# Dharamdas Shamlal Agarwal vs Police Commissioner & Anr on 16 March, 1989

## Equivalent citations: 1989 AIR 1282, 1989 SCR (2) 43, AIR 1989 SUPREME COURT 1282, 1989 (1) JT 580, 1989 (2) SCC 370, (1989) 2 GUJ LH 44, (1989) ALLCRIC 293, (1989) 2 CRIMES 53, (1990) 2 CHANDCRIC 96

## Author: S.R. Pandian

## Bench: S.R. Pandian, B.C. Ray

PETITIONER:
DHARAMDAS SHAMLAL AGARWAL

Vs.

RESPONDENT:
POLICE COMMISSIONER & ANR.

DATE OF JUDGMENT16/03/1989

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
RAY, B.C. (J)

CITATION:
1989 AIR 1282 1989 SCR (2) 43
1989 SCC (2) 370 JT 1989 (1) 580
1989 SCALE (1)658
CITATOR INFO :
F 1989 SC1881 (3)

ACT:
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.

HEADNOTE:

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 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 s

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called associates were nowhere disclosed which fact wou
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show either the authority did not know as to who the
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associates were or knowing their names has refrained fr
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furnishing it to the detenu thereby disabling him to ma
ke
his effective representation, and
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that the grounds of detention otherwise were vague or def
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cient. For the respondent it was contended that each activ
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ty of the petitioner was a separate ground of detention a
nd
that the fact that the petitioner was acquitted in the sa
id
cases was of no consequence.
Allowing the writ petition,
HELD: The requisite subjective satisfaction, the form
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tion of which is a condition precedent to passing of
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detention order, will get vitiated if material or vit
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facts which would have bearing on the issue and weighed t
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satisfaction of the detaining authority one way or the oth
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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 orde
r.
[51D-E]
In the instant case, at the time when the detaini
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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 oth
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hand it was withheld and the detaining authority was giv
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to understand that the trial of those cases was pendin
g.
This non-placing of the material fact resulting in no
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application of the mind of the detaining authority to t

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said fact has vitiated the requisite subjective satisfa
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tion, rendering the impugned detention order invalid. T
he
same is, therefore, set-aside. The detenu be set at liber
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forthwith. [51E, F, G, H]
S.K. Nizamuddin v. State of West Bengal, AIR 1974
SC
2353; Suresh Mahato v. The District Magistrate, Burdwan

JUDGMENT:

Ors., AIR 1975 SC 728; Asha Devi v. Additional Secretary to the Government of Gujarat & Anr., [1979] 2 SCR 215 and Si ta Ram Somani v. State of Rajasthan & Ors., [1986] 2 SCC referred to.

Shiv Rattan Makim v. Union of India & Ors., [1985] Sup p.

(3) SCR 843 and Subharta v. State of West Bengal [1973] S CC 250, distinguished.

& ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 5 of 1988.

(Under Article 32 of the Constitution of India.) Dr. Y.S. Chitale, M.K. Pandit, P.H. Parekh, J.H. Pare kh and M.N. Sompal for the Petitioner.

P.S. Poti, Mrs. H. Wahi and M.N. Shroff for the Respondent s.

The Judgment of the Court was delivered by S. RATNAVEL PANDIAN, J. This is a petition under Artic le 32 of the Constitution of India challenging the legality a nd validity of the order of detention dated 17.9.1988 passed by the detaining authority (the Commissioner of Police, Ahmed a-

bad City) clamping upon the petitioner (the detenu herei

n) the impugned order of detention under Sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activ i-

ties Act, 1985 on the ground that he on the materials plac ed before him was satisfied that it was necessary to make th is order of detention with a view to preventing the detenu fr om acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad City and directed t he detenu to be detained in Sabarmati Central Prison. In purs u-

ance of the said order, the detenu has been detained in t he aforesaid prison.

The Government approved the order of detention on 21.9.1988. The detenu submitted his representation dat ed 22.9.1988 to the Ist respondent who by his order dat ed 30.9.1988 rejected the same. Hence this Writ Petition. Before adverting to the arguments advanced by Dr. Ch i-

tale, on behalf of the detenu; we would like to produce t he relevant portion of the grounds of detention which rea ds thus:

> " ..... As such you are a dangerous person as defined in section 2(c) of the said Act, and known as dangerous perso n.
>
> As you with the aid of your Associates create dangero us atmosphere in the said vicinity you disturb public peac e, maintenance and as such following offences were register ed against you with Police Records, and in which you we re arrested.

| Sr. No. | Plice Station | Offence Regd. No. | Section | Decision |
|---|---|---|---|---|
| 1. | Sabarmati | 140/81 | 324, 114 IPC | Compro-mised |
| 2. | Sherkotda | 411/82 | 332,323, 114 IPC | 16.2.82 P.T. |
| 3. | Sherkotda | 412/82 | PIC 147, 148 149,307 BP Act 135(1) | P.T. |
| 4. | Sherkotda | 452/82 | 302, 109,3 | Not proved |
| 5. | Sabarmati | 346/82 | 302, 109,34 | In the Court |

> While considering complaints, in the above cases, Identif i-
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> cation (Chehra Nissan) Register, and charge-sheets co n-
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> tents carefully, it is found that you, with the aid of yo ur associates, in the said area, give threats to innoce nt people, and cause injuries to them by showing dangero us weapons that like Acid, Knife, sharp weapons. As such y ou commit offences punishable for causing injuries to hum an body and which are punishable in Indian Pen al Code ..... "

Dr. Chitale, the learned counsel for the petition er took us through the grounds of detention and the oth er relevant records, particularly the copies of the statemen ts of witnesses on the basis of which the detaining authori ty has claimed to have drawn his subjective satisfaction f or passing this impugned order of detention and raised vario us contentions inter-alia contending; (1) The material a nd vital fact, namely, the acquittal of the detenu in the cas es registered in Crime Nos. 411 and 412 of 1982 of Sherkot da Police Station as shown at Serial Nos. 2 and 3 in the tab le appended to grounds of detention which fact would ha ve influenced the minds of the detaining authority one

way or the other on the question whether or not to make the dete n-

tion order, has not been placed before the detaining autho r-

ity and this non-placing and the consequent non-consider a-

tion of the said material likely to influence the minds of the detaining authority vitiates the subjective satisfacti on and invalidates the detention order; (2) Leave apart, t he non-disclosure of the names of the witnesses on whose stat e-

ments the detaining authority placed reliance to draw h is subjective satisfaction, claiming privilege under Secti on 9(2) of the Act, the grounds of detention otherwise a re vague or deficient and lacking details with regards to t he names of the 'associates', for the disclosure of which no privilege could be claimed and hence it was not possible f or the detenu in the absence of the names of the so call ed 'associates' to make an effective representation against t he order of detention, the deprivation of which amounts to an infringement of the constitutional safeguard provided under Article 22(5) of t he Constitution of India; (3) Though the authority has me n-

tioned in more than one place the words 'your associate s' which fact evidently should have influenced the mind of t he detaining authority in making this impugned order, the nam es of the associates are nowhere disclosed which fact wou ld show either the authority did not know as to who the assoc i-

ates were or knowing the names of the associates, he h as refrained from furnishing it to the detenu thereby disabli ng the detenu to make his effective representation; and (4) T he materials placed before the detaining authority were hard ly sufficient to draw any conclusion that the alleged activ i-

ties of the detenu were detrimental to the ' ' maintenan ce of public order..' ' A plethora of decisions were cited by Dr. Chitale. T he learned counsel for the respondent, Mr. Poti vehement ly urged that the contentions urged by Dr. Chitale do not mer it consideration and the detaining authority in the prese nt case is justified in passing this order of detention. M r.

Poti also cited number of decisions in support of his su b-

missions.

We shall now examine these contentions in seriatim. In the grounds of detention five cases register ed against the detenu in respect of which he had been arrest ed are taken into consideration by the detaining authority to draw his subjective satisfaction that the detenu was di s-

turbing the maintenance of public order. Out of the fi ve cases, two cases mentioned under Serial Nos. 2 and 3 a re 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, t he detaining authority was of the opinion that the trials of both the cases were not over, though actually the detenu h ad 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 a re admitted, the date of acquittal of Crime No. 411/82 is giv en as 6.7.88 in the counter. In the Writ Petition two grou nd Nos. 10 and 11 are with reference to these cases. They re ad as follows:

> "10. The petitioner states that in the grounds of detenti on the detaining authority has mentioned erroneously that Ca se No. 411 of 1982 is pending. In fact, the said Case w as decided by the Court on 26.8.1988 and the petitioner w as acquitted by the judgment dated 26.9.1988 delivered by t he Metropolitan Magistrate, Court No. 7, Ahmedabad. When grounds of detention were passed and when the detenti on order was passed in September, 1988, the detaining authori ty has taken a non-existing fact into account that the sa id case was pending trial. The detention is liable to be quashed on this ground also.
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> 11. Likewise, the grounds of detention mention ed that Case No. 412 of 1982 is pending which is erroneous. T he said case was decided on 5.6.1988 and the petitioner w as acquitted. The detention is liable to be quashed for taki ng this non-existing ground."

These two grounds are answered by the detaining author i-

ty in paragraphs 12 and 13 of his affidavit in reply swo rn in December 1988 which read thus:

> "12. With reference to the averments made in para 10 of t he petition, I say that the same are not true' and deni ed hereby. I say that the petitioner was acquitted in Crime N o.
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> 411 of 1982 by the Metropolitan Magistrate, Court no. 7, Ahmedabad by an order dated 6.7.1988. However, it is submi t-
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> ted that each activity of the petitioner is a separa te ground of detention against the petitioner and, therefor e, even if the petitioner is acquitted in the said Crimin al Case, the detention order is not vitiated on that count.
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> 13. With reference to the averments made in para 11 of t he petitioner, I say that the same are not true and deni ed hereby. I say that it is true that in the Criminal Case N o.
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> 412/82 the petitioner was acquitted by the Sessions Cou rt No. 20, Ahmedabad on 5.6.1984. However, as submitted here i-
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> nabove, each activity of the petitioner is a separate grou nd for detention of the petitioner, and, therefore, the fa ct that the petitioner was acquitted in Criminal Case no. 4 (Sec 412) of 1982 has no bearing on the detention order a nd the detention

order cannot be said to be vitiated on th at count."

Though as per Section 6 of the Act the grounds of dete n-

tion 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 co n-

sideration is whether the detaining authority was real ly aware of the acquittal of the detenu in those two cases mentioned under Serial Nos. 2 and 3 on the date of passi ng the impugned order. It is surprising that the detaini ng authority who has specifically mentioned in the grounds of detention that the petitioner's cases 2 and 3 were pendi ng trial on the date of passing the order of detention has co me forward with a sworn statement in reply, filed nearly thr ee months after signing the grounds of detention, that he kn ew that the accused had been acquitted in both the cases. T he averments made in paragraphs 12 and 13 in the affidavit in reply are not clear at what point of time the detaini ng authority came to know of the acquittal of the detenu in both the cases. At any rate, it is not his specific ca se that the fact of acquittal was placed before him for consi d-

eration at the time of passing the impugned order. But wh at the authority repeatedly states is that "each activity of the petitioner is a separate ground of detention" and ad ds 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 t he detaining authority. It has been admited by Mr. Poti th at the sponsoring authority initiated the proceedings a nd placed all the materials before the detaining authority on 14.9.1988 by which date the petitioner had already be en acquitted in the above said two cases. Thus it is clear th at either the sponsoring authority was not aware of the acqui t-

tals of those two cases or even having been aware of t he acquittals had not placed that material before the detaini ng authority. So at the time of signing the order of detentio n, the authority should have been ignorant of the acquittal s.

Evidently to get over the plea of the detenu in the wr it petition in this regard for the first time in the counte r, the detaining authority is giving a varying statement as if he knew about the acquittal of the detenu in both the case s.

As ruled by this Court in Shiv Ratan Makim v. Union of Ind ia & Ors., [1985] Supp. (3) SCR 843 at page 848 "even if a criminal prosecution fails and an order of detention is th en made, it would not invalidate the order of detention" b e-

cause as pointed out by this Court in Subharta v. State of West Bengal, [1973] 3 SCC 250 "the purpose of preventi ve detention being different from conviction and punishment a nd subjective satisfaction being necessary in the former whi le proof beyond reasonable doubt being necessary in t he latter", the order of detention would not be bad mere ly because the criminal prosecution has failed. In the prese nt case, we would make stress, not on the question of acquitt al but on the

question of non-placing of the material and vit al fact of acquittal which if had been placed, would ha ve 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 dete n-

tion order was passed under the provisions of Maintenance of Internal Security Act. In that case the ground of detenti on was rounded on a solitary incident of theft of alumini um wire alleged to have been committed by the detenu therei n.

In respect of that incident a criminal case was filed whi ch was ultimately dropped. It appeared on 'record that t he history sheet of the detenu which was before the detainin g.

authority did not make any reference to the criminal ca se launched against the petitioner, much less to the fact th at the prosecution had been dropped or the date when the pet i-

tioner was discharged from the case. In connection with th is aspect this Court observed as follows:

> "We should have thought that the fact that a criminal ca se is pending against the person who is sought to be proceed ed against by way of preventive detention is a very materi al circumstance which ought to be placed before the Distri ct 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 Distri ct 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 t he present, but the criminal case should be allowed to run i ts full course and only if it fails to result in convictio n, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to t he District Magistrate."

It is true that the detention order in that case was s et aside on other grounds but the observation extracted abo ve is quite significant. The above observation was subsequent ly approved by this Court in Suresh Mahato v. The Distri ct Magistrate, Burdwan and Others, AIR 1975 SC 720 and in As ha Devi v. Additional Chief Secretary to the Government of Gujarat & Ant., [1979] 2 SCR 215. In the latter case (i. e.

Asha Devi), it has been pointed out:

> " ..... if material or vital facts which would infl u-
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> ence the minds of the detaining authority one way of t he other on the question whether or not to make the detenti on order, are not placed before or are not considered by t he detaining authority it would vitiate its subjective sati s-

> faction rendering the detention order illegal."

In Sita Ram Somani v. State of Rajasthan and Other s, [1986] 2 SCC 86 certain documents which were claimed to ha ve been placed before the Screening Committee in the fir st instance were not placed before the detaining authority a nd consequently there was no occasion for the detaining autho r-

ity to apply its mind to the relevant material. In t he circumstances of that case, a principal point was rais ed before this Court that there was no application of mind by the detaining authority to those vital materials which we re with-held. This Court, while answering that contenti on observed thus:

> "No one can dispute the right of the detaining authority to make an order of detention if on a consideration of t he relevant material, the detaining authority came to t he conclusion that it was necessary to detain t he appellant.'But the question was whether the detaining a u-
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> thority 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 requisi te subjective satisfaction. the formation of which is a cond i-

tion precedent to passing of a detention order will g et vitiated if material or vital facts which would have beari ng on the issue and weighed the satisfaction of the detaini ng authority one way or the other and influenced his mind a re either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority befo re issuing the detention order. It is clear to our mind that in the case on hand, at the time when the detaining authori ty passed the detention order this vital fact, namely, t he acquittals of the detenu in case Nos. mentioned at seri al Nos. 2 and 3 have not been brought to his notice and on t he other hand they were withheld and the detaining authori ty was given to understand that the trial of those cases we re pending. The explanation given by the learned counsel f or the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the nonplacing of the material fact--namely the acquittal of detenu in t he above-said two cases resulting in non-application of min ds of the detaining authority to the said fact has vitiated t he requisite subjective satisfaction, rendering the impugn ed detention order invalid. Since we have now come to the conclusion that the ord er of detention is to be set aside on the first ground itsel f, we are not inclined to traverse on other grounds. In t he premises, the impugned order is set aside and the Wr it Petition is allowed. We direct that the detenu be set at liberty forthwith.

P.S.S. Petition allowed.