In Re: Seetharaman

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SooperKanoon Citation : sooperkanoon.com/806349

Court : Chennai

Decided On : Oct-14-1955

Reported in : AIR1956Mad292; (1956)1MLJ232

Appellant : In Re: Seetharaman

Judgement :
ORDER

Somasundaram, J.

1. This is a revision by the counter-petitioner in M.C. No. 6 of 1954 on the file of the District Magistrate (Judicial), Vellore, against the order asking him to execute a bond to keep the peace and be of good behaviour under section no (e) and (f) of the Code of Criminal Procedure. The petitioner herein was the counter-petitioner in the trial Court. He is said to be a graduate. Proceedings were instituted against him for taking a bond under section no (e) and (f) of the Code of Criminal Procedure. The learned trial Magistrate found that a case has been made out and directed the accused to give security on his own bond for Rs. 1,000 with two sureties each for a like amount to be of good behaviour for a period of one year. He found that a case has been made out both under Clause (e) and Clause (f) of Section 110 of the Code of Criminal Procedure. But on appeal the Sessions Judge held that no satisfactory case has been made out for action under Clause (e) of Section 110, Criminal Procedure Code, but the evidence clearly disclosed that it is necessary to take a bond from him under Clause (f) of Section 110 of the Code.

After agreeing with the trial Court so far as section no (f) was concerned, the learned Judge reduced the period of the bond from one year to six months.

2. In revision both questions of fact and questions of law were raised. On the question of fact there is the concurrent finding of both the Courts below based on evidence that the petitioner did incite many of his followers to acts of violence against the landlords and as a result of propaganda there were several acts of destruction of property and other acts of mischief. Both the Courts found that on account of the activities of the petitioner and his followers normal life has become impossible for the landowners in the villages concerned. This finding is well justified on the evidence adduced before the Court. There is, therefore, no reason to interfere on a question of fact.

3. The question of law that is raised is this: The order says that on the petitioner's failure to furnish the security as ordered, he will be committed to prison to suffer rigorous imprisonment for the period of the bond or till such time as the security is furnished. The provision as to taking bonds under Section 110 of the Code of Criminal Procedure, is a preventive measure and the detention ordered in default of furnishing the security under Section 123, Criminal Procedure Code, is therefore preventive detention and that the provision regarding this is ultra vires of the Constitution. The learned Counsel contends that the order of detention in this case does not conform to the provisions of Article 22(4) of the Constitution and is therefore ultra vires.

4. The question, therefore, to be considered is whether the detention under Section 123, Criminal Procedure Code, in default of furnishing the security ordered under Section 118 of the Criminal Procedure Code is preventive detention within the meaning of Article 22(4) of the Constitution; and, whether the provisions of Section 123, Criminal Procedure Code, are ultra vires. The learned Counsel in support of his contention relies on the decision of the Allahabad High Court in Harpal Singh v. State : AIR1950 All562 . The facts in the above case are that the person concerned was under detention under the U.P. Maintenance of Public Order Act. Under that order, the Government, that is, the executive authority may direct the arrest of any person, if it is of the opinion that his being at large is

prejudicial to the public safety of the State. By the Act they introduced a new Section 123-A in the nature of an amendment to Section 123 of the Criminal Procedure Code. By and under the provision of the new proviso, any person of the description mentioned above may be asked to furnish security to keep the peace and be of good behaviour failing which he can be detained in prison for the period of the bond or till the time the bond is executed. It was there contended that this detention in default of security is preventive detention and in such cases the provisions of Article 22(4) of the Constitution have to be observed and in the absence of any provision for the procedure prescribed, the provisions of Section 123-A, Criminal Procedure Code, are ultra vires. In my opinion the principle of the above decision is correct. The detention in the above case is detention by the executive authority and not by a judicial tribunal. It is to such cases of executive detention that Clauses (4) and (5) of Article 22 of the Constitution apply. The preventive detention in the article means preventive detention by an executive authority and not detention by any order passed by a judicial tribunal after a full trial. This view of mine finds support in the decision of another Bench of the Allahabad High Court in Jit Bahadur Singh v. State : AIR1953 All753 , where this very question of the ultra vires nature of the detention under Section 123, Criminal Procedure, Code, was considered; and the Bench held that Clauses (4) to (6) of Article 22 clearly indicated that the preventive detention there spoken of was detention otherwise than by an order of Court on a judicial enquiry. It seems to me that the provision for the appointment of Advisory Boards consisting of persons of high judicial qualifications equal to those of Judges of High Courts shows that judicial mind must be brought to bear upon the cases of persons detained without trial under the direction of the executive authority. The persons who are detained without any trial should have an opportunity of meeting the grounds on which they are detained and hence a provision has been made in the Constitution for the appointment of an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court. This is a safety and protection to those who are detained by an order of the executive authority. It is true that detention under Section 123, Criminal Procedure Code, is in one sense preventive detention. But the preventive detention here is different from the preventive detention contemplated in Article 22(4) of the Constitution. I agree with

the decision in Jit Bahadur Singh v. State : AIR1933 All753 and hold that the provisions of Section 123, Criminal Procedure Code, which provides for detention for failure to give security which was ordered after full trial is not the detention referred to in Article 22(4) of the Constitution and therefore it is not ultra vires of the Constitution.

5. There is no other point raised in the case either on the question of fact or on the question of law. The petition fails and is dismissed.