Khoisnam Robindra Singh Vs. District Magistrate and ors.

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Court : Guwahati

Decided On : Feb-22-1984

Judge : T.N. Singh and S. Haque, JJ.

Appellant : Khoisnam Robindra Singh

Respondent : District Magistrate and ors.

Prior history : T.N. Singh, J. 1. The petitioner challenges his continued detention pursuant to an order passed on 26-11-83 Under Section 3(3) of National Security Act, 1980, for short the Act, by the District Magistrate (Central) Manipur. The admitted position, however, is that he was first taken into custody by C.R.P.F. personnel in the early morning of 12-5-83 and then handed over to the police the same day in connection with FIR Case No. 100(5)783 of. Singjamei P. S. whereupon he was remanded to judicial

Judgement :

T.N. Singh, J.

1. The petitioner challenges his continued detention pursuant to an order passed on 26-11-83 Under Section 3(3) of National Security Act, 1980, for short the Act, by the District Magistrate (Central) Manipur. The admitted position, however, is that he was first taken into custody by C.R.P.F. personnel in the early morning of 12-5-83 and then handed over to the police the same day in connection with FIR Case No. 100(5)783 of. Singjamei P. S. whereupon he was remanded to judicial custody. While he was thus incarcerated a prayer was made on 6-7-83 for his arrest by the Investigating Officer of FIR Case No. 168(3)781 of Imphal P. S. to the Court to allow the petitioner to be arrested in connection with the said case. The prayer was allowed. On 9-8-83 a similar prayer was made by the concerned Investigating Officer in connection with FIR Case No. 44(7)781 of Yairipok P.S. case which was also allowed. However, he was granted bail by the court in all three cases and his case is that on 5-10-83 he came home and was in his house living with other members of the family as a law-abiding citizen.

2. The impugned detention order served on the petitioner was produced before us in original by learned Counsel Mr. L. Nanda Kumar Singh. The order is hi a cyclostyled type written form wherein the petitioner's name and age (20 years) as also his father's name and address are found to have been filled in hand-writing. We may extract the relevant portion of the recital contained in the said form:

Whereas information has been lodged before me that Shri...son of...aged... of...is acting in a manner prejudicial to the security of the State and maintenance of public orders; Whereas I .... am satisfied that the activities are prejudicial to the security of

the State and maintenance of public order, and whereas there is possibility of his continuing to act in a manner prejudicial to the security of the State and maintenance of Public order if he is let out on bail by any court of law, it is, therefore, necessary to detain him...

3. The grounds of detention were served on the petitioner on 2-12-83 after he was taken into custody on 28-11-83 pursuant to the above detention order. The focal point of attack by learned Counsel for the, petitioner is ground No. (c) though the other grounds were not spared either. We propose, therefore, to quote and test first the validity of this ground before examining the other contentions raised in this case by the learned Counsel:

That you collected fund for the PLA in the month of Sept/Oct. 1982 amounting to Rs. 2,000/- from some of the employees and handed over to K. Ingocha Singh, @ Nabaone of your associate members of the PLA.

4. The above ground is subjected to a three-pronged attack. Firstly, it is contended, the ground is vague inasmuch as it is devoid of basic facts. The vagueness of the ground has robbed the petitioner of his constitutional right of making effective representation and violation of the mandate of Art 22(5) has rendered continued detention of the petitioner void. Secondly, submits learned Counsel, the ground must be considered to be non-existent as at the heart of the ground lies the single and solitary fact of collection of Rs. 2.000/- by the petitioner for PLA fund .in the month of Sept/Oct. 1982 and this fact is not supported by the subsidiary facts stated in the ground to prop up the allegation. Thirdly, it is submitted, .the ground is vitiated by the non-genuine subjective satisfaction of the detaining authority in passing the impugned detention order inasmuch as no reasonable man could come to the rational conclusion on the basis of the facts stated in the said ground that the petitioner had collected Rs. 2,000/- for PLA fund as alleged in the ground. Reliance in this connection is placed on Khudiram : [1975]2SCR832 .

5. Learned Senior Govt. Advocate contended strenuously relying on the decision in Dhananjay's case : 1982CriLJ1779 that the challenge on the score of vagueness must be rejected. Our attention was drawn by learned State Counsel to para 35 of the Judgment wherein their Lordships observed:

If basic facts have been given in a particular case constituting the grounds of detention which enabled the detenu to make an effective representation, merely because meticulous details of facts are not given will not vitiate the order of detention.

This observation was made to support the view which their Lordships expressed in the context of a challenge grounded on vagueness stating that whether a particular ground was vague will depend on the facts and circumstances of each case because vagueness was a relative term. Indeed the only test to determine what details could be considered meticulous appears to us to be stated by their Lordships requiring 'meticulous examination' of the ground in question. Accordingly, we have given our anxious consideration to the different aspects of the challenge grounded on vagueness in the instant case. It appears to us that the source of collection of the money has to be considered as the basic fact of this ground which is stated in the ground to be 'from some of the employees'. In our opinion this is as vague as anything, Unless the detenu was given some idea as to the place where the persons

concerned were employed and the names of their employers he could not make an effective representation. The right to make an effective representation cannot be treated as an empty formality. It carries a right to satisfy the authority concerned that the impugned ground could not be a rational basis of subjective satisfaction for passing the order of detention. The detenu must be in a position to contest the truth of the allegation contained in the impugned ground while making the representation. He must not be in a position where he has to face a roving allegation to which he can only give a fishing answer. We have no manner of doubt that the source of collection of fund cannot be regarded as meticulous detail and that the same must be regarded as the basic fact of the ground. Indeed, one of the test, according to us, for judging whether a particular fact is a basic fact or a meticulous detail is to see if the ground can stand without it. In this case, if the source of collection is not stated the fact of collection itself becomes doubtful. Because* in this case how the amount collected was dealt with is also shrouded hi mystery. It is no doubt true what was offensive was the collection and its objects and among these two facts one of paramount importance is that of collection and therefore without anything being mentioned of the source of collection the ground could not stand on its own.

6. We are also of the opinion that the other two challenges by learned Counsel are also not without merit though we do not propose to hold affirmatively in this case as to whether we should also consider the ground to be non-existent, However, we have no hesitation to hold that the barrenness of the ground has vitiated the subjective satisfaction of the detaining authority. We have no difficulty to hold that it would be impossible for a reasonable man to come to the conclusion on the facts stated in the ground that the petitioner had collected Rs. 2,000/- for PLA fund as alleged therein. In Khudiram (supra) and even earlier in Debu Mahto : 1974CriLJ699 the scope of judicial inquiry to test the subjective satisfaction of the detaining authority was indicated. Indeed, the court held that:

The grounds on which the subjective satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be alleged.

What appears, therefore, fully established by now is that the test of satisfaction to be adopted in such cases should be that of a 'reasonable person',

7. However, when we looked into the records to satisfy ourselves as to how the conclusion stated in the ground could be reached by the detaining authority, to our utter surprise, we found revealing facts. Indeed, the basic fact of the ground, namely, the source of collection, figured very much in the dossier and there cannot therefore be any doubt that the subjective satisfaction of the detaining authority was based on the facts which found place in the dossier. The source of collection as stated in the dossier is in the following terms:

(i) Collection of Rs. 800/- from Shri Oinam Tombi Singh of Maibam Leikai, and employee of P.W.D. in September, 1982.

(ii) Collection of Rs. 100/- from one O. Mangi Singh of Maibam Leikai, a Section Officer in PWD, Manipur in September, 1982.

(iii) Collection of Rs. 100/- from one Thokchom Munindro Singh, an employee in RMC Hospital in the month of Oct. 1982.

(iv) Collection of Rs. 100/- from one Khangembam Chaoba Singh of Lilando Lampak in Oct. 1982.

(v) Collection of Rs. 900/- from one E E of Utlou village younger brother of Shri Th. Chaoba Singh, MLA in Oct. 1982.

This discovery kills not only this ground but the order itself in that violation of the constitutional mandate of Article 22(5) stands established thereby without further pleading or proof. The first part of Article 22(5) explicitly requires communication to the detenu of the 'grounds' and it is settled law that the basic facts which constitute the grounds should also be communicated because the term 'ground' includes the basic facts.

8. In this view of the matter it is not necessary for us to deal with other contentions raised in this case by Mr. Nanda Kr. Singh but in all fairness to the learned Counsel we consider it proper to mention the same. He has assailed ground (a) also on the score of vagueness. His contention is that although offensive activity alleged therein against the petitioner is 'propaganda' by him for PLA, particulars of the 'propaganda' have not been stated. We do not consider the objection to be serious. Because, the detenu has been projected in the ground as a member of the said 'out-lawed organisation'. Where, when and in what manner he carried on the secret propaganda was therefore best known to him in the facts and circumstances of the case. In any view of the matter this statement in ground (a) if regarded as a mere preamble, it would therefore be immune to challenge on account of vagueness.

9. Learned Counsel also challenged the validity of grounds (d) and (e). In both cases, '' submits learned Counsel, the documents which were relied on by the detaining authority in reaching its subjective satisfaction with respect to these grounds were not supplied to the detenu. In ground (d) it is alleged that one pistol, one rifle and one revolver were recovered on 12-5-83 from the house of one Priya Kumar Singh of Singjamei Makha at the instance of the detenu but neither the seizure list not the statement leading to the discovery of the weapons were furnished to the detenu, Learned Counsel relied on two decisions of this Court to support his submission that for non-furnishing of the seizure list his right to 1 make effective representation was infringed. The latest decision may be appositely referred to. In Civil Rule (HC) 271 of 1983 decided on 24-1-1984 : 1985 Cri L 553 Thokchom Gosai Singh v. State of Manipur this Court held that seizure of incriminating articles from the possession of the detenu, was taken into consideration by the detaining authority in reaching the requisite subjective satisfaction and therefore non-supply of the copy of the seizure memo introduced a serious infirmity in the order. The cases of Thakur Mulchandani : 1982CriLJ1730 and Mohd. Zakir : 1982CriLJ611 were relied on for this purpose. However, learned Senior Govt. Advocate referred to the fact that in the instant case there was no seizure memo prepared and no statement either of the detenu was recorded Under Section 27 of the Evidence Act. He drew in this connection our attention to the report by CRPF on the basis of which FIR Case No. 100(5)783 of Singjamei P.S. was recorded. Copies of this FIR and the report were furnished with the grounds to the detenu. From the perusal of this report we find that these weapons were recovered by CRPF at the time of their arresting the detenu. We have also perused the records of the detaining authority to satisfy ourselves if any seizure memo or any statement of the detenu did really exist or was before the detaining authority at the tune of passing the impugned order of detention. But we did not find either of these documents in the records. In this view of the matter we consider that

reliance on Mangibabu's case : 1983CriLJ445 by learned Counsel is of no avail.

10. We are left now to deal with the point which the learned Counsel submitted in the forefront of his argument challenging the detention order as vitiated by non-application of mind of the detaining authority. His contention was that the expressions 'if he is let out on bail' which found place in the cyclostyled order ipso facto established the mechanical nature of the exercise of the power by the detaining authority. Because, according : to learned Counsel, the detenu had already been let out on bail when the impugned detention order was passed. Learned Senior Govt. Advocate has, however, drawn our attention to the return filed in this case by the detaining authority to explain this position. In para 1.0 of the return the detaining authority has explained what he meant by the said expression. According to him as the petitioner had already been released on bail in the criminal cases instituted against him it was evident that application of normal criminal law became ineffective against him. However, we do not propose to express any opinion on this aspect of the matter. Even so, we may observe that the mere fact that a detention order is drawn up in a cyclostyled typewritten form will not speak of the casualness or mechanical nature of exercise of its power by the detaining authority. In our opinion, the detention order does not stand by itself apart from the grounds and only on reading the two together it may be possible for the court to come to a finding if in a particular case the power was exercised in a casual manner and the non-application of mind of the detaining authority is writ large on it, W e say so because this view appears to have been taken by their Lordships of the Supreme Court in the appeal taken from the decision of this Court in Sarat Mudoi's case (see : 1983CriLJ1728). The order merely manifests, according to us, the decision taken by the detaining authority on the grounds available to him. The form in which this decision is expressed is merely the outer cast of the decision, the basis or core of which must be gathered not only from the language used in the order but from other facts and circumstances of the case.

11. In the result the application succeeds, we hold the continued detention of the petitioner to be unconstitutional and void. We direct that the petitioner shall be set at liberty forthwith if not wanted in any other case. The application is allowed and the rule is made absolute.

S. Haque, J.

12. I agree.