

Ram Nagina Rai vs District Magistrate on 13 March, 1950

Equivalent citations: AIR1950ALL500, AIR 1950 ALLAHABAD 500

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Bench: Raghubar Dayal

ORDER

1. This is an application under Section 491, Criminal P. C., by Ram Nagina Rai in the following circumstances : On 18th May 1949 the Provincial Government ordered his detention Section 3, Sub-section (1) (a), U. P. Act IV [4] of 1947, for a period of six months. This detention came to an end on 17th November 1949. On 15th November 1949 the District Magistrate of Ghazipur passed an order under Section 3, Sub-section (1), Clauses (d) and (f), requiring him to act in a certain manner. He further ordered him under Section 3, Sub-section (3) of the Act to enter into a bond with two sureties for the due performance and enforcement of the restrictions and conditions specified in the orders against him, immediately after the service of the order. He further directed, under Section 123A, Criminal P. C., that if he failed to execute the band and to furnish the sureties, he be committed to prison or, if ho be already in prison, he be detained there until the period specified expired or until he executed the bond and furnished the sureties. Ram Nagina Rai refused to enter into a bond and furnish sureties, and, therefore, he was kept in detention subsequent to 17th November 1949.

2. At the time of the passing of the order by the District Magistrate, Ghazipur, on 15th November 1949 Ram Nagina Rai was detained in the Central Prison, Naini, outside the district of Ghazipur.

3. An order under Section 3, Sub-section (1), Clauses (d) and (f) could be passed by the Provincial Government alone under the provisions of the Act itself. It was on 13th April 1948 that the Provincial Government delegated its powers to act under Section 3, Sub-section (1), Clauses. (d) and (f) to the District Magistrates in these provinces. It was in view of such delegated authority that the District Magistrate of Ghazipur issued the various orders against Ram Nagina Rai on 15th November 1949. This delegation gave the right to District Magistrates to exercise these powers within their jurisdiction. It is clear, therefore, that the District Magistrate, Ghazipur, could pass the order under Section 3, Sub-section (1), Clauses (d) and (f) against parsons within his district. It is contended for the State that the District Magistrate could have communicated his order to persons outside the district, informing them as to how they were to behave within his jurisdiction and that, therefore, the orders under Section 3 of the Act were not illegal. Nothing need be said on this point so far as the communication of the order under Section 3, Sub-section (1), Clauses (d) and (f) was concerned, as at the moment it is not material to consider it in that connection. The order under Section 3, Sub-section (3) was an order which the District Magistrate, Ghazipur, could not have passed against a person who was not within his jurisdiction. He could give orders to furnish bonds and security to persons within his jurisdiction. If a person is not within his jurisdiction, no such

order can be passed by him under the authority delegated to him by the Government under Section 11 of the Act. The order under Section 123A followed the failure of the applicant to furnish the security required under Section 3, Sub-section (3). When the order under Section 3, Sub-section (3) was not a legal order, -the District Magistrate, Ghazipur, could not have passed the order under, Section 123A, Criminal P. C., ordering the detention of the applicant in jail for the failure of furnishing the required security. In this view of the matter, we are of opinion that the detention of the applicant under Section 128A, Criminal P. C., is illegal.

4. We, therefore, order that he be released from custody forthwith.