

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.)NO.1690 OF 2017

VISHRAM GURJAR THROUGH HIS BROTHER AND
PAIROKAR SANWAR MAL GURJAR ... PETITIONER(S)

VS.

STATE OF RAJASTHAN AND ORS. ... RESPONDENT(S)

O R D E R

1. Two issues relating to the order of preventive detention, were raised by the petitioner before the High Court. The first contention of the petitioner was, that Section 3 of the Rajasthan Prevention of Anti-Social Activities Act, 2006 (hereinafter referred to as the "2006 Act"), authorizes the State Government or the District Magistrate (within the local limits, of whose jurisdiction, the order of preventive detention is to be passed), exclusive jurisdiction to pass an order of preventive detention. It was submitted, that no other person, other than the State itself or the District Magistrate, can pass an order of preventive detention. It was pointed out, that insofar as the present case is concerned, the order of preventive detention was passed on 20.09.2016 by the Commissioner of Police, Jaipur.

2. Section 3 of the 2006 Act, relied upon by the learned counsel for the petitioner , is extracted hereunder :

"3. Power to make orders detaining certain persons.- (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an authorized officer he shall forthwith 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 matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities whether as a boot-legger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.

Explanation.- For the purpose of this sub-section public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely *inter alia* if any of the activities of any person referred

to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the public at large or any section thereof or a grave or widespread danger to life, property or public health."

Based on Sub-Section (2) of Section 3, extracted above, it was submitted, that the above provision does not authorise the Commissioner of Police to pass an order of preventive detention. It was therefore contended, that the order of preventive detention passed in this case was liable to be set aside.

3. We have considered the above submission, but find no merit therein.

4. It would be pertinent to mention, that the Commissioner of Police had exercised the jurisdiction vested in the District Magistrate under Section 3(2), (extracted above), on the basis of a notification dated 4.1.2011 (Annexure P-2). The aforesaid notification had been issued in exercise of powers vested in the State Government, under Section 20(5) of the Code of Criminal Procedure, 1973, and under Section 15(4) of the Rajasthan Police Act, 2007. We shall, therefore, examine the validity of the order of detention, based on the provisions relied upon in the notification dated 4.1.2011.

5. We may first advert to Section 20(5) of the Code of Criminal Procedure, 1973, which is reproduced below :

"20.Executive Magistrates.-

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(5) Nothing in this section shall preclude the State Government from conferring under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area."

A perusal of the aforesaid provision, leaves no room for doubt, that notwithstanding "... any law for the time being in force ...", the Commissioner of Police can be delegated the powers in relation to a metropolitan area. It is therefore apparent, that irrespective of the mandate contained in Section 3(2) of the 2006 Act, it was open to the State Government, to delegate the powers vested in the District Magistrate, with reference to a metropolitan area, so as to enable the Commissioner of Police, to exercise powers vested in the District Magistrate, under Section 3(2) of the 2006 Act. We are therefore satisfied, that the delegation of powers to the Commissioner of Police, in the notification dated 4.1.2011 was permissible, under Section 20(5) of the Code of Criminal Procedure, 1973.

6. Additionally, reference may be made to Section 15(4) of the Rajasthan Police Act, 2007. The same is reproduced below :

"15. Control, Supervision and Direction of Police Force in Metropolitan Areas.-

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(4) The Commissioner of Police appointed under sub-section (1) shall exercise such powers, perform such functions and discharge such

duties, and shall have such responsibility and authority as may be determined by the State Government by a general or special order."

A perusal of Section 15(4) reveals, that it is open to the State Government to require the Commissioner of Police, to exercise such powers, and perform such functions, and discharge such duties, as may be determined by the State Government. Undoubtedly the notification issued on 4.1.2011, had been issued by exercising powers vested in the State Government under Section 15(4) of the Rajasthan Police Act, 2007. We are therefore satisfied, that Section 15(4) read with Section 20(5) of the Code of Criminal Procedure, clearly authorises the State Government, to delegate powers vested under Section 3(2) of the 2006 Act, to the Commissioner of Police.

7. In view of the conclusions drawn in the preceding two paragraphs, we are satisfied, that the impugned order passed by the Commissioner of Police, cannot be faulted on the ground of jurisdiction.

8. It would be relevant to mention, that during the course of hearing, learned counsel for the petitioner placed reliance on a judgment rendered by this Court in Criminal Appeal No.702/2006 (A.N. Roy, Commissioner of Police & Anr. Vs. Suresh Sham Singh) decided on 4th July, 2006. Having perused the afore-said judgment, we are of the view, that the same does not deal with the controversy,

which is the subject matter of the present special leave petition.

9. The last contention of the learned counsel for the petitioner was, on the merits of the detention order. We have perused the allegations levelled against the petitioner, from the impugned detention order itself, as well as, from the factual position referred to by the High Court in the impugned order. We find no justification to interfere with the determination of the High Court, on the merits of the detention order.

10. For the reasons stated hereinabove, we find no merit in this petition. The special leave petition is accordingly dismissed.

.....CJI.
[JAGDISH SINGH KHEHAR]

.....J.
[Dr. D.Y. CHANDRACHUD]

.....J.
[SANJAY KISHAN KAUL]

New Delhi;
6th March, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).1690/2017

(Arising out of impugned final judgment and order dated 13/12/2016
in HCWP No.243/2016 passed by the High Court Of Rajasthan At
Jaipur)VISHRAM GURJAR THROUGH HIS BROTHER AND
PAIROKAR SANWAR MAL GURJAR

Petitioner(s)

VERSUS

STATE OF RAJASTHAN AND ORS.

Respondent(s)

(With appln.(s) for exemption from filing O.T. and interim relief)

Date : 06/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAULFor Petitioner(s) Mr. L.B. Rai,Adv.
Mr. Vijay Awana,Adv.
For Mr. Shankar Divate,Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E RThe special leave petition is dismissed in terms of
the signed order. Pending applications stand disposed
of.(Sarita Purohit)
Court Master(Renuka Sadana)
Assistant Registrar

(Signed order is placed on the file)