STATE OF MAHARASHTRA AND ORS.
v.
SHRI RAMCHANDRA RAMMILAN MISHRA @ PANDEY

MARCH 22, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Maharashtra Prevention of Dangerous Activities (Bootleggers) Slumlords and Drug Offenders Act, 1981; Section 3(2): Preventive detention of respondent on ground of maintenance of public order—Challenge to—High Court quashed the order holding that the Board by not affording an opportunity of producing witnesses to detenu violated principles of natural justice—On appeal, Held: There was no obligation on the Advisory Board to summon witnesses but the detenu himself has to keep his witnesses present at the appointed time—Detenu failed to produce witnesses—Since High Court proceeded on the wrong premise, its judgment could not be sustained—Competent authority could pass fresh order of detention if the circumstances so warrant—However, no opinion expressed on the desirability or otherwise of passing a fresh order—Constitution of India, 1950; Article 22(5).

The Commissioner of Police, Mumbai in exercise of powers under Section 3(2) of the Maharashtra Prevention of Dangerous Activities (Bootleggers) Slumlords and Drug Offenders Act passed order of detention of the respondent to prevent him from indulging in any activity in any manner prejudicial to the maintenance of public order. Detenu challenged the order of detention mainly on the ground that he was not afforded an opportunity of producing the witnesses before the Advisory Board to prove his innocence. High Court quashed the order holding that there was violation of the principles of natural justice as well as the fundamental rights as protected under Article 22(5) of the Constitution. Hence the present appeal.

It was contended by the appellant-State that the detenu neither produced any witness nor stated before the Advisory Board that he desired to examine witnesses; and that the High Court had overlooked the facts in arriving at its findings.

Respondent-Detenu submitted that the High Court was right in

A **holding that the Advisory Board did not afford him opportunity to examine witnesses to prove his innocence.**

Partly allowing the appeal, the Court

HELD: 1.1. The detenu was free to produce the witnesses before the
B **Advisory Board in order to rebut the allegations levelled against him. However, there was no obligation on the Advisory Board to summon witnesses and it was for the detenu to keep his witness present at the appointed time. The approach of the High Court by proceeding on the basis as if there was such an obligation on the Advisory Board was not**
C **correct. That apart, High Court had nothing concrete before it to surmise that any witness was present, and the failure on the part of the Advisory Board to verify about the same constituted denial of an opportunity. Hence the Judgment of the High Court is set aside. Since the detenu has been released pursuant to the judgment of the High court, it shall be open to the appellants or any competent authority to pass fresh order of detention**
D **if the circumstances so warrant. However, it is clarified that no opinion has been expressed about the desirability or otherwise of passing any fresh order of detention. [298-E; 299-D-E-F]**

A.K. Roy v. *Union of India*, **[1982] 1 SCC 271, followed.**

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 746 of 1998.

From the Judgment and Order dated 4.11.97 of the Bombay High Court in Crl. W.P. No. 486 of 1997.

F Mukesh K. Giri, Manish Kumar Saron and Ravindra Keshavrao Adsure for the Appellants.

Ashok Kumar Sharma for the Respondent.

The Judgment of the Court was delivered by

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ARIJIT PASAYAT, J. State of Maharashtra in this appeal questions legality of the judgment rendered by a Division Bench of the Bombay High Court quashing order of detention passed by the Commissioner of Police, Mumbai in purported exercise of powers under Section 3(2) of the Maharashtra Prevention of Dangerous Activities (Bootleggers) Slumlords and Drug
H Offenders) Act, 1981 (in short 'the Act'). The High Court quashed the order

only on the ground that there was violation of the principles of natural justice as well as the fundamental rights protected under Article 22(5) of the Constitution of India, 1950 (in short 'the Constitution'). The order of detention was passed on the ground that detention of respondent (hereinafter referred to as the 'detenu') was necessary in order to prevent him from acting in any manner prejudicial to the maintenance of public order. Order of detention was passed on 20.2.1997. Along with detention order detenu was served with grounds of detention and other relevant documents on 21.2.1997. Pursuant to the said mittimus, the detenu was lodged in the Nasik Road, Central Prison. The order of detention was challenged before the High Court on several grounds. The major ground of challenge was that the detenu was not granted opportunity of producing witnesses before the Advisory Board to prove his innocence, though a representation was made in this regard on 1.3.1997. The Advisory Board approved the detention. The High Court was of the view that it was not necessary to deal with the other aspects, and only on the ground that the detenu was denied opportunity to produce witnesses quashed the order of detention.

The High Court was of the view that since there was no material to show that Advisory Board had enquired from the detenu whether his witnesses were present, opportunity of examining witnesses when he was interviewed by the Advisory Committee on 5th April, 1997, was denied.

Learned counsel for the appellant-State submitted that the approach of the High Court is clearly erroneous. The Secretary to the Advisory Committee had filed an affidavit before the High Court which clearly stated as follows:

> "The detenu did not produce any witness for examination and did not state before the Advisory Board that he wanted to examine witnesses".

Learned counsel for the appellant submitted that the High Court has overlooked the factual position and its conclusions are not supportable in law. Learned counsel for the respondent-detenu submitted that after long passage of time issues have become academic. In addition, the High Court was justified in holding that the Advisory Board did not afford opportunity to detenu to examine witnesses.

In order to appreciate rival submission it would be appropriate to refer to a Constitution Bench decision in *A.K. Roy* v. *Union of India,* [1982] 1 SCC 271, where it was observed as follows:

A "The last of the three rights for which Shri. Jethmalani contends it the right of the detenu to lead evidence in rebuttal before the Advisory Board. We do not see any objection to this right being granted to the detenu. Neither the Constitution nor the National Security Act contains any provision denying to the detenu the right to present his own evidence in rebuttal of the allegations made against him. The detenu may therefore offer oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him. We would only like to add that *if the detenu desires to examine any witnesses, he shall have to keep them present at the appointed time and no obligation can be cast on the advisory Board to summon them.* The Advisory Board, like any other tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. It would be open to it, in the exercise of that power, to limit the time within which the detenu must complete his evidence. We consider it necessary to make this observation particularly in view of the fact that the Advisory Board is under an obligation under Section 11 [1] of the Act to submit its report to the appropriate Governments within seven weeks from the date of detention of the person concerned. The proceedings before the Advisory Board have therefore to be completed with the utmost expedition."

(underlined for emphasis)

The position, therefore, is clear that detenu was free to produce the witnesses before the Advisory Board in order to rebut the allegations levelled. There was no obligation on the Advisory Board to summon witnesses and it was for the detenu to keep his witness present at the appointed time. In the instant case specific affidavit of the Secretary which was noted by the High Court, *inter alia,* stated as under:

"With reference to para 8(D & K) of the petition, it is stated that the detenu *Shri Ramchandra Rammilan @ Pandey was informed by the Advisory Board*, through the Superintendent, Nasik Road Central Prison, Nasik to make representation to the Chairman, Advisory Board, M.P.D.A. 1981 and for taking assistance of his friend who is not a legal practitioner *or examine* witnesses and keep him/them present at the *time of his interview before the Advisory Board.*

The said detenu has submitted two representations dated the 1st March, 1997 and 21st March, 1997 through the Superintendent, Nasik

Road Central Prison, Nasik. Both the representations were duly considered by the Advisory Board. He was heard against the detention order. *The detenu did not produce any witness for examination and did not state before the Advisory Board that he wanted to examine* witnesses".

(underlined for emphasis)

The undisputed position, therefore, is that the detenu did not produce any witness for examination and even did not state before the Advisory Board that he wanted to examine the witness or that the witness was present. The High Court seems to have proceeded on the basis that once a representation is made indicating the desire to examine witness, there was no necessity for any oral prayer. That may be so. But as noticed in *A.K. Roy's* case (supra), it was for the detenu to keep his witness ready for examination. The specific statement of the Secretary to the Advisory Board on affidavit is that detenu did not produce any witness for examination. It was not for the Advisory Board to summon any witness. When the detenu did not produce any witness for examination, there was no necessity for the Advisory Board to require the detenu to produce witnesses. The approach of the High Court which proceeded on the basis as if there was such an obligation on the Advisory Board, therefore, is not right. That apart the Court had nothing concrete before it to surmise that any witness was present, and the failure on the part of the Advisory Board to verify about the same constituted denial of an opportunity. We set aside the judgment of the High Court.

Since the detenu has been released pursuant to the judgment of the High Court, it shall be open to the appellants or any competent authority to pass fresh order of detention if the circumstances so warrant. We make it clear that we have not expressed any opinion about the desirability or otherwise of passing any fresh order of detention. The appeal is allowed to the extent indicated.

S.K.S. Appeal partly allowed.