Siddharth @ Sindhu Laxmanbhai Thorat vs District Magistrate Navsari on 8 May, 2019

Author: Anant S. Dave

Bench: Anant S. Dave, Biren Vaishnav

C/LPA/1020/2019 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1020 of 2019

In R/SPECIAL CIVIL APPLICATION NO. 12408 of 2018
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1020 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE

and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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SIDDHARTH @ SINDHU LAXMANBHAI THORAT
Versus
DISTRICT MAGISTRATE NAVSARI

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Appearance:
MR. KISHAN H DAIYA(6929) for the Appellant(s) No. 1

MS NISHA THAKORE, ASSISTANT GOVERNMENT PLEADER for
Respondents
NOTICE SERVED BY DS(5) for the Respondent(s) No. 1,2,3
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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 08/05/2019

ORAL JUDGMENT

(PER : HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE)

1. Heard Mr. Kishan H. Daiya, learned advocate for the appellant and Ms. Nisha M. Thakore, learned Assistant Government Pleader for the respondents.

2. Admit. Ms.Nisha Thakore, learned Assistant Government Pleader waives service of notice of admission on behalf of the respondents. With the consent of the parties, this appeal is taken up for final hearing.

3. This letters patent appeal under clause-15 of the Letters patent is filed by the appellant challenging the judgment and order dated 20.11.2018 passed by learned single Judge in Special Civil Application No. 12408 of 2018.

4. The appellant-petitioner-detenue was detained pursuant to order of detention dated 14.6.2018 passed by respondent No.1-District Magistrate, Navsari in the backdrop of registration of four complaints with Vijalpor police station; viz. (i) IInd CR No. 55 of 2017 for the offences under sections 323, 504, 506(2) and 114 of Indian Penal Code and (ii) Ist CR No. 16 of 2017 for the offences under sections 279, 337 of Indian Penal Code and sections 177 and 184 of Motor Vehicles Act; (iii) IInd CR No. 64/2017 for the offences punishable under section 323, 504, 506(2) and 114 of Indian Penal Code and (iv) Ist CR No. 08 of 2018 for the offences under sections 332, 186, 323, 504, 506(2) and 114 of Indian Penal Code and also one offence C/LPA/1020/2019 JUDGMENT was registered with Navsari Rural Police Station being Ist CR No. 149/2017 for the offences under sections 143, 147, 148, 149 and 326 of Indian Penal Code.

5. The detenue was branded as dangerous person as defined in section 2(c) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("the Act" for short), meaning thereby a person, who

either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under chapter V of the Arms Act, 1959. One of the grounds raised was about disturbance of law and order vis-a-vis breach of public order in view of registration of 4 different FIRs in short span of 7 months against the appellant-detenue under various sections of Indian Penal Code as mentioned above. Before the learned single Judge, grounds were canvassed by the petitioner that in absence of tangible material there was nothing to demonstrate that the detenue either continued or was likely to continue in such activities. However, the learned single Judge confirmed the order of detention on the ground that registration of 5 FIRs would be sufficient to bring the petitioner-detenue within the definition of "dangerous person" as he was habitual offender.

6. Before this Court, very same grounds are urged by learned advocate for the appellant which were urged before the learned single Judge. It is submitted that in the absence of any breach of public order, much less breach of law and C/LPA/1020/2019 JUDGMENT order, it cannot be said that detention order was required to be passed. It is submitted that the detaining authority has not exhausted ordinary remedy available under the penal laws and taking resort to such drastic action of detention without trial, fundamental right of the appellant to life and liberty guaranteed under Article 21 of the Constitution of India is taken away without following due procedure of law. In support of the contention, reliance is placed on the decision of the Apex Court in the case of Rekha v. State of Tamil Nadu Through Secretary to Government and Another reported in (2011) 5 SCC 244 and it is submitted that detention powers cannot be utilized as a short cut to ordinary law process. It is therefore, submitted that the order of detention deserves to be quashed and set aside.

7. As against the above, learned Assistant Government Pleader Ms. Nisha M. Thakore, appearing for respondents, would contend that commission of crime by the appellant has resulted into breach of public order and in view of registration of FIRs in the city of Navsari, the appellant can be said to be dangerous person and habitual offender. It is submitted that subjective satisfaction arrived at by the authority is not possible to be substituted or branded as perverse. It is therefore, submitted that the judgment under challenge deserves no interference.

8. Having regard to the facts and circumstances of the case, We find that though there are powers available under section 3(1) of the Act, ordinary law of Indian Penal Code under which FIRs are registered in four offences for which C/LPA/1020/2019 JUDGMENT punishment is prescribed in the Indian Penal Code, is sufficient and order of detention cannot be passed as a short cut to exhaust such remedy. Ordinarily, this Court will be loath in interfering with subjective satisfaction of the detaining authority. While arriving at subjective satisfaction, the detaining authority is supposed to undertake objective assessment of the material available. In this connection, we may refer to the judgment of this Court in Letters Patent appeal No.2732 of 2010, dated 28.3.2011 in the case of Aartiben W/o Nandubhai Jayantibhai Sujnani vs. Commissioner of Police & 2 others, wherein, this Court has quoted the observations made by Apex Court in the case of Pushker Mukherjee vs. State of West Bengal, reported in AIR 1970 SC 852, wherein distinction is drawn between public order and law and order. The Supreme Court observed in the said judgment as under:

> "Does the expression "public order" take in every kind of infraction of order or only some categories thereof ? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily C/LPA/1020/2019 JUDGMENT injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

9. We may further refer to the judgment of the Apex Court in the case of Arun Ghosh v/s State of West Bengal (1970) 1 SCC 98, wherein, the Apex Court has observed as under:

> "... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act...."

10. In another case of he Apex Court in the case of Ram Manohar Lohia v/s State of Bihar & others (1966) 1 SCR 709, wherein, the Apex Court has observed as under:

> "...Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the C/LPA/1020/2019 JUDGMENT two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention

> of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under he Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances."

11. In the above judgments, the Apex Court distinguished the public order and law and order and advisability of invoking drastic remedy of preventive detention against citizens.

12. Under the circumstances, in view of the judgment of this Court in the case of Aartiben W/o Nandubhai Jayantibhai Sujnani vs. Commissioner of Police & 2 others and considering the totality of circumstances, in our opinion, the detaining authority has failed to substantiate that the alleged antisocial activities of the appellant- detenue adversely affect or are likely to affect adversely the maintenance of public order. The order of detention, therefore, cannot be sustained and deserves to be quashed and set aside.

13. For the foregoing reasons, the letters patent appeal is allowed. Judgment and order passed by the learned single Judge in Special Civil Application No.12408 of 2018 dated 20.11.2018 confirming the order of detention dated C/LPA/1020/2019 JUDGMENT 14.6.2018 passed by respondent No.1 is hereby quashed and set aside. Consequently, order of detention dated 14.6.2018 passed by respondent No.1 is quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other offence.

14. In view of the disposal of the main appeal, connected civil application does not survive and the same is disposed of. Direct service is permitted.

(ANANT S. DAVE, ACJ) (BIREN VAISHNAV, J) A.M. PIRZADA