

Commissioner of Police and Another

Vs

Gurbux Anandram Bhiryani

Criminal Appeal No. 493 of 1987

(Ranganath Misra, M. M. Dutt JJ)

15.12.1987

ORDER

1. The claiming authority under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offender Act 55 of 1981 (hereinafter referred to as 'the Act') is under appeal by special leave against the quashing of the order made against it by the Bombay High Court. The appellant made the order of detention in exercise of power under Section 3(1) of the Act and the grounds in respect of the detention were furnished to the respondent on December 19, 1986. He is also facing a prosecution under Section 8(c) read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 where he is on bail. The order of detention runs this :

Whereas the Commissioner of Police, Greater Bombay is satisfied with respect to the person known as Gurbux Anandram Bhiryani, Res : 502 Exotique Co-op. Housing Society, 5th floor, 17th Road, Khar (West) Bombay-400052 that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 (No. 55 of 1981).

Now, I therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the said Act, read with Government Order, Home Department (Special) No. DDS/1386/1/SPL-3(B), dated October 1, 1986, the Commissioner of Police, Greater Bombay hereby direct that the said Gurbux Anandram Bhiryani be detained under the said Act.

The High Court quashed the detention by accepting the position that the fact that the detenu had been released on bail in the criminal prosecution referred to above had not been placed before the detaining authority and not being aware of such a material fact he had come to the conclusion that it was necessary to place the detenu under detention under the Act. We have heard learned counsel on both sides and while we are not in agreement with certain observations made by the High Court, we find it difficult to interfere with the order quashing the detention. The order is bad on another ground, namely, the period of detention has not been indicated by the detaining authority. The scheme of this Act differs from the provisions contained in similar Acts by not prescribing a period of detention but as Section 3 of the Act indicates, there is an initial period of detention which can extend up to three months and that can be extended for periods of three months at a time. It was open to the detaining authority to detain the detenu even for a period of lesser duration than three months. That necessitated the period of detention to be specified and unless that was indicated in the order, the order would also be vitiated. In scores of decisions this Court has been emphasising the necessity of law; yet authorities on whom the power is conferred have not been complying with the

requirements and even if there be merit to support the order of detention, the procedural defects lead to quashing thereof as a result of which the purpose of the Act is frustrated and the suffering in the community does not abate.

2. Since we are of the view that even on the additional ground we have indicated, the order of detention was bad, it is not necessary to consider whether ground provided in the impugned judgment is tenable for quashing. The appeal fails and is dismissed. We would leave to open to the appellant to deal with the situation in accordance with law.

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