

Mohd. Shafi and Another

Vs

State of Jammu and Kashmir

Writ petition No. 183 of 1969

(V. Bhargava, K.S. Hegde JJ)

17.10.1969

JUDGMENT

BHARGAVA, J. -

1. In the petition under Article 32 of the Constitution, there are now two petitioner before us, Mohd. Shafi and Mohd. Yaqub. Both these petitioner were originally detained under the Defence of India Rules. In January, 1968, when the President issued the notification terminating the Emergency so that the Defence of India Rules became ineffective, steps were taken to detain both these petitioner under the Jammu and Kashmir Preventive Detention Act No. 13 of 1964 as amended by the Jammu and Kashmir Preventive Detention (Amendment) Act No. 8 of 1967 (hereinafter referred to as "the Act"). In both cases, the orders of detention were passed on the 3rd January, 1968 and these were served not he detenus. Mohd. Shafi is continuing under detention even now under that order of 3rd January, 1968, while, in the case of Mohd. Yaqub, that order was revoked and a fresh order of detention was served on him on the 25th August, 1969. Both the petitioner challenged their detention in this writ petition on the ground that their detention under the orders, dated 3rd January, 1968 had become illegal. During the pendency of this petition, the order of 3rd January, 1968 in respect of Mohd. Yaqub having been revoked and a fresh order having been served on him on the 25th August, 1969, Mohd. Yaqub filed a supplementary affidavit to challenge his detention under this later order.

2. Mohd. Shafi challenged the validity of his detention order primarily on the ground that the grounds of detention were not served on him within the period of 10 days laid down by Section 8(1) of the Act. According to the affidavit filed on behalf of the Government, the detention order, fated 3rd January, 1968, became effective on 10th January, 1968, so that, even if the period of 10 days is counted from the date of the order, viz., 3rd January, 1968, the service of the grounds was within the period land down in Section 8(1). Mohd. Shafi, on the other hand, filed a counter-affidavit alleging that the grounds of detention were not served on him on 12th January, 1968 but were served much later. In view of this one affidavit filed by Mohd. Shafi, an opportunity was given to the State Government to file rejoinder affidavits bringing to the notice of the Court the correct facts about service of the grounds of detention on him. The Government was also directed to produced the relevant records of the Secretariat and the Jail for perusal of the Court. Two rejoinder affidavits have been fled. These affidavits are by Dina Nath, retired Deputy Superintendent, Central Jail, Jammu, who was occupying that post at the relevant time, and by Girdhari Lal Aima, Head-Assistant, Home Department (Internal Security Section), Jammu and Kashmir Government, Srinager. Their affidavits disclose that information was sent from the Jammu Jail to the Secretariat on the 2nd April, 1968, giving intimation that the grounds of detention had been served on Mohd. Shafi on 12th January, 1968. Dina Nath, the retired Deputy Superintendent of the Jail has not stated

on oath that he himself served the grounds on Mohd. Shafi on 12th January, 1968. All he says is that on 12th January, 1968, when the copies of grounds of detention were served upon various detenus, the duplicates in respect of them were with the jail authorities and on the basis of the said duplicates, he prepared the latter, dated the 2nd April, 1968, addressing it to the Secretary to Government. In this letter, according to him, it was stated that the grounds of detention were delivered to the detenus concerned on the 12th January, 1968. Thus, no one on behalf of the State Government has come forward to swear in an affidavit that the grounds of detention were actually served in his presence or by himself on Mohd. Shafi on 12th January, 1968. As against this, there is the definite statement in the affidavit of Mohd. Shafi that the grounds were not served on him on 12th January, 1968. The circumstances that intimation of the service was sent as late as 2nd April, 1968, by the jail authorities to the Government lends considerable strength to the assertion made by Mohd. Shafi. If the grounds were served on 12th January, 1968, there is no reason why immediate intimation of that service was not sent to the Government soon after the 12th January, 1968. Further, we have found on a perusal of the records produced before us a note on the copy of the letter with which the grounds of detention were sent from the Government to the jail authorities to the effect that the grounds were communicated on 12th January, 1968 and the original letter was kept in a file, the number of which is given in that note. That file containing the original letter has not been produced for our perusal. If the original letter had been produced, it would have shown when the grounds were actually communicated and acknowledgment of the communications was taken from Mohd. Shafi. Learned counsel appearing for the State Government stated before us that he had received instructions that no such file exists. What has happened to that file is not known. The very fact that a note regarding that file is contained on the copy of the letter leads to the inference that such a file at one time did exist. The non-production of that file, therefore, raises a strong presumption that, if produced, it would have supported the case of the detenu. In view of these circumstances, we have no hesitation in accepting the plea of the detenu that the grounds of detention were not served on him on 12th January, 1968, and that there was, in fact, non-compliance with the provisions of Section 8(1) of the Act. On that non-compliance, the detention of Mohd. Shafi under the order, dated 3rd January, 1968, became illegal, so that he is entitled to be set at liberty.

3. So far as Mohd. Yaqub is concerned, similar grounds were taken by him also to challenge his detention order, dated 3rd January, 1968, but those grounds have now become immaterial in view of the fact that, at present, he is being detained under the order of detention served on him on 25th August, 1969. That order was passed on the 20th August, 1969. This order followed the revocation of the earlier order, dated 3rd January, 1968, which was in force and in pursuance of which he was kept in detention up to 25th August, 1969. This continued detention under the order, dated 20th August, 1969, has been challenged on the ground that such an order could not be validly made by the State Government in view of the provisions of Section 14(2) of the Act. Section 13(1) of the Act laid down the maximum period for which a person may be detained in pursuance of any detention order as two years from the date of detention. The, Section 14(2) removed the bar against the Government making a fresh order of detention on revocation or expiry of a detention order. This power was made subject to the fresh order being made where fresh facts may have arisen after the date of revocation or expiry which could lead to the satisfaction of the detaining authority that a fresh order was needed. These provisions contained in Section 13(1) and 14(2) of the Act are very similarly to the provisions contained in section 11-A(1) and Section 13(2) of the Preventive Detention Act, 1950. These two provisions of the Preventive Detention Act were interpreted by this Court in *Hadibandhu Das v. District Magistrate, Cuttack*, Civil Appeal No. 1210 of 1968, D/-22-4-1968 - 2-5-1968 (AIR 1969 SC 43). In that case, this Court held that, in view of the provisions of

Section 11-A and Section 13(2) of the Preventive Detention Act, a fresh order of detention could be made only if fresh grounds came into existence after the expiry or revocation of the earlier order of detention. No such fresh order could be made on grounds which existed period to the revocation or expiry of the earlier order of detention. This decision was subsequently followed in Kshetra Gogai v State of Assam, Writ No. 211 of 1969, D/- 19-9-1969 1970(1) SCC 40. The principle laid down in these cases fully applies to the interpretation of Sections 13(1) and 14(2) of the Act. Consequently, in the case of Mohd. Yaqub a valid fresh order of detention could have been passed in August, 1969, only if that order, was based on fresh facts which came into existence after the order, dated 3rd January, 1968, was revoked. On the face of it, no such grounds could possibly come into existence, because Mohd. Yaqub was in jail under detention and there is not suggestion that any of his activities in jail could constitute such fresh facts justifying a fresh order. The fresh order of detention, dated 20th August, 1969 is, thus, contrary to law and invalid. His detention is, therefore, illegal. He is also entitled to be set at liberty.

4. As a result, the petition of both these petitioner is allowed. They shall be released forthwith unless required in connection with some other charge.

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