

In Re: N.R. Sreenivasan

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Court : Chennai

Decided On : Feb-14-1949

Reported in : (1949)1MLJ581

Appellant : In Re: N.R. Sreenivasan

Judgement :

Rajagopalan, J.

1. The petitioner applies under Section 491 of the Code of Criminal Procedure for his release from detention. The petitioner was arrested and taken into judicial custody on 25th October, 1947. He was charged in two cases with the commission of specific offences punishable under the Penal Code, namely, Sections 147, 148, 323, 426 and 452 of the Indian Penal Code. He continued in such judicial custody apparently till 21st March, 1948. Some time before 21st March, 1948, he applied for release on bail with reference to those specific charges levelled against him under the Penal Code. Bail appears to have been granted by the Sessions Judge, but on what date it was granted we have not been told. Meanwhile, on 5th March, 1948, an order was passed by the District Magistrate of Coimbatore under Section 2(1)(a) of Madras Act I of 1947. The order ran:

Whereas I * * * am satisfied that with respect of N.R. Sreenivasan * * * that he is acting in a manner prejudicial to the public safety and with a view to preventing him from so doing it is necessary to detain him * * I hereby direct that the said N.R.

Sreenivasan shall be arrested by the police wherever found and removed to the Central Jail, Vellore.

That order was passed on 5th March, 1948. From the affidavit filed on behalf of the counter-petitioners it is found that it was only from 21st March, 1948, that the petitioner was treated as a person detained under the provisions of Madras Act I of 1947. Grounds for detention dated 29th March, 1948, were furnished to the petitioner on 27th April, 1948. Additional grounds were furnished on 31st July, 1948. It would appear that shortly before 28th January, 1949, the Government passed the requisite order under Section 3(5) of the Act confirming the original order passed under Section 2(1)(a) of the Act.

2. The main contention of the learned advocate for the petitioner is that the detention of the petitioner under the provisions of Madras Act I of 1947 is mala fide. In Narayanaswami Naidu. Inspector of Police, Mayavram¹, the learned Chief Justice laid down four categories in which classes of cases alone it will be open to the Court to intervene in an application filed under Section 491 of the Code of Criminal Procedure with reference to orders passed under Act I of 1947, (a) when the order is not duly authenticated, (b) when the person detained in pursuance of the order is not the person intended to be detained, (c) when there is lack of bona fides, and (d) when it is established that the essential requirements of Section 2, namely, satisfaction * * * is not present. We are concerned only with (c). In the affidavit filed on behalf of the counter-petitioners, sworn to by an Inspector of Police it was averred:

While in remand he (the petitioner) applied for bail and the Sessions Judge, Coimbatore ordered his bail on condition that he should report at the police station every day. As such the detenu was at liberty to furnish the necessary securities and come out from the jail. Hence an order for his detention was considered necessary. He was treated as a detenu from 21st March, 1948.

3. No doubt the affidavit also disclosed the fact that the charges against the petitioner were withdrawn, but that in no way affects the legality of the order of detention. In our opinion, the only reasonable construction the averments in the affidavit are capable of is that it was to prevent the release of the petitioner on bail

that his detention was considered necessary. That clearly is not one of the grounds of satisfaction, Section 2(1) of Madras Act I of 1947 contemplates. No doubt under Clause (c) of the four classes postulated by the Chief Justice, the fact that the District Magistrate, the detaining authority, was satisfied under Section 2(1) of the Act is a fact that can be gathered from the order of detention itself, and further beyond that, it may not be permissible to go. But in considering the question, whether the apparent satisfaction recorded by the District Magistrate was in good faith in exercise of the statutory powers conferred upon him, it is certainly permissible to view the order of detention in relation to the apparent and avowed object with which that order of detention was passed, that is not to prevent a breach of the peace or a danger to public safety but to prevent the petitioner from coming out of jail if he could find the sureties he was required to do by the Sessions Judge. Such an exercise of power, we are convinced was mala fide; and where a detention is traceable only to such an exercise of power mala fide, the detention must be held to be illegal.

4. There is one other point to be mentioned. What the District Magistrate said was that the petitioner was acting in a manner prejudicial to the public safety and that with a view to prevent him from so doing, it was necessary to detain him-Now that order was passed on 5th March, 1948. The petitioner, it must be remembered, was in custody from 25th October, 1947, Under Section 2(1)(a) even a satisfaction that a person was about to act in a manner prejudicial to public safety would have been sufficient to justify an order of detention; but when the Magistrate purports to have been satisfied that the petitioner was acting in a manner prejudicial to public safety, we cannot import into that order that the District Magistrate meant to say that the petitioner was about to act in a manner prejudicial to public safety. The, use of the word ' acting ' in contradistinction with 'about to act,' which should apply to acts in future, could only be interpreted to mean to relate to something done in the recent past if not in the immediate present that is the recent past in relation to 5th March, 1948, the date of the order. Since the petitioner was in judicial custody from 25th October, 1947, that recent past was absent and could not have been considered by the District Magistrate. We. are not concerned now whether that was a sufficient reason for the District Magistrate to be satisfied; but we are only on the question whether such an exercise of power was in good faith or in bad

faith. As we have already pointed out, the materials placed; before us clearly indicate that it was not in the exercise of good faith that the order of detention was passed on 5th March, 1948.

5. We allow the petition and direct that the petitioner be set at liberty unless he is detained for a valid reason.

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