DHARAMDAS SHAMLAL AGARWAL

v.

POLICE COMMISSIONER & ANR.

MARCH 16, 1989

[B.C. RAY AND S. RATNAVEL PANDIAN, JJ.]

Gujarat Prevention of Anti-Social Activities Act, 1985: SS. 3(2) & 6—Detention Order—Validity of—Material and vital fact having a bearing on the issue not placed before detaining authority—Held, requisite subjective satisfaction vitiated by non-application of mind.

The petitioner was detained under an order dated 17th September, 1988 made by the detaining authority under sub-s. (2) of s. 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The grounds of detention mentioned five offences registered against him with police records, out of which the first one under s. 324 IPC was stated to have been compromised, the second under s. 332 IPC and the third under ss. 148 and 307 IPC respectively were stated to be pending trial, the fourth under s. 302 IPC was stated not proved, while the fifth under s. 302 IPC was stated to be in the court.

The Government approved the said order on 21st September, 1988. The detenu submitted his representation dated 22nd September, 1988 to the first respondent who by his order dated 30th September, 1988 rejected the same. He thereupon, filed this petition under Article 32 of the Constitution.

It was contended for the petitioner that he has been acquitted even on 26th August, 1988 in the case shown at serial No. 2 in the Table appended to the grounds of detention, and on 6th June, 1988 in the case shown at Serial No. 3, that this material and vital fact of his acquittal in the said cases had not been placed before the detaining authority and this non-placing and the consequent non-consideration of the said material likely to influence the mind of the detaining authority vitiates the subjective satisfaction and invalidates the detention order, that the names of his so-called associates were nowhere disclosed which fact would show either the authority did not know as to who these associates were or knowing their names has refrained from furnishing it to the detenu thereby disabling him to make his effective representation, and

that the grounds of detention otherwise were vague or deficient. For the respondent it was contended that each activity of the petitioner was a separate ground of detention and that the fact that the petitioner was acquitted in the said cases was of no consequence.

Allowing the writ petition,

HELD: The requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order, will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. [51D-E]

In the instant case, at the time when the detaining authority passed the detention order the vital fact of acquittal of the detenu in cases mentioned at serial Nos. 2 and 3 had not been brought to his notice and on the other hand it was withheld and the detaining authority was given to understand that the trial of those cases was pending. This non-placing of the material fact resulting in non-application of the mind of the detaining authority to the said fact has vitiated the requisite subjective satisfaction, rendering the impugned detention order invalid. The same is, therefore, set-aside. The detenu be set at liberty forthwith. [51E, F, G, H]

S.K. Nizamuddin **v.** *State of West Bengal,* **AIR 1974 SC 2353;** *Suresh Mahato* **v.** *The District Magistrate, Burdwan & Ors.,* **AIR 1975 SC 728;** *Asha Devi* **v.** *Additional Secretary to the Government of Gujarat & Anr.,* **[1979] 2 SCR 215 and** *Sita Ram Somani* **v.** *State of Rajasthan & Ors.,* **[1986] 2 SCC 86 referred to.**

Shiv Rattan Makim **v.** *Union of India & Ors.,* **[1985] Supp. (3) SCR 843 and** *Subharta* **v.** *State of West Bengal* **[1973] SCC 250, distinguished.**

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 537 of 1988.

(Under Article 32 of the Constitution of India.)

Dr. Y.S. Chitale, M.K. Pandit, P.H. Parekh, J.H. Parekh and M.N. Sompal for the Petitioner.

P.S. Poti, Mrs. H. Wahi and M.N. Shroff for the Respondents. A

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. This is a petition under Article 32 of the Constitution of India challenging the legality and validity of the order of detention dated 17.9.1988 passed by the detaining authority B (the Commissioner of Police, Ahmedabad City) clamping upon the petitioner (the detenu herein) the impugned order of detention under Sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 on the ground that he on the materials placed before him was satisfied that it was necessary to make this order of detention with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order in the area of C Ahmedabad City and directed the detenu to be detained in Sabarmati Central Prison. In pursuance of the said order, the detenu has been detained in the aforesaid prison.

The Government approved the order of detention on 21.9.1988. D The detenu submitted his representation dated 22.9.1988 to the 1st respondent who by his order dated 30.9.1988 rejected the same. Hence this Writ Petition.

Before adverting to the arguments advanced by Dr. Chitale, on behalf of the detenu; we would like to produce the relevant portion of E the grounds of detention which reads thus:

> "..... As such you are a dangerous person as defined in section 2(c) of the said Act, and known as dangerous person. As you with the aid of your Associates create dangerous atmosphere in the said vicinity you disturb F public peace, maintenance and as such following offences were registered against you with Police Records, and in which you were arrested.

Sr. No.	*Plice Station*	*Offence Regd. No.*	*Section*	*Decision*
1.	Sabarmati	140/81	324, 114 IPC	Compro-mised 16.2.82
2.	Sherkotda	411/82	332, 323, 114 IPC	P.T.

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3.	Sherkotda	412/82	PIC 147, 148 149, 307 BP Act 135(1)	P.T.
4.	Sherkotda	452/85	IPC 302, 201, 34	Not proved
5.	Sabarmati	346/87	IPC 302, 109, 34	In the Court

While considering complaints, in the above cases, Identification (Chehra Nissan) Register, and charge-sheets contents carefully, it is found that you, with the aid of your associates, in the said area, give threats to innocent people, and cause injuries to them by showing dangerous weapons that like Acid, Knife, sharp weapons. As such you commit offences punishable for causing injuries to human body and which are punishable in Indian Penal Code ....."

Dr. Chitale, the learned counsel for the petitioner took us through the grounds of detention and the other relevant records, particularly the copies of the statements of witnesses on the basis of which the detaining authority has claimed to have drawn his subjective satisfaction for passing this impugned order of detention and raised various contentions *inter-alia* contending; (1) The material and vital fact, namely, the acquittal of the detenu in the cases registered in Crime Nos. 411 and 412 of 1982 of Sherkotda Police Station as shown at Serial Nos. 2 and 3 in the table appended to grounds of detention which fact would have influenced the minds of the detaining authority one way or the other on the question whether or not to make the detention order, has not been placed before the detaining authority and this non-placing and the consequent non-consideration of the said material likely to influence the minds of the detaining authority vitiates the subjective satisfaction and invalidates the detention order; (2) Leave apart, the non-disclosure of the names of the witnesses on whose statements the detaining authority placed reliance to draw his subjective satisfaction, claiming privilege under Section 9(2) of the Act, the grounds of detention otherwise are vague or deficient and lacking details with regards to the names of the 'associates', for the disclosure of which no privilege could be claimed and hence it was not possible for the detenu in the absence of the names of the so called 'associates' to make an effective representation against the order of detention, the deprivation of which amounts to an infringement of the

constitutional safeguard provided under Article 22(5) of the Constitution of India; (3) Though the authority has mentioned in more than one place the words 'your associates' which fact evidently should have influenced the mind of the detaining authority in making this impugned order, the names of the associates are nowhere disclosed which fact would show either the authority did not know as to who the associates were or knowing the names of the associates, he has refrained from furnishing it to the detenu thereby disabling the detenu to make his effective representation; and (4) The materials placed before the detaining authority were hardly sufficient to draw any conclusion that the alleged activities of the detenu were detrimental to the "maintenance of public order."

A plethora of decisions were cited by Dr. Chitale. The learned counsel for the respondent, Mr. Poti vehemently urged that the contentions urged by Dr. Chitale do not merit consideration and the detaining authority in the present case is justified in passing this order of detention. Mr. Poti also cited number of decisions in support of his submissions.

We shall now examine these contentions in seriatim.

In the grounds of detention five cases registered against the detenu in respect of which he had been arrested are taken into consideration by the detaining authority to draw his subjective satisfaction that the detenu was disturbing the maintenance of public order. Out of the five cases, two cases mentioned under Serial Nos. 2 and 3 are shown as 'P.T.', that is pending trial. In other words on 17.9.88 i.e. the date of passing the order of detention, the detaining authority was of the opinion that the trials of both the cases were not over, though actually the detenu had been acquitted even on 26.8.1988 in the case relating to Crime No. 411 of 1982 and on 5.6.88 in the case relating to Crime No. 412/82. Though the acquittal of both the cases are admitted, the date of acquittal of Crime No. 411/82 is given as 6.7.88 in the counter. In the Writ Petition two ground Nos. 10 and 11 are with reference to these cases. They read as follows:

> "10. The petitioner states that in the grounds of detention the detaining authority has mentioned erroneously that Case No. 411 of 1982 is pending. In fact, the said Case was decided by the Court on 26.8.1988 and the petitioner was acquitted by the judgment dated 26.9.1988 delivered by the Metropolitan Magistrate, Court No. 7, Ahmedabad. When

grounds of detention were passed and when the detention order was passed in September, 1988, the detaining authority has taken a non-existing fact into account that the said case was pending trial. The detention is liable to be quashed on this ground also.

11. Likewise, the grounds of detention mentioned that Case No. 412 of 1982 is pending which is erroneous. The said case was decided on 5.6.1988 and the petitioner was acquitted. The detention is liable to be quashed for taking this non-existing ground."

These two grounds are answered by the detaining authority in paragraphs 12 and 13 of his affidavit in reply sworn in December 1988 which read thus:

"12. With reference to the averments made in para 10 of the petition, I say that the same are not true and denied hereby. I say that the petitioner was acquitted in Crime No. 411 of 1982 by the Metropolitan Magistrate, Court no. 7, Ahmedabad by an order dated 6.7.1988. However, it is submitted that each activity of the petitioner is a separate ground of detention against the petitioner and, therefore, even if the petitioner is acquitted in the said Criminal Case, the detention order is not vitiated on that count.

13. With reference to the averments made in para 11 of the petitioner, I say that the same are not true and denied hereby. I say that it is true that in the Criminal Case No. 412/82 the petitioner was acquitted by the Sessions Court No. 20, Ahmedabad on 5.6.1984. However, as submitted hereinabove, each activity of the petitioner is a separate ground for detention of the petitioner, and, therefore, the fact that the petitioner was acquitted in Criminal Case no. 411 (Sec 412) of 1982 has no bearing on the detention order and the detention order cannot be said to be vitiated on that count."

Though as per Section 6 of the Act the grounds of detention are severable and the order of detention shall not be deemed to be invalid or inoperative if one ground or some of the grounds are invalid, the question that arises for consideration is whether the detaining authority was really aware of the acquittal of the detenu in those two cases

mentioned under Serial Nos. 2 and 3 on the date of passing the impugned order. It is surprising that the detaining authority who has specifically mentioned in the grounds of detention that the petitioner's cases 2 and 3 were pending trial on the date of passing the order of detention has come forward with a sworn statement in reply, filed nearly three months after signing the grounds of detention, that he knew that the accused had been acquitted in both the cases. The averments made in paragraphs 12 and 13 in the affidavit in reply are not clear at what point of time the detaining authority came to know of the acquittal of the detenu in both the cases. At any rate, it is not his specific case that the fact of acquittal was placed before him for consideration at the time of passing the impugned order. But what the authority repeatedly states is that "each activity of the petitioner is a separate ground of detention" and adds further that "the fact that the petitioner was acquitted in Criminal Case No. 411/82 and 412/82 is of no consequence". We are unable to comprehend the explanation given by the detaining authority. It has been admited by Mr. Poti that the sponsoring authority initiated the proceedings and placed all the materials before the detaining authority on 14.9.1988 by which date the petitioner had already been acquitted in the above said two cases. Thus it is clear that either the sponsoring authority was not aware of the acquittals of those two cases or even having been aware of the acquittals had not placed that material before the detaining authority. So at the time of signing the order of detention, the authority should have been ignorant of the acquittals. Evidently to get over the plea of the detenu in the writ petition in this regard for the first time in the counter, the detaining authority is giving a varying statement as if he knew about the acquittal of the detenu in both the cases. As ruled by this Court in *Shiv Ratan Makim* v. *Union of India & Ors.*, [1985] Supp. (3) SCR 843 at page 848 "even if a criminal prosecution fails and an order of detention is then made, it would not invalidate the order of detention" because as pointed out by this Court in *Subharta* v. *State of West Bengal*, [1973] 3 SCC 250 "the purpose of preventive detention being different from conviction and punishment and subjective satisfaction being necessary in the former while proof beyond reasonable doubt being necessary in the latter", the order of detention would not be bad merely because the criminal prosecution has failed. In the present case, we would make stress, not on the question of acquittal but on the question of non-placing of the material and vital fact of acquittal which if had been placed, would have influenced the minds of the detaining authority one way or the other. Similar questions arose in *Sk. Nizamuddin* v. *State of West Bengal*, AIR 1974 SC 2353 in which the detention order was passed under the provisions of Maintenance of

A Internal Security Act. In that case the ground of detention was founded on a solitary incident of theft of aluminium wire alleged to have been committed by the detenu therein. In respect of that incident a criminal case was filed which was ultimately dropped. It appeared on record that the history sheet of the detenu which was before the B detaining authority did not make any reference to the criminal case launched against the petitioner, much less to the fact that the prosecution had been dropped or the date when the petitioner was discharged from the case. In connection with this aspect this Court observed as follows:

> "We should have thought that the fact that a criminal case C is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. That circumstance might quite possible have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District D Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be E most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate."

It is true that the detention order in that case was set aside on other grounds but the observation extracted above is quite significant. F The above observation was subsequently approved by this Court in *Suresh Mahato* v. *The District Magistrate, Burdwan and Others,* AIR 1975 SC 720 and in *Asha Devi* v. *Additional Chief Secretary to the Government of Gujarat & Anr.*, [1979] 2 SCR 215. In the latter case (i.e. Asha Devi), it has been pointed out:

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> "..... if material or vital facts which would influence the minds of the detaining authority one way of the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal."

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In *Sita Ram Somani* v. *State of Rajasthan and Others,* [1986] 2 SCC 86 certain documents which were claimed to have been placed before the Screening Committee in the first instance were not placed before the detaining authority and consequently there was no occasion for the detaining authority to apply its mind to the relevant material. In the circumstances of that case, a principal point was raised before this Court that there was no application of mind by the detaining authority to those vital materials which were with-held. This Court, while answering that contention observed thus:

> "No one can dispute the right of the detaining authority to make an order of detention if on a consideration of the relevant material, the detaining authority came to the conclusion that it was necessary to detain the appellant. But the questin was whether the detaining authority applied its mind to relevant considerations. If it did not, the appellant would be entitled to be released."

From the above decisions it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. It is clear to our mind that in the case on hand, at the time when the detaining authority passed the detention order this vital fact, namely, the acquittals of the detenu in case Nos. mentioned at serial Nos. 2 and 3 have not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases were pending. The explanation given by the learned counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material fact—namely the acquittal of detenu in the above-said two cases resulting in non-application of minds of the detaining authority to the said fact has vitiated the requisite subjective satisfaction, rendering the impugned detention order invalid.

Since we have now come to the conclusion that the order of detention is to be set aside on the first ground itself, we are not inclined to traverse on other grounds. In the premises, the impugned order is set aside and the Writ Petition is allowed. We direct that the detenu be set at liberty forthwith.

P.S.S Petition allowed.