SUPREME COURT OF INDIA

Gopi Ram

Vs.

State of Rajasthan

Writ Petn. No. 14 of 1966

(A. K. Sarkar, C.J.I., J. R. Mudholkar, R. S. Bachawat, J. M. Shelat and Raghubar Dayal, JJ.

19.04.1966

JUDGEMENT

MUDHOLKAR, J.:

1. The petitioner who has been detained in the Central Jail, Jaipur under an order dated January 19, 1965 made by the District Magistrate, Ganganagar under Cl. (b) of Sub-r. (1) of R. 30 of the Defence of India Rules, 1962 has moved this Court under Art. 32 of the Constitution for the grant of a writ in the nature of habeas corpus.

2. An order of detention of the petitioner under the aforesaid provision was first made on April 5, 1963. It could not be served on the petitioner for a long time because it is said that he was absconding. On November l, l964 he was arrested in connection with an offence under S. 307/395, Indian Penal Code but was released on bail. On November 4, 1964 the order of detention was served on him and he was sent to the Central Jail, Jaipur for being detained. On January 18, 1965 the original order of detention was cancelled by the Government because, we are informed, informed of some defect therein. The order of cancellation was served on him on January 21, 1965 and he was

released in pursuance thereto. Immediately thereafter however, he was re-arrested under a warrant issued by the Sub-Divisional Magistrate, Karampur in respect of the offence under S. 307/395, I. P. C. Prior to this, that is, on January 19, l965 the District Magistrate, Ganganagar made an order of detention of the petitioner. This order was served on him in jail on January 23, 1965. Since that date he is in detention. By his order dated July 7, 1965 the Governor of Rajasthan, in exercise of the powers conferred by sub-r. (7) of R. 30 (A) directed that the petitioner's detention be continued.

3. Mr. S. C. Agarwala appearing for the petitioner has challenged the detention of the petitioner on two grounds: (1) that as the petitioner was already in jail when the order dated January 19, 1965 was served on him, his detention is illegal, (2) that the reviewing authority contemplated by sub-r. (7) of R. 30 (A) did not review the order of detention and, therefore, the order made by the Governor on July 7, l965 is vitiated.

4. In support of the first contention reliance is placed by learned counsel on the decision of this Court in Rameshwar Shaw v District Magistrate, Burdwan, AIR 1964 SC 334. In that case an order of detention was made against a person under S. 3 (1) of the Preventive Detention Act, 1950 at a point of time when that person was an under-trial prisoner in jail and served on him in jail. It was contended before this Court that it would not be possible for the detaining authority to come to the conclusion that person who is in jail custody may act in a prejudicial manner unless he is detained While dealing with this contention this Court observed that it is necessary to bear in mind the past conduct or antecedent history of the person on which the detaining authority purports to act, that the activities of the person must be proximate in point of time to the making of the order of detention and also that these should have a rational connection with the conclusion that the detention of the person is necessary. It is true that upon the facts of that case this Court quashed the order of detention but it also observed thus

"As abstract proposition of law, there may not be any doubt that S. 3 (1) (a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail."

5. This decision was referred to in Makhan Singh v. State of Punjab, AIR 1964 SC 1120, and it was held there that the principles laid down therein would also apply to the case of a person against whom an order of detention is made under R. 30 of the Defence of India Rules. Mr. Agarwala relies upon the observations of this Court in the aforesaid decision to the effect that the service of a detention order on a person who is already in jail custody virtually seeks to effectuate what may be called a "double detention" and such double detention is not intended either by S. 3 (1) (a) of the Preventive Detention Act or R. 30 (1) (b) of the Defence of India Rules. We may, however, mention that the abstract proposition of law stated in Rameshwar Shaw's case, AIR 1964 SC 334, has been reiterated in this case also. After reiterating it this Court has observed :

"Besides, when a person is in jail custody and criminal proceedings are pending against him, the appropriate authority may, in a given case take the view that the criminal proceedings may end very soon and may terminate in his acquittal. In such a case, it would be open to the appropriate authority to make an order of detention, if the requisite conditions of the Rule or the section are satisfied, and serve it on the person concerned if and after he is acquitted in the said criminal proceedings." (p. 1126).

6. Both these decisions were relied upon on behalf of the petitioners in Godavari Shamrao Parulekar v. State of Maharashtra AIR 1964 SC 1128. These decisions were distinguished on the ground that the principle laid down in them may apply to a case where the person against whom an order of detention was made is either an under trial prisoner or is a convicted person the period of whose sentence has to run for some length of time, this Court also observed :

"The principle of those two cases cannot, in our opinion, be applied to a case where a fresh order of detention was passed after the cancellation or revocation of the earlier order of detention."

7. From the facts which we have set out it is clear that the satisfaction of the District Magistrate as to the existence of circumstances which necessitated the detention of the petitioner was not arrived at a point of time when the petitioner was already in jail custody. It was arrived at as long ago as on April 5, 1963. The original order made by the District Magistrate was cancelled on January 18, 1964 because of some defect therein and was followed up by another order of detention of January 19, 1965. In the circumstances the order dated January 19, 1965 cannot but be regarded as being based upon the satisfaction of the District Magistrate regarding the necessity of the detention of the petitioner arrived at before the petitioner was detained in jail as an under-trial prisoner.

8. Mr. Agarwala, however, contended that the material date is the date of service of the detention order which, in this case was January 23, 1965 and that on that date the petitioner who had been released on January 21, 1965 in view of the cancellation of the earlier order of detention had been arrested under a warrant of the Sub-Divisional Magistrate and remanded to jail custody. Since he was already in jail custody, the argument proceeds, how could the District Magistrate be reasonably satisfied that his detention in jail was necessary for preventing him from acting in a manner prejudicial to public safety etc. ? Reliance was strongly placed by learned counsel on certain observations in Makhan Singh's case AIR 1964 SC 1120 in support of his contention that if a person is already in jail the service of an order of detention on him is bad. As we read that decision as well as the one in Rameshwar Shaw's case AIR 1964 SC 334, the validity of an order of detention does not necessarily depend upon whether the order was served on him when he was or was not in jail custody. All the surrounding circumstances have got to be borne in mind for deciding whether or not the order is valid. The essential thing is that the legislature has left it to the detaining authority to be satisfied about the necessity of detention and that in the absence of mala fides on the part of that authority the Court cannot go into the question of the propriety of the subjective satisfaction of

the detaining authority. Where the initial order of detention is not challenged on the ground of mala fides its supersession by another order of detention passed on the same ground as the one earlier made cannot be said to be tainted by mala fides merely because when it was made the person was already in jail custody.

9. As regards the second contention it seems to be plainly misconceived. The petitioner alleged that the detention order was not reviewed by the reviewing authority contemplated by sub-r. (7) of R. 30 (A). This fact is denied on behalf of the State in the affidavit filed by the District Magistrate, Ganganagar who has sworn to the fact on the basis of his personal Knowledge. There is no reason to disbelieve this averment. It is no doubt true that the order made by the Governor on July 7, 1965 does not in clear language say that the order of detention was reviewed by the reviewing authority but it does state the fact that was in fact reviewed. Mr. Agarwala wants us to infer from the order that the review was made not by the reviewing authority but by the Governor and this was contrary to the provisions of the aforesaid sub-rule. We cannot accept this contention in view of the categorical statement contained in the affidavit of the District Magistrate.

10. There is thus no force in either of the two contentions raised on behalf of the petitioner. We therefore dismiss this petition.

Petition dismissed.