APPELLATE CRIMINAL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

In re MAGANLAL JIVABHAI PATEL.*

1952
Apr. 1

Preventive Detention Act (IV of 1950), ss. 3 (1) (a) (ii), 11—Order of detention—Habeas corpus applications against order rejected—Further application on ground of change of circumstances since date of order —Detaining authority denying change—Power of High Court to set aside order.

In dealing with an habeas corpus application made under art. 226 of the Constitution of India by a person, detained under the Preventive Detention Act, 1950, the High Court has competence to decide whether the detaining authority had jurisdiction to pass the order of detention or had applied its mind properly to the question of detention or whether the detention order was passed *mala fide* or whether any of the grounds of detention fell outside the scope of the Act or whether the order was invalid for any other reason. But it is not open to it to go into the question whether on merits the detaining authority had justification to pass the order of detention or continue the detention.

An order of detention was passed against a detenu under s. 3 (*1*) (*a*) (*ii*) of the Preventive Detention Act, 1950, on March 29, 1950, and grounds in support of it were furnished to him on June 19, 1950. The order was challenged by the detenu both before the High Court and the Supreme Court but his applications were rejected. In the meantime, after the passing of the Preventive Detention (Amendment) Act, 1951, the Government of Bombay confirmed the order on May 16, 1951, on the report of the Advisory Board. On December 14, 1951, the detenu again applied to the High Court under Art. 226 of the Constitution of India *inter alia* on the ground that circumstances had changed since the date of the order with the result that the grounds furnished to him in June 1950 had become irrelevant for the purpose of his further detention. The detaining authority by its affidavit denied the change and maintained that the grounds continued to subsist:

Held, (*i*) that the High Court was not a revising authority in the same sense or manner in which the Advisory Board constituted under the Act was intended to be over the orders of detention passed by the detaining authority;

(*ii*) that it was for the detaining authority alone to come to a conclusion of its own whether or not the detention was justified in the interest of the maintenance of public order;

(*iii*) that in view of the affidavit of the detaining authority, the High Court had no power to interfere with the order on the ground urged by the detenu.

Application for a writ of habeas corpus under art. 226 of the Constitution of India.

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* Criminal Application No. 1278 of 1951.

Maganlal Jivabhai Patel (applicant) was a member of the Communist Party of India and was an office-bearer of some Trade Unions. On March 29, 1950, an order of detention was passed against him under s. 3 (*1*) (*a*) (*ii*) of the Preventive Detention Act, 1950, by the District Magistrate of Ahmedabad. The order itself was served on the applicant on June 14, 1950, and the grounds in support of it were furnished to him on June 19, 1950.

The applicant first filed an application before the High Court under art. 226 of the Constitution of India, but that application was rejected on October 10, 1950. The applicant thereafter applied to the Supreme Court under Art. 32 of the Constitution but that application too was rejected on October 10, 1951.

In the meantime, on February 22, 1951, the Preventive Detention Act, 1950, was amended by the Preventive Detention (Amendment) Act, 1951, and in accordance with the amended s. 9 of the Act, the applicant's case was referred to the Advisory Board. On May 16, 1951, the Government of Bombay confirmed the order in pursuance of the Board's opinion.

On January 10, 1952, the applicant again applied under Art. 226 to the High Court challenging the order *inter alia* on the ground that circumstances had changed since March, 1950, because the Communist Party of India of which he was an active member had radically reoriented its policy, and that the change in the situation made his further detention illegal. The detaining authority denied that the situation had materially altered and maintained that the ground of detention still subsisted.

The application was heard.

K. T. Sule, for the applicant.

H. M. Choksi, Government Pleader, for the State.

VYAS J. This is an application under art. 226 of the Constitution of India, in which the order of detention passed by the District Magistrate, Ahmedabad, on March 29, 1950, and served on the petitioner on June 14, 1950, and confirmed by the Government of Bombay on May 16, 1951, on the report of the Advisory Board, is sought to be challenged.

The petitioner was arrested on June 14, 1950, in pursuance of an order of detention which was passed against him by the

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District Magistrate of Ahmedabad on March 29, 1950. The grounds of detention were furnished to the petitioner by the District Magistrate on June 19, 1950. In Criminal Application No. 951 of 1950, which also was made under art. 226 of the Constitution of India, this order of detention was challenged by the petitioner. But that application was rejected by this Court on October 10, 1950. Thereafter the petitioner filed an application for *habeas corpus* before the Supreme Court of India under art. 32 of the Constitution and that application also was dismissed after hearing on October 10, 1951. It was thereafter that the present application was filed by the petitioner on December 14, 1951.

Now, the first ground advanced before us by Mr. Sule for the petitioner for challenging the order of detention is that on June 20, 1950, the applicant was transferred from the Navrangapura Police Lock-up, where he was under detention, to Baroda, a place outside the jurisdiction of the District Magistrate, Ahmedabad, without any proper order being passed in the matter of the transfer. It is contended that as there was no valid order for the transfer of the detenu from Ahmedabad to Baroda, the continued detention of the detenu (petitioner) from that date onward was illegal. It is to be remembered that this point was not pressed either before this Court in Criminal Application No. 951 of 1950 or before the Supreme Court and therefore obviously the petitioner could not be permitted now to press it before us in this application.

The next point which is pressed before us by Mr. Sule is that after the case of this petitioner was referred to the Advisory Board under s. 9 of the Act and after the report of the said Board was received. Government did not, by an order, confirm the detention of the petitioner. The point which Mr. Sule seeks to make before us is that Government have not got on their records a definite order confirming the detention of the petitioner after receiving the report from the Advisory Board. It is to be remembered that this ground is not stated in the present application of the petitioner. Had it been stated, Government would have had an opportunity to file an affidavit in regard to it. In these circumstances, we do not think we could permit the petitioner to raise it now before us.

The third ground as stated in the application for challenging the order of detention is that the period of detention was not

stated in the communication dated May 16, 1951, which the District Magistrate of Ahmedabad sent to the detenu. The text of that communication was as follows—

"I am to inform you that in accordance with s. 9 of the Preventive Detention Act your case was placed by Government before the Advisory Board, and Government have in pursuance of the Board's opinion maintained the detention order."

The contention of Mr. Sule is that it was a serious defect not to have stated the period of detention in this communication of the District Magistrate. Now, this point, though touched, was really not pressed by Mr. Sule before us in view of the fact that it is covered by the decision of the Supreme Court in *Dattatrayya M. Pangarkar* v. *The State*,[1] in which it has been held that the non-specification of the period for which the detention was to continue, in the order of confirmation made under s. 11 *(1)* of the Preventive Detention Act after the Advisory Board had considered the cases of the detenus, would not make the detention illegal.

The last ground which is urged before us by Mr. Sule for contending that this Court should not sustain the order of further detention of the petitioner is this: The alleged activities which were the basis of the order of detention which was passed against the petitioner were activities prior to March 1950. Very nearly two years have already passed since that time, and it is contended that times having changed, this Court must recognise the change and should not confirm the further detention of the applicant. In other words, the argument of Mr. Sule amounts to this that there is no justification for the continuation of the detention of the petitioner on the same grounds on which his detention was ordered on March 29, 1950, and which were furnished to him on June 19, 1950. In support of this submission Mr. Sule has drawn our attention to a judgment of the Madras High Court in Criminal Miscellaneous Petitions Nos. 1721, 1722 and 1815 of 1951 of that Court. In particular, our attention has been invited to paragraphs 13, 15 and 17 of that judgment. In paragraph 13 of the judgment it is observed by the Madras High Court:

"The scope of our jurisdiction as a *habeas corpus* Bench dealing with detenus continued under Act IV of 1950 has been sought to be narrowly restricted by the learned Advocate-General. According to him, as we understand his argument, we can only interfere and release such a detenu if after considering each ground of detention separately we find it irrelevant for the purposes of preventive detention and are precluded

[1] (1952) 54 Bom. L. R. 524, s. c. [1952] S. C. R. 612.

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from going into the sufficiency and adequacy of the grounds. This may be so in considering the validity of the grounds under the Maintenance of Public Order Act or even under the Preventive Detention Act of 1950. But we are wholly unable to accept these fetters on our jurisdiction in the light of Article 226 of the Constitution. If we accept the limitations the Advocate General seeks to impose upon us, we shall be rendered powerless and helpless as a *habeas corpus* Bench to intervene not only in these cases but in any case at all."

Then in paragraph 15 of the judgment the learned Judges proceeded to observe.

"At the same time we are quite unable to accept the position that Parliament when it enacted Act IV of 1951 intended to emasculate High Courts of all powers in connection with these old detenus. The Act as regards this is eloquently silent, and in fact it could not under the Constitution make any attempt to limit the powers of the High Courts under Article 226 in this connection. Nor can we think it was in any event the intention of the Legislature to confer powers on an Advisory Board which cannot in appropriate cases be exercised by a *habeas corpus* Bench after a full hearing of the detenu and his representations."

And in paragraph 17 they said:

"We have set out these difficulties in the way of any precise determination of the scope of our jurisdiction in these cases and think that they can only be resolved by our bringing into play only such reserve powers as are vested in High Courts under the Constitution as may be necessary to uphold equity and justice on which the Constitution is founded. We have abandoned our quest for any legal theory by which our jurisdiction can be precisely defined or fettered or the conditions under which it can be exercised and decided to invoke commonsense, the quintessence of which is or should be law though unfortunately it cannot always be embodied in any rigid legal theory. We think that in view of what we have said we clearly have jurisdiction which we propose to exercise in appropriate cases of releasing detenus if on examination of the original grounds of detention in the light of their representations and in the context of Act IV of 1951 we find them irrelevant for the purpose of further detention, in other words, if we consider that they are fit cases for release."

Relying upon this judgment it is sought to be argued before us by Mr. Sule that the grounds which were furnished to the detenu in June 1950 should be considered by us as being irrelevant for his further detention and that accordingly we should order the release of the detenu forthwith.

We must, with very great respect, differ from the view as expressed in the abovementioned judgment of the Madras High Court. In our view, under the scheme of the Preventive Detention Act it is a matter entirely for a detaining authority as a representative of the executive government to decide

whether the activities of a particular person are prejudicial to the security of the State, the maintenance of public order, etc. It is that authority alone, and not the Court, who by virtue of the executive office held by it and by virtue of the duties, functions and responsibilities attaching to that office is in the best position to take a decision whether the detention of a particular person is called for on any of the reasons mentioned in s. 3, sub-s. (*1*), cl. (*a*), of the Act. It would be impossible for the Court to be in touch with the activities of the members of the public in different spheres of life and therefore the Court would not have the means to decide whether any particular person is likely to engage himself in any prejudicial activities. It has not the machinery at its disposal, such as an executive authority has, for the purpose of arriving at a requisite satisfaction whether a person should be detained under the Preventive Detention Act or should be permitted to continue his indulgence in activities unfettered. No doubt, a *habeas corpus* Bench has competence to decide whether a detaining authority had jurisdiction to pass an order of detention or had applied its mind properly to the question of detention or whether the detention order was passed *mala fide* or whether any of the grounds fell outside the scope of the Act or whether the order was invalid for any other reason. But it is not open to it, in our view, to go into the question whether on merits the detaining authority had justification to pass the order of detention or continue the detention. That under the Act is a sphere exclusively of the detaining authority and upon that sphere the Court cannot encroach. It is the detaining authority alone whose satisfaction as to whether a person should be detained or not is material and relevant under the scheme of the Preventive Detention Act, and it is that authority which has got to see whether the activities of a particular person are prejudicial to the maintenance of public order, security of State, etc. In our view, it is clear that the Legislature has given power to executive authority to decide for itself whether a particular person's activities are such as to call for his detention under the Preventive Detention Act. If we turn to the Act as also to the Constitution of India we find that full liberty is given to the executive authority even to withhold the disclosure of grounds on which the detention of a person is ordered, if in the opinion of that authority such disclosure is detrimental to the interest of the public. The Legislature did not intend

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that this Court should act as a revising authority in the same sense or manner in which the Advisory Board constituted under the Act was intended to be a revisory authority over the orders of detention passed by the detaining authority. In our view, it is entirely for the executive authority, who is the custodian of public order, to decide whether a person's being at large is detrimental to the interests of the State, the maintenance of public order, etc. Such a question really relates to the governance of the State and is not one for judicial decision. For these reasons we are of the view that we have got no power to interfere with the order of detention passed against the petitioner on such grounds as are pressed before us by Mr. Sule on the authority of the Madras case. If we turn to the affidavit which has been filed by the District Magistrate of Ahmedabad in this case he says:

"It is denied that the situation and circumstances have materially changed since March 1950. The grounds of detention still subsist and there is no change in the situation whatsoever."

As this Court has repeatedly pointed out, in such cases it is that authority alone who has got to come to a conclusion of his own whether the detention of a person is justified or not in the interest of the maintenance of public order.

The net result therefore is that the application fails and is dismissed.

Rule discharged.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice.

1952 *Apr.* 18

DAHYABHAI GIRDHARDAS (ORIGINAL PLAINTIFF), APPLICANT *v.* BOBAJI DAHYAJI KOTWAL AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS.*

Practice—Civil—Signature on plaint affixed by plaintiff's son as his Kulmukhtyar—Son having no proper authority to sign the plaint—Whether plaintiff can be allowed to amend plaint by striking off son's signature and to sign plaint himself.

In a suit filed by the plaintiff the plaint was signed by his son who described himself as the plaintiff's kulmukhtyar. As the son had no

*Civil Revision Application No. 449 of 1951.