Rajkumar Mahavirkumar Shital Sharma Vs State of Gujarat

Special Civil Application No. 1972 of 2014

Court: Gujarat High Court

Date of Decision: June 18, 2014

Acts Referred:
Gujarat Prevention Of Anti-social Activities Act, 1985 â€" Section 2(c), 3(2)#Penal Code, 1860 (IPC) â€" Section 379

Citation: (2014) 06 GUJ CK 0016

Hon'ble Judges: S.G. Shah, J

Bench: Single Bench

Advocate: Mataferrpande, Advocate for Petitioner No. 1, Advocate for the Appellant; Bipin Bhatt, AGP for Respondents No. 1, 3, Advocate for the Respondent

Final Decision: Allowed

Judgement

S.G. Shah, J.
Heard learned counsel for the parties.

2. This petition is directed against the order of detention dated 13.1.2014 passed by respondent No. 2, in exercise of powers conferred u/s 3(2)

of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short "the Act"] by detaining the detenu as a ""dangerous person"" as defined u/s

2(c) of the Act.

3. Learned advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside and the

ground that the registration of two offences by itself cannot bring the case of the detenu within the purview of definition of ""dangerous person"" u/s

2(c) of the Act. Learned counsel for the detenu further submits that the illegal activity carried out as alleged, cannot have any nexus or bearing with

the maintenance of the public order and at the most it can be said to be breach of law and order. Further, except statements of witnesses and

registration of FIRs, no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detenu with

breach of the public order.

4. Learned counsel for the detenu, placing reliance on the decisions reported in the cases of [i] Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State

of Gujarat, , [ii] Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, ; and [iii] Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta,

Commissioner of Police and Others, , submitted that the case on hand is squarely covered by the ratio laid down in the aforesaid decisions.

Learned counsel for the detenu further submits that it is not possible to hold in the facts of the present case that the activities of the detenu with

reference to the criminal case/s had affected even tempo of the society, posing a threat to the very existence of the normal and routine life of the

people at large or that on the basis of the criminal case/s, the detenu had put the entire social apparatus in disorder, making it difficult for whole

system to exist as a system governed by the rule of law by disturbing the public order.

5. Learned AGP for the respondent-State supported the detention order passed by the authority and submitted that the detenu is a dangerous

person and sufficient material and evidence was found during the course of investigation, which was also supplied to the detenu, indicating that the

detenu is in habit of indulging into activities as defined u/s 2(c) of the Act and considering the facts of the case, the detaining authority has rightly

passed the order of detention and the detention order deserves to be upheld by this Court.

6. Having heard the learned counsel for the parties and considering the facts and circumstances of the case, it appears that the subjective

satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law inasmuch as the offences alleged in the

FIRs cannot have any bearing on the public order since the law of the land i.e. Indian Penal Code and other relevant penal laws are sufficient

enough to take care of the situation and that the allegations as have been levelled against the detenu cannot be said to be germane for the purpose

of bringing the detenu as a dangerous person within the meaning of section 2(c) of the Act and, unless and until the material is there to make out a

case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the

whole social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenu is a dangerous person

within the meaning of Section 2(c) of the Act. Except general statement, there is no material on record which shows that the detenu is acting in such

a manner which is dangerous to the public order. In view of the ratio laid down by the Hon''ble Supreme Court in the cases of [i] Ranubhai

Bhikhabhai Bharwad (supra), [ii] Ashokbhai Jivraj @ Jivabhai Solanki (supra) and [iii] Mustakmiya Jabbarmiya Shaikh (supra), the Court is of the

opinion that the activities of the detenu cannot be said to be dangerous to the maintenance of public order and at the most fall under the

maintenance of ""law and order"".

7. In view of the above, I am inclined to allow this petition because simplicitor registration of FIR/s by itself cannot have any nexus with the breach

of maintenance of public order and the authority can take recourse under the Indian Penal Code and no other relevant or cogent material exists for

invoking powers u/s 3(2) of the Act.

8. If we peruse the citations, it becomes clear that even the Hon''ble Supreme Court has considered that detention is not permitted even in the case

of robbery and theft. The present is the case of sections 379 of the Indian Penal Code. Therefore, the Court has no option but to allow the

petition.

9. The petitioner has argued on merits on FIRs, referring certain judgments. However, discussion of such facts, prima facie at this stage, is not

warranted since it may otherwise prejudice the trial.

10. It is generally seen that though some of the accused are repeatedly detained on different occasions for different offences, only because of

nondisclosure of proper information and in all such detention orders, such orders are generally quashed and set aside by the Court. It is also seen

that because of quashing of previous detention order, competent authority could not consider the grounds of detention under such order which is

already quashed as a ground for detention for subsequent offences by the same detenue. However, when competent authorities are not abiding all

other cited cases while passing the order of detention based upon solitary offence, it is surprising to note that at no point of time they challenged the

observation of any Court that when previous order of detention has been quashed, it cannot be considered in subsequent detention. It goes without

saying that if a particular detenu continuous to commit the similar offence repeatedly, and if he is required to be detained repeatedly then atleast at

some point of time, the competent authority shall compile all the information and shall consider it for fresh detention order as and when necessary

and shall produce all such information before the Court so as to avoid the quashing of such detention order. If competent authority fails to take

care of such exercise and when in impugned order of detention all such facts were not disclosed or considered for passing such order, the

detention order is required to be dealt with as it is without considering the additional disclosure in affidavit-in-reply by the respondents.

11. In view of above facts and circumstances, it would be necessary to observe that the competent authority is not precluded to disclose all

material facts while detaining the petitioner if so require for any offence that he might commit hereinafter. In other words, though impugned order is

quashed and set aside at present, it would not come in way of the competent authority for quoting such FIRs and order of detention, thereby to

treat petitioner as a habitual offender in case of commission of offence repeatedly.

12. However, since all such order are quashed on technical ground, the same shall not come in the way of the detaining authority to pass an

appropriate order in future.

13. In the result, the petition is allowed. The order of detention dated 13.1.2014 passed by the respondent No. 2 is quashed and set aside. The

detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute accordingly. Direct service

permitted.