Baboo Ram Agarwal vs The State on 8 December, 1950

Equivalent citations: AIR1951ALL838, AIR 1951 ALLAHABAD 838

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. This is an application by one Babu Ram Agarwal under Section 491, Criminal P. C. challenging the illegality of his arrest and detention and praying that he may be released.

2. The material facts antecedent to the arrest of Babu Ram Agarwal will appear from the affidavit of Mr. C.P. Srivastava, City Magistrate, Lucknow. Babu Bam Agarwal is the proprietor of Jai Hind Iron Stores, La Touche Road, Lucknow, which was established about four years ago. He was previously employed with the Agarwal Metal Stores, La Touche Road, on a fixed salary. It appears that the District Magistrate received information that Babu Bam Agarwal was a habitual black-marketeer and used to sell iron goods, for which he had no licence, above the controlled rates. He disputed Mr. C.P. Srivastava to make secret enquiries about his dealings. Mr. Srivastava arranged a fake deal and asked Mr. Ved Prakash, Deputy Collector, to pose as a purchaser. He gave him RS. 120 in currency notes duly initialled by him on 19-9-1950; Mr. Ved Prakash, accompanied by the informer, went to the shop of Babu Bam, while he Mr. Srivastava stayed at some distance. When the deal was completed and rods were loaded on the thela, Mr. Srivastava suddenly appeared on the scene and interrogated Babu Bam as to where the rods were being sent. The latter said that they were being Bent to Motinagar. A couple of seconds later, Babu Ram took out some notes from his shirt pocket and threw them towards his servant Natthu Singh, who took them up. Mr. Srivastava caught hold of Natthu Singh's hand and took possession of the notes. These notes were the same notes which he had initialled and which Mr. Ved Prakash had passed to Babu Ram as the purchase price of the rods Mr. Ved Prakash told Mr. Srivastava that he had paid Rs. 120 towards the part payment of the price at the rate of RS. 28 per maund and had promised to pay the balance of Rs. 7-4-0 later. Mr. Srivastava on being pointed out by Mr Ved Prakash recovered from Babu Ram's table a piece of paper on which he had calculated the price of the rods. This confirmed the statement of Mr. Ved Prakash that the rate charged was double the controlled rate. Mr. Srivastava then made a vigorous search of the shop and found a considerable quantity of iron rods kept in a kotbri at the back of the shop. He prepared a recovery list and got it signed by Babu Ram. His signature appears in English. He asked Babu Ram to show him the stock book but he told him that he had none. He also said that he had no licence to stock or to sell iron goods. Babu Ram made a flat denial of having sold any rods to Mr. Ved Prakash and said that he must have got them from somewhere else Mr. Srivastava then

searched the godown of Babu Ram which was about 50 yards away from his shop. The key of this godown was handed to Mr. Srivastava after some reluctance. The godown when opened was found to contain a large quantity of iron goods stocked therein. Recovery lists of these goods were prepared and were signed by Babu Ram in English. Mr Srivastava also came to know from Mr. Ved Prakash that Babu Ram had sent a thela load of rods to Narhai soon after his arrival with instructions to thelawala that they should wait outside the Arya Samaj building for his employee Babu Lal. Both he and Mr. Ved Prakash proceeded to the spot and found the thelawalas waiting. Mr. Srivastava took down the statement of Sheo Charan thelawala who admitted that in addition to these goods he had been employed by Babu Ram to send similar goods to Sadar and Chauk. He book him to Sadar where it was found that Balbir Singh, M. E. 8. Contractor had purchased one maund of rods for his house which was under construction. Mr. Srivastava also recorded the statement of Khuda Bakhsh thelawala who had loaded the rods bought by Mr. 'Ved Prakash. After completing these formalities he submitted his report to the District Magistrate on September 20. That however does not conclude the matter. Mr. Srivastava, apparently an energetic and painstaking officer, pursued his enquiries and approached the District Supply Officer to enquire if Babu Ram had applied for any permit. He found that Babu Ram bad applied on 10-4-1950 for a permit for iron rods, that the application was originally made for one ton but the figure 1 was subsequently altered to 2 and it contained overwriting at a number of places. This aroused his suspicion and he sent for Mr. Ambarish Verrna, Sub Divisional Officer of Sarda Canal section posted at Hardoi, to find out how he had certified Babu Ram's application. Mr. Verma admitted that ha had certified for only one ton and the over-writing was done without his knowledge. Babu Ram, on the basis of this forged application, obtained a permit from the District Supply Officer, Lucknow, on May 27. He purchased two tons of iron rods on May 30 at Kanpur from the U. P. Rolling Mills Co. Ltd. This material, according to the application of Babu Ram, was needed for the extension of his house in Motinagar. As the house stood on Improvement Trust plots, Mr. Srivastava enquired from the Engineer whether any permission to build had been granted but he was told that no construction had been authorised since September 1949. He took the further precaution of visiting the spot and making personal enquiries which confirmed the fact that no extension had been carried out for the last six or seven months and that the materials obtained under the pretence of making extensions had not been used for that purpose. Thereupon Mr. Srivastava made a supplementary report to the District Magistrate on September 20. Prom the facts elicited in the course of his enquiries, Mr. Srivastava found that Babu Ram was a habitual black marketeer in controlled iron goods and made a report leaving it to the District Magistrate to take such action as he thought fit. Mr. Srivastava has sworn in his affidavit that the entire investigation conducted and the reports submitted by him to the District Magistrate were made bona fide and in honest discharge of his duties as a public servant.

3. The case of the petitioner is that he was arrested on September 19 under Iron and Steel (Control of Production & Distribution) Order, 1941 read with Section 7, Essential Supplies (Temporary Powers) Act (XXIV [24] of 1946), that he was detained and kept in custody in the District Jail, Lucknow, that he had applied for bail in the Court of the City Magistrate on September 21, that he was ordered to be released on bail on executing a personal bond of Rs. 50,000 in addition to two Burettes of the like amounts, on September 29 and that after his release he was rearrested by the police the same day under an order of the District Magistrate under the Preventive Detention Act (IV [4] of 1950). It; is also stated that the police has not yet submitted the charge-sheet and

according to his counsel the case is fixed before the City Magistrate for December, 11. The application was made on October 6.

4. It is admitted that the order of the District Magistrate detaining the petitioner under Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 3, Preventive Detention Act (IV [4] of 1950) was drawn up on September 28 and was served along with the grounds on the petitioner on September 29. The representation is stated to have been made by the petitioner on October 24 and this was duly placed before the Advisory Board as required by Section 8, Preventive Detention Act. We understand that no report has yet been made by the Board to the State Government.

5. The relevant portion of Section 3 stands thus :

> "3 (1) The Central Government or the State Government may
>
> (a) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to .....
>
> (iii) the maintenance of supplies and services essential to the community, ...

it is necessary so to do, make an order directing that such person be detained."

Under Sub-section (2) a District Magistrate has been authorised to exercise the power conferred upon the Government under Sub-section (1) (a) (iii) and under Sub-section (3) the District Magistrate making such an order is required forthwith to report the fact to the State Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the necessity for the order.

6. Under Section 7, the authority making the order is required to communicate, as soon as may be, to the detenu the grounds on which the order has been made and to afford him the earliest opportunity of making a representation against the order.

7. Section 8 deals with the constitution of Advisory Boards which are to consist of two persons, who are, or have been, or are qualified to be appointed as, Judges of a High Court.

8. Under section 9 the Government is to make reference to the Advisory Board within six weeks from the date of the detention and place before them the order in question the grounds on which the order has been made and the representation, if any, made by the detenu.

9. Section 10 deals with the procedure of the Advisory Board which is required 60 report whether or not, in its opinion, there is sufficient cause for detention. The detention may be confirmed by the Government on receipt of the report from the Advisory Board that there is, in its opinion, sufficient cause for such detention.

10. The duration of the detention without obtaining the opinion of the Advisory Board can be extended under section 12 for a period not exceeding one year from the date of the detention in case where the object of the detention is to prevent a person from acting in any manner prejudicial to (a) the defence of India, relations of India with foreign powers or the security of India; or (b) the security of State or the maintenance of public order.

11. These are the material provisions of the Preventive Detention Act.

12. The grounds which were served on the petitioner under Section 7, Preventive Detention Act, may be reproduced in the words of the District Magistrate:

> "Whereas, by virtue of order No. 10/P. D. dated 28-9-1950, you, Babu Ram Agarwal s/o Lala Tej Ram Agarwal, Proprietor, Jai Hind Iron Stores, La Touche Road P.S. Kaisarbagh, Lucknow, have been detained cinder Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 3, Preventive Detention Act (Act No. IV of 1950), "Now, therefore, in pursuance of the provisions of Section 7 of the said Act you are hereby informed that the grounds of your detention are as follows :--
>
> (1) That on 19 9-1950, ou were found in possession at your shop Jai Hind Iron Stores, La Touche Road, Lucknow, and at your godown nearby of controlled Iron goods such as round iron rods of various sizes galvanised, corrugated and plain iron sheets and G I pipes as per recovery lists signed by you for whose storage you had no licence either from the Provincial Iron Controller or the District Magistrate, Lucknow.
>
> (2) That on 19-9-1950 you sold 4 maunds 21 seera and 12 chhataks of iron roads to Shri Ved Prakash Deputy Collector, Lucknow, for Rs. 127-4-0 i. e. at Rs. 28 per maund (a) without any licence to sell this material, (b) without taking permit from the purchaser, and (c) charged prices much above the controlled price of such material viz. Rs. 15 per maund.
>
> (3) That you despatched about 12 maunds of iron rods on a thela to Narhai for sale on 19-9-50 in the presence of Shri Ved Prakash Deputy Collector Lucknow.
>
> (4) That you forged your application for iron on Misc. Form No. 7 bearing No 1120 dated 10-4-50 and fraudulently obtained Permit No. 12/Book No. 1 for two tons of iron rols on 27 5 1950 from the District Supply Officer Lucknow after the Engineer concerned Shri Ammarish Varma, Sub-Divisional Officer, Sarda Canal, Third Sub-Division on Hardoi, had certified the correctness only of one ton.
>
> (5) That the two tons of iron rods obtained as stated in (4) above were not used by you for the purpose mentioned in your application dated 10-4-1950 in contravention of the conditions of the Permit.

These actions on your part are prejudicial to the maintenance of Supplies and Services essential to the Community and it has therefore been considered necessary to detain you.

Also, in pursuance of the provisions of the said section of the said Act, you are further informed that you have a right to make a representation against the order under which you are detained. If you wish to make such a representation you should address it to the Home Secretary to the State Government through the undersigned.

Given under my hand and seal of the Court, this 28th day of September, 1950.

Sd./ Harpal Singh. I. A. S., District Magistrate Lucknow.

13. The application of Babu Ram is accompanied by an affidavit of his son Bishambhar Dayal Agarwal but not by him and no reason is given why Babu Ram was unable to make the affidavit himself as required under the Habeas Corpus Rules framed under Section 491 (2), Criminal P. C.

14. A supplementary affidavit has been filed by one Tej Ram described as a pairokar fully conversant with the facts of the case. The first affidavit merely states the fact of his arrest on 19th September his release on September, 29 on furnishing bail and his re-arrest the same day under the Preventive Detention Act The second affidavit, however, tries to controvert the grounds of the order in paras. 2 and 3 which are as follows:

> (2) That the allegations contained in the Grounds supplied to the detenu and the affidavits filed on behalf of the opposite party as they are stated are not correct and they are denied.
>
> (3) That it is denied that the detenu applicant had any unlicensed articles or that he had contravened any of the provisions of the law or committed any offence as alleged."

The contents of these paragraphs are stated to be true to the declarant's belief and they are not stated on his personal knowledge. The denial is also vague and general and makes no attempt to explain how goods were sold without licence and the prices charged above the controlled rates.

15. At the outset, counsel for the petitioner contended that the arrest of the petitioner was mala fide in as much as his arrest was for an offence under the Iron and Steel (Control of Production & Distribution) Order, 1941, read with Section 7, Essential Supplies (Temporary Powers) Act No XXIV of 1946 and when the District Magistrate found that the prosecution could not succeed, the petitioner was arrested under the Preventive Detention Act. Reliance is placed in support of this contention on A.K. Gopalan v. State of Madras, A. I. R. (37) 1950 S. C. 27 ; Gyanendra Kumar Jah v. The Crown A. I. R. (37) 1950 E. P. 162; Khalifa Janki Das v. Imperator, A. I. R. (37) 1950 E. P. 172 and Maledath Bharathan v. The Commissioner of Police, A. I. R. (37) 1950 Bom 202. This contention may be easily disposed of. The District Magistrate in his affidavit states that from information received from highly responsible authorities and sources of unimpeachable character he

was satisfied upon the material placed before him that it was necessary to take immediate action against the petitioner under Section 3, Preventive Detention Act with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community, that the petitioner was pursuing this prejudicial course of conduct for some time prior to his arrest, that the action was taken purely for the purpose of prevention and not as a punitive measure, that it was false that the action was designed to circumvent the order of release passed by the City Magistrate, that he had applied a judicial mind before the passing of the order, that the order passed by him was bona fide and that the order was passed by him not for any collateral purpose but honestly in discharge of his official duties as a public servant.

16. The correctness of this affidavit is borne out from a communication of the District Magistrate on September 21 to the Chief Secretary in which he had expressed the view that Babu Ram could be prosecuted under the Essential Supplies (Temporary Powers) Act, 1946, for contravention of the provisions of the Iron and Steel (Control of Production & Distribution) Order but since he was reported to be one of the notorious black-marketeers in iron goods, he was considering whether he should be detained under the Preventive Detention Act. To this communication he attached three draft grounds for detention and concluded by saying that he was taking legal advise in the matter. These grounds are identical with the first three grounds which were eventually served upon the petitioner. The other two grounds came to light after the report of the District Magistrate. It is clear, therefore, that the action for detention was not an afterthought maliciously contrived to hamper the petitioner in his defence in the criminal case, nor was it intended to defeat the order of release passed by the City Magistrate. A reference to the grounds served upon the petitioner will show that Ground No. 2 alone was the subject-matter of prosecution but the other grounds were not and could not be made the basis of the prosecution. There is no inflexible rule of law that when a person is first prosecuted for an offence and is either released on bail or the prosecution fails against him, his detention cannot be ordered if there are otherwise sufficient materials to justify such detention. As a matter of fact in the present case we are informed that no prosecution has been launched and no charge-sheet submitted to the City Magistrate. The prosecution would have been under Para. 11B (3), Iron and Steel (Control of Production & Distribution) Order, 1941, read with Section 7, Essential Supplies (Temporary Powers) Act, which lays down that "no producer or stock-holder or other person shall sell, or offer to sell, any iron or steel at a price exceeding the maximum price fixed under Sub-clause (1) or (2)."

By Section 11, Essential Supplies Act, it is clearly laid down that no Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21, Penal Code. We are informed by the Government Advocate that no such report in writing has been made by any public servant nor is there any intention to do so. It is further stated that the date fixed by the City Magistrate is with a view to await action which is intended to be taken by the Controller under Para. 10B, Iron and Steel (Control of Production & Distribution) Order, with regard to the sale of the goods seized from the possession of the petitioner.

17. Gopalan's case, A. I. R. (37) 1950 S. C. 27, does not advance the petitioner's case. It is well settled, according to that case, that the Preventive Detention Act of 1950 is intra vires of the Constitution

with the exception of Section. 14, which is illegal and ultra vires, but this invalidity does not affect the rest of the provisions in the Act. Reference was made to a passage at p. 91 of the judgment of B.K. Mukherjea J. in regard to the meaning of the Preventive Detention. His Lordship referred to the observation of Lord Finlay in Rex v. Halliday, (1917) A. C. 260 at p. 269 to the effect that "it is not a punitive but a precautionary measure." His Lordship then proceeds :

> "The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. No offence is proved, nor any charge formulated, and the justification of such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence (vide Lord Macmillan in Liversidege v. Anderson, (1942) A. C. 206)."

It is true that the distinction between the two forms of action, namely punitive action such as a criminal charge and preventive detention is clear-cut and it is not open to the detaining authority to punish a man for some act which could only have constituted the basis of prosecution. Such is, however, not the case here. The mere fact that the arrest was originally ordered for a specific offence but it was not followed by prosecution for that offence cannot affect the power of the detaining authority to take preventive action after the interim or final release of the person detained. The observation above quoted is no authority for the view that where an arrest unaccompanied by prosecution is followed by an order of detention, the Court must hold that the detention was mala fide. The circumstances disclosed in the present case rebut any such inference.

18. The case of Gyandnendra Kumar Jain, (A. I. R. (37) 1950 E. P. 162) is entirely distinguishable on facts. In that case Jain was arrested under the Punjab Public Safety Act 1947 and a case was registered against him. While his bail application was pending, the prosecution withdrew the case under the aforesaid Act which in the meantime had been superseded by a subsequent Act in 1949. Accordingly an order of his discharge was passed but before he was discharged he was arrested by the police under Section 3, Preventive Detention Act, for an indefinite period. This was, therefore, a case in which the prosecution was withdrawn. Falshaw J. remarked :

> "Where a man is arrested and ordered to be detained under Section 3 of the Act after having been originally arrested on a specific charge which has either collapsed or been withdrawn, as in the present case, there must always remain a strong suspicion that his detention has been ordered on the very facts which formed the basis of the specific charge against him, and which could not be substantiated in a Court of law, since after the date of his first arrest his conduct could not have furnished any fresh material against him. To this extent the bona fides of the order of detention become doubtful, but I would not go so far as to hold that in every case the detention becomes illegal."

In the present case no prosecution was launched. As a matter of fact from the very inception the detaining authority had contemplated action under the Preventive Detention Act and it was a mere accident that the petitioner was arrested for an offence but there was no proceedings in prosecution. In that case the detention was held illegal on the double ground that no Advisory Tribunal as

contemplated in Sub-section (4) had been properly constituted, and that his case was not referred to the Tribunal which did exist within two months of his arrest and detention without the existence of any special reasons for not referring it within the specified period. Another defect in the detention was that no communication was made to the detenu as was required by Sub-section (5) nor was he informed of his right to make a representation to the Government or to afford the earliest opportunity of doing so. This provision being mandatory, non-compliance with it rendered the detention illegal.

19. In Khalifa Janki Das's case (A. I. R. (37) 1950 E. P. 172) it was held that the East Punjab Public Safety Act (No. V [5] of 1949) being enacted for prevention and not for punishment of persons, the District Magistrate was not justified in arresting the detenu on the ground that his carrying on a malicious propaganda and issuing posters which were objectionable from a communal point of view would bring him within the mischief of Section 153A, Penal Code. This case is, therefore, clearly inapplicable to the facts of the present case.

20. In Maledath's case (A. I. R. (37) 1950 Bom 202) the detenu was arrested under the Bombay Public Security Measures Act (VI [6] of 1947), as he was likely to act in a manner prejudicial to safety and tranquillity. The investigation by the police had been carried on in violation of the provisions of the Criminal Procedure Code and it was found that the petitioner was actually arrested for having committed an offence tinder the Criminal law. The investigation was started by the police authorities under the Criminal Procedure Code and then he was detained by the Superintendent of Police and the detention was continued by the order made by the Commissioner of Police. The learned Chief Justice observed:

> "In our opinion, the alternatives open to the Police authorities are very clear. When an offence has been committed the police authorities may investigate it, in which case they must comply with the provisions of the law with regard to investigation; or they may feel that the detention of the accused is more essential in the interest of the State, and what is more important is what he is likely to do rather than what he has already done, in which case it would be open to them to detain him under the Security Act. But they cannot pursue both the rights at the same time, because, on the facts of this case, it is apparent that these two rights are inconsistent and cannot be exercised at the same time, they cannot detain the applicant under the Security Act and at the same time carry on the investigation without providing the applicant with the safeguards to which he is entitled under the law."

These observations have no bearing upon the facts of the present case but the subsequent remarks of the learned Chief Justice are apposite. His Lordship proceeds:

> "The authorities have laid down that the powers of the detaining authority are very wide under the law as it exists to day. Government may detain a person even though the grounds clearly disclose that he could have been prosecuted under the ordinary criminal law with regard to those very grounds. The detaining authority may, as I pointed out earlier, detain a person although a criminal Court has acquitted him in

> respect of the very charge for which he is being detained under the Security Act. Therefore, in our opinion, when the detaining authority makes up his mind to detain a person who is alleged to have committed an offence, then the detaining authority has made his choice and it would not be permissible to him to investigate the offence while still keeping the person under detention and not complying with the provisions of the law with regard to investigation. Of course, it would be open to the detaining authorities to carry on an investigation into the offence provided they submit to the provisions of the law in this respect."

It has been repeatedly held that the burden of proving that the order was mala fide lies upon the detenu. (See Prahalad Panda v. Province of Orissa, A. I. R. (37) 1950 Orissa 107. This was the view under Ordinance III of 1944. (See Basanta Chandra v. Emperor, A. I. R. (32) 1945 F. C. 18 and also In re Manubhai Bhikabhai, A. I. R. (30) 1943 Bom. 194 and Laxman Prasad Sharma's case, 1945 C. W. N. 217. The contention, therefore, that the order of the District Magistrate was not passed in good faith fails.

21. In Mool Chand v. Emperor, A. I. R. (35) 1948 ALL. 281, Wanchoo J. held that the mere fact that certain persons were first arrested under some provision of the ordinary law and were later ordered to be detained under the Act, is not in itself proof of mala fide and it is for those persons to adduce further circumstances or evidence to show that the executive authorities acted mala fide.

22. The same learned Judge in the case of Kameshwar v. Rex, A. I. R. (35) 1948 ALL. 440 held that the fact that the grounds for detention supplied to a detenu make out an offence under the law, is not a ground for not ordering detention under the Act, instead of prosecuting him for the offence disclosed. It was rightly remarked that the Act is meant for action in an emergency which required that the person concerned should be immediately put under restraint and stopped from continuing the course of conduct which led to his detention. This may not be possible to achieve if there can only be prosecution for any offence that might have been committed incidentally.

23. Mool Chand's case (A. I. R. (35) 1948 ALL. 281) was followed in K. Dasappa v. District Magistrate, South Kanara, A. I. R. (36) 1949 Mad. 712. That was a case under the Madras Act (NO. 1 of 1947) and it. was held that simply because a man has been arrested under Section 151 of the Criminal Procedure Code it cannot be said that the powers under the Madras Act (1 of 1947) cannot be exercised and the person so arrested cannot be detained thereunder. In such a case in the absence of any other circumstance detention under the Act is not by itself proof of mala fides.

24. It was faintly argued that the grounds referred to the past conduct of the petitioner while the section is intended to restrain future activities. This contention is based upon a misunderstanding. The nature of the action under the Preventive Detention Act, is one intended to prevent a person from acting in any manner prejudicial to the maintenance of supplies and services essential to the community in future. It is absolutely necessary that his future must be judged by his past. It is not until the past activities of an individual spreading over a period of time not distant or remote have been watched and scrutinised, will it be possible to come to any reasonable conclusion as to his conduct in future. Once the objectionable nature of his activities for a period prior to his arrest is

brought to light, the authorities on being satisfied as to his future behaviour would inevitably take action of a preventive character. The grounds of the order referring to the petitioner's activities in the recent past, therefore, constituted a valid basis of action for his detention.

25. The next question is whether the order of the District Magistrate is open to interference on the ground that there was not sufficient material before him to be satisfied that the petitioner was going to act in a manner prejudicial to the maintenance of supplies and services essential to the community. There is abundance of authority for the view that the satisfaction contemplated in Section 3 is the satisfaction of the District Magistrate and it is not open to the Court to examine minutely into the reasonableness or otherwise of the order. The observation of the learned Chief Justice of India in Gopalan's case (A. I. R. (37) 1950 S. C. 27) may be quoted with advantage here:

> "Section 3 is also impugned on the ground that it does not provide an objective standard which the Court can utilize for determining whether the requirements of law have been complied with. It is clear that no such objective standard of conduct can be prescribed except as laying down conduct tending to achieve or to avoid a particular object. For preventive detention action must be taken on good suspicion. It is a subjective test based on the cumulative effect of different actions, perhaps spread over a considerable period. As observed by Lord Finlay in The King v. Halliday, (1917) A. C. 260 at p. 269: 86 L. J. K. B. 1119 a Court is the least appropriate tribunal to investigate the question whether circumstances of suspicion exist warranting the restraint on a person."

It was held in Durgadas v. Rex, A. I. R. (36) 1949 ALL. 148 that satisfaction only means that the detaining authority was in fact satisfied, or, in other words, honestly satisfied and not a dishonest satisfaction at all. The satisfaction has to be on the consideration of the materials available to the detaining authority which may not be legal evidence.

26. In Indu Bhushan Deb. v. The District Magistrate, Allahabad, A.I.R. (36) 1949 ALL. 82, Wanchoo J. went so far as to say that there was nothing in Section 3 (1)(a) that the order of detention should show on the face of it that the authority passing the order was satisfied that it was necessary to detain the person for reasons specified in Section 3 (1) (a). If the recital of the satisfaction is not to be found in the order it does not follow that there was no satisfaction before the order in question was passed. In such a case it will be open to the authority concerned to state by an affidavit whether it was so satisfied, and if this is done, the order of detention must be held to have been legally and properly passed.

27. Similarly, Bind Basni Prasad J. in Har Prasad Singh v. District Magistrate, Ghazipur, A.I.R. (36) 1949 ALL. 403 held that where the order detaining a person is legal, the Court cannot go into the question of fact on the basis of which the order was made. The Court cannot question the satisfaction of the authorities. To the same effect is the view of the same learned Judge in Mahmud Hasan Khan v. Rex, A. I. R. (36) 1949 ALL. 406.

28. My learned brother Kidwai J. in S.S. Yusuf v. Rex, A. I. R. (37) 1950 ALL. 69 after referring to the well-known case of Liversidge v. Sir John Anderson, (1942) A. C. 206 and other cases, took the same view.

29. The case of Ghulam Hussain v. Rex, A.I.R. (36) 1949 Oudh 20, to which I was a party, laid down certain conclusions while dealing with a similar question arising under the U. P. Maintenance of Public Order (Temporary) Act, IV of 1947. These are reproduced in the judgment of my learned brother Kidwai J. in the case of S.S. Yusuf (A.I.R. (37) 1950 ALL. 69). They will be found to bear repetition.

> "3. That the satisfaction required under the section must be the satisfaction of the authority issuing the order and it will not be open to the Court to determine the sufficiency of the reasons which induced the aforesaid authority to issue such an order nor to investigate into the evidence upon which that authority was satisfied that it was necessary to detain the person concerned against whom such an order is made.
>
> 4. That the Court in the exercise of its exceptional powers under Section 491 will be competent to determine whether such an order could have been made by a person acting reasonably and in good faith and be found that the order was made in bad faith or that the authority did not apply its mind in passing the order it will set it aside."

It follows that the recital of the satisfaction in the order of the District Magistrate, having regard to the circumstances disclosed in the present case, is conclusive and is not liable to be challenged.

30. Even if ground No. 2 is excluded from consideration, the other grounds are quite sufficient in themselves to justify the order of detention, though it would be perfectly legitimate for the detaining authority to make use of that ground as valuable material for holding that the petitioner's activities are likely to be prejudicial to the maintenance of supplies and services essential to the community. All the grounds have been fully borne out by the materials placed before us and we have not the slightest; hesitation in holding that the District Magistrate had ample material at his disposal to justify the order which he made. The grounds which formed the basis of the action show that the petitioner had come to acquire large stocks of iron goods without a proper licence, that he had no scruples in obtaining two tons of iron rods from the District Supply Officer, Lucknow, by employing fraudulent means and that he was disposing of large stocks of unlicensed iron material above the controlled price. The object of the Government in passing the Essential Supplies (Temporary Powers) Act, and regulating the control of production and distribution of certain essential commodities, including iron and steel, was to ensure a fair and equitable distribution among the public. It is obvious that the activities carried on by the petitioner were such as to interfere with the scheme underlying the Act and the Government orders and could rightly be regarded as prejudicial to the maintenance of supplies of essential commodities to the community. The District Magistrate was, therefore, perfectly justified in taking action against the petitioner so as to prevent him from continuing these objectionable activities in public interest. Had the district authorities shown an attitude of laissez. faire, they would have been guilty of a grave dereliction of duty. A satisfactory feature of the case is that the City Magistrate did not employ the machinery of the police in

organizing the raid obviously with a view to avoid the least vestige of suspicion about the bona fides of the action. There is nothing to suggest that in taking prompt action to suppress the nefarious activities of a black marketeer in iron goods he was actuated by any motives but the dictates of public duty. We are of opinion that this is eminently a fit case in which action was rightly taken by the District Magistrate under the provisions of the Preventive Detention Act.

31. We accordingly hold that the order of detention is perfectly legal and justified. We, therefore, dismiss the application.

Kidwai, J.

32. I have has the advantage of reading the judgment of my learned brother and I agree with the conclusions at which he has arrived and the order which he proposes.