SUPREME COURT OF INDIA

Chandrakant Baddi

Vs.

Addl. Dist. Magistrate & Police Commnr.

Crl.A.No.756 of 2008

(Tarun Chatterjee and H.S.Bedi JJ.)

29.04.2008

ORDER

1. Leave granted.

2. The appellant herein was detained for a period of one year under an order dated 9th December 2005 passed under Section 3 (2) of the Karnataka Prevention of Dangerous Activities of Bottleggers Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and *Slum Grabbers Act 1985*. This order was challenged in the Karnataka High Court on 16th December 2005 by way of a writ of habeas corpus. By its order dated 1st September 2006, the Division Bench relying on *Commissioner of Police & Anr. vs. Gurbux Anandram Bhiryani*[1] quashed the order of detention and directed that the appellant be set at liberty. The State of Karnataka thereafter moved an application for review of the order dated 1st September 2006 on the plea that the aforesaid judgment had been over-ruled by a later judgment of this Court in *T.Devki vs. Govt of Tamil Nadu & Ors.*[2]. The Hon'ble Judges constituting the Bench observed that they had "spent sleepless" nights on account of an error committed by them in the light that the counsel had not brought the subsequent judgment of the Supreme Court to notice and that their judicial conscience had been pricked for having passed an order relying on a judgment which had been over-ruled. The Bench thus allowed the Review Petition on 30th March 2007 and re-called the order dated 1st September 2006. The Bench also noticed that the period of detention had since expired on 8th December 2006 and accordingly observed:

> "In these circumstances, despite the opposition of Sri Javali, learned counsel and despite his contention that his client cannot be sent back to jail, in the light of a detention order having come to an end in the case on hand, we are not prepared to accept his submissions. A beneficiary of a defective order cannot be permitted to have the benefit and that benefit has to be recalled in the light of recalling benefit order. In these circumstances, we deem it proper to direct the police to take him to custody for the remaining period."

3. It is against this order that the present appeals have been filed. While issuing notice on 30th April 2007 the operation of the impugned order had been stayed. In the meanwhile, the learned counsel for the respondents has also filed a reply and we have accordingly heard the matter on merits. The learned counsel for the appellant has pointed out that as the detention order was deemed to have come to an end on the expiry of one year i.e. 8th December 2006, it would be inappropriate to send the appellant back into custody and for this plea has placed reliance on *Sunil Fulchand Shah vs. Union of India & Ors.*[3]. The learned counsel for the respondent has, however, placed reliance on a subsequent judgment of this Court in *State of T.N. & Anr. Vs. Alagar*[4] to contend that the period during which the detenu appellant had remained outside custody on account of a wrong order could not be taken into account in computing the period of detention and that it was still open to the detaining authority to examine as to what was to be done in the circumstances of the case keeping in view certain specified factors.

4. We have heard the learned counsel for the parties and gone through the record. In Sunil Fulchand Shah (supra) the Bench was dealing with the question posed as under:

> "First, whether the period of detention is a fixed period running from the dates specified in the detention order and ending with the expiry of that period or the period is automatically extended by any period of parole granted to the detenu. Secondly, in a case where the High Court allows a habeas corpus petition and directs a detenu to be released and in consequence the detenu is set free and thereafter on appeal the erroneous decision of the High Court is reversed, is it open to this Court to direct the arrest and detention of the detenu, to undergo detention for the period which fell short of the original period of detention intended in the detention order on account of the erroneous High Court order."
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> This question was answered in the following terms:
> "The quashing of an order of detention by the High Court brings to an end such an order and if an appeal is allowed against the order of the High Court, the question whether or not the detenu should be made to surrender to undergo the remaining period of detention, would depend upon a variety of factors and in particular on the question of lapse of time between the date of detention, the order of the High Court, and the order of this Court, setting aside the order of the High Court.
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> A detenu need not be sent back to undergo the remaining period of detentionn, after a long lapse of time, when even the maximum prescribed period intended in the order of detention has expired, unless there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained pursuant to the appellate order and the State is able to satisfy the court about the desirability of "further" or "continued" detention."

5. This judgment was followed in Alagar's case and in paragraph 9 it was observed that:

> "The residual question is whether it would be appropriate to direct the respondent to surrender for serving remaining period of detention in view of passage of time. As was noticed in Sunil Fulchand Shah vs. Union of India and State of T.N. v. Kethiyan Perumal it is for the appropriate State to consider whether the impact of the acts, which led to the order of detention still survives and whether it would be desirable to send back the detenu for serving remainder period of detention. Necessary order in this regard shall be passed within two months by the appellant State. Passage of time in all cases cannot be a ground not to send the detenu to serve remainder of the period of detention. It all depends on the facts of the act and the continuance or otherwise of the effect of the objectionable acts. The State shall consider whether there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the present order."

6. A reading of the above quoted paragraphs would reveal that when an order of a Court quashing the detention is set aside, the remittance of the detenu to jail to serve out the balance period of detention does not automatically follow and it is open to the detaining authority to go into the various factors delineated in the judgments aforequoted so as to find out as to whether it would be appropriate to send the detenu back to serve out the balance period of detention. In this view of the matter, we are of the opinion that the detaining authority must be permitted to re-examine the matter and to take a decision thereon within a period of 3 months from the date of the supply of the copy of this order. We further direct that during this period the interim order in favour of the appellant given by us on 30th April 2007 will continue to operate.

7. The appeals are allowed in the above terms.

[1]*(1988) Supp. SCC 568*
[2]*(1990) 2 SCC 456*
[3]*(2000) 3 SCC 409*
[4]*(2006) 7 SCC 540*