did not have ration cards for purchasing such stock or to persons possessing such permits or ration cards in excess as of the quantity lawfully allotted to them. Such conduct will certainly be prejudicial to the maintenance of supplies essential to the community within the meaning of the relevant section of the Preventive Detention Act under which the District Mag. has passed the order of detention. The order, made by the Dist. Mag. in those circumstances cannot be characterised as arbitrary. It, is warranted by the provisions of the Preventive Detention Act.

8. The Act was passed for the purpose of giving summary jurisdiction to States & responsible officers of States to take prompt action where circumstances call for

drastic steps. The information obtained by the Mag. & which is relied on by him need not satisfy the strict rules regarding admissibility of evidence before a judicial tribunal. The rule that the accused person is entitled to the benefit of the doubt which applies in the case of persons tried before criminal Courts. will not apply in the case of persons proceeded against and detained under the Preventive Detention Act. The authority concerned who takes action under the Act need not, therefore, give the benefit of the doubt to the person proceeded against. Nor is it open to a Court of law which is approached for relief as in the present case, to go into the question as to whether the information acted upon by the Dist. Mag. was sufficient to entitle him to take steps as he has done in the present case. The duty of the Court is not to substitute its judgment in the place of the judgment of the officer who took snob action. The object of the Act so far as the provision relevant to the present case is concerned is to put a stop to anti-social measures which would endanger the safety of the State. A case like the present is a typical case coming within the purview of the Act. A Court of law which is approached in a case like the present to exercise the special jurisdiction vested in it has to sit with great care and caution. If serious attention is not paid to the various aspects of the matter & the case is disposed of on a superficial consideration of the complaint made by a private citizen who is detained, then the proper administration of the State which according to the ideals underlying the new Const, of India must be carried on with the object of benefiting all the citizens and eliminating all danger to the safety of the State, will be frustrated. We, therefore, hold that the Dist. Mag. has exercised the jurisdiction vested in him under this Act properly & not arbitrarily as contended on behalf of the petitioner.

9. It would be convenient at this stage to refer to certain leading decisions of the House of Lords which throw a flood of light on the points arising in the present case. In *The King v. Halliday* 1917 A.C. 260 : 86 L.J. K.B. 1119, Lord Finlay L. C. , referring to a case that arose under Regulation 14 (b) of the Defence of the Realm (Consolidation) Regulations 1914, in England which empowered the Secretary of State to order the internment of any person of hostile origin or association where on the recommendation of a competent naval or military authority it appeared to him expedient for securing the public safety of the defence of the realm, stated as follows in the course of his speech:

Any preventive measures, even if they involve some restraint or hardship upon individual, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State.

Referring to the object of this provision lord Atkinson stated as follows in the course of his speech:

However precious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment, namely, national success in the war, or escape from national plunder or enslavement. It is not contended in this case that the personal liberty of the subject can be invaded arbitrarily at the mere whim of the Executive, What is contended is that the Executive has been empowered during the war, for paramount objects of State, to invade by legislative enactment that liberty in certain states of fact....

Preventive justice, as it is styled, which consists in restraining a man from committing a crime he may commit but has not yet committed, or doing some act injurious to members of the community which he may do but has not yet done, is no new thing in the laws of England.' In that as in almost every case where preventive Justice is put in force some suffering & inconvenience may be caused to the suspected person. That is inevitable. But the suffering is, under this statute, inflicted (or something much more important than the liberty of convenience, namely, for securing the public safety & defence of the realm. It must not be assumed that the powers conferred upon the Executive by this statute will be abused. By the several provisions already referred to every precaution that could be reasonably taken has I think, been taken to prevent error or abuse.

* * * *And as preventive justice proceeds upon the principle that a person should be restrained from doing something which, if free & unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof.

* * * *These precautions already referred to effectually guard against all injustice or abuse in the administration of the regulation.

These remarks apply to the facts & circumstances of the present case. In *Liversidge v. Anderson*, 1942 A.C. 206 : 110 L.J. K. B. 72 the House of Lords in dealing with Regulation 18-B of the Defence (General) Regulation, 1939, ruled as follows:

Where the Secretary of State, acting in good faith under this regulation makes an order in which he recites that he has reasonable cause to believe a person to be of hostile assocn. & that by reason thereof it is necessary to exercise control over him & directs that that person be detained, a Ct. of law cannot inquire whether in fact the Secretary of State had reasonable ground for his belief, The matter is one for the executive discretion of the Secretary of State, Therefore, in an action by a person detained against the Secretary of State for damages for false imprisonment the Ct. cannot compel the deft, to give particulars of the grounds on which he had reasonable cause to believe the pltf. to be a person of hostile assocns. or that by reason of such hostile assocns. it was necessary to exercise control over the pltf. The production by the Secretary of State of an order of detention, made by him & ex facie regular & duly authenticated, constitutes a defence to such an action unless the pltf discharges the burden of establishing that the order is invalid.' There, as in the present case, the bona fides of the officer who made the order was not impugned. In such circumstances, a Ct. cannot act as a Ct. of appeal from the decision of the officer & his affidavit can be taken as proving that he had reasonable cause to believe & did honestly believe the matters in question & that being so the order was validly issued, The Ct. cannot in such circumstance exercise any power to inquire into the grounds of belief of the executive authority or to consider whether there were grounds on which he could reasonably arrive at his belief. Again in *Green v. Secy, of State for Home Affairs*, 1942 A.C. 284 : 111 L.J. k.B. 1334 in which an order made by the Secretary of State under an emergency legislation came up for discussion, the view was expressed: In my opinion, the production by the Secretary of State of an order of detention by him ex facie regular & duly authenticated, such as the House has before it in this case, constitutes a peremptory defence to any action of false imprisonment & places on the pltf. the burden of establishing that the order is unwarranted, defective or otherwise invalid.

10. The next question is whether there is any ground for the contention that the information furnished to the petnr. by the Dist Mag. as required by Section 7 of the Act is too vague to be answered effectively by the petnr. On a perusal of the order dated 26 10-1950 which contained the substance of the information obtained by the Dist. Mag. it is clear that the basis of the steps taken by the Dist. Mag. under the Act was information that the petnr. was making unauthorised disposals of rice & wheat in such a manner as to be prejudicial to the maintenance of supplies to the community. The nature of this charge has already been explained.

There is nothing vague about it. It is open to the petnr. to satisfy the higher authorities who are mentioned in the Act that this suspicion is not well founded & that he has never dealt in foodgrains contrary to the provisions of law authorising their disposal & distribution. Being a licensed wholesale ration shop keeper he could easily satisfy the authorities concerned of his innocence if that is his defence by the production of the account books which he is bound to keep. In the circumstances, we are satisfied that there is no substance in the contention that the information supplied to the petnr, Under Section 7 of the Act is too vague to be acted upon or to be answered effectively by the petnr. It is thus clear that the order made by the Dist. Mag. was a lawful order & not an illegal or improper order which calls for interference by this Ct.

11. In a case arising under an Act which provides for preventive detention the question as to whether the pstr. should be detained for the full period mentioned in the order passed by the Dist. Mag. or whether before the termination of that period he may be released is a matter that will have to be consid. by the Govt of the State. We feel no doubt that this question will be examined when the State exercises the powers conferred upon it by the Act. We are making this observation because the point that the object of the Act is not to provide for punitive detention but only for preventive detention should not be lost sight of.

12. On our finding that there is no substance in the two contentions urged before this Ct for interfering with the order made by the Dist Mag. this petn. must be dismissed.

