

CASE NO.:
Appeal (crl.) 109 of 2001

PETITIONER:
Ahmed Noormohmed Bhatti

RESPONDENT:
State of Gujarat and Ors.

DATE OF JUDGMENT: 16/03/2005

BENCH:
N. Santosh Hegde & B.P. Singh & S.B. Sinha

JUDGMENT:
JUDGMENT

B.P. SINGH, J.

The petitioner herein filed a petition before the High Court of Gujarat at Ahmedabad under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure. In his petition, the petitioner prayed for quashing of the criminal proceedings initiated against him on the complaints of respondents 5, 6 and 7. He also prayed in the said petition for a declaration that Section 151 of the Code of Criminal Procedure is unconstitutional and ultra vires. The High Court by its impugned judgment and order dated 4th April, 1996 in Special Criminal Application No. 95 of 1996 rejected the petition holding that there was no ground to hold that Section 151 of the Code of Criminal Procedure was unconstitutional and further there was no ground to quash the proceedings initiated against the petitioner in which process has been issued.

So far as the challenge to Section 151 of the Code of Criminal Procedure is concerned the High Court has noticed the fact that the prayer for declaring the provision as unconstitutional is not supported by factual assertions and the writ petition lacked specific averments and allegations of fact on the basis of which it was contended that the provision was ultra vires and unconstitutional. However, the High Court considered the arguments addressed before it and rejected the same holding that the powers conferred upon the police authorities under Section 151 of the Code of Criminal Procedure were well defined, and guidelines for their exercise are also found in the provision so as to save it from the charge of being either arbitrary or unreasonable. The detention under Section 151 of the Code of Criminal Procedure was only for a limited period of 24 hours for the purpose mentioned therein and the said provision, therefore, offended no provision of the Constitution. So far as the criminal proceedings pending against the petitioner are concerned, they were sought to be challenged on the ground of being mala fide, an abuse of the process of Court and being untrue and unfounded. The High Court after considering the facts of the case came to the conclusion that having regard to the principles laid down by this Court in State of Haryana v. Bhajan Lal: [1992] Suppl. 1 SCC 335 no case was made out for quashing the aforesaid proceedings.

We may only notice a few facts which are necessary for the disposal of this petition. As urged before us by the counsel for the petitioner, on 11th December, 1995 a complaint was made by respondent No. 5 to Dy. Superintendent of Police, Kutch-Bhuj regarding an incident which took place on 9th December, 1995. In connection with that incident statements were recorded on 13th December, 1995. It is alleged that on 16th December, 1995 the petitioner was detained by the Inspector of Police, Bhuj, respondent No. 4, under Section 151 of the Code of Criminal Procedure. However, he was produced before the Magistrate and a Chapter Proceeding under Sections 107 & 116(3) of the Code of Criminal Procedure was initiated against him on the basis of the complaint of respondent No. 5. It is also not in dispute that

FIR No. 100/1996 dated 9th January, 1996 has been recorded against the petitioner alleging commission of offences punishable under Sections 504, 506 and 507 of the Indian Penal Code on the complaint of respondent No. 6. Similarly a First Information Report was lodged by respondent No. 7 against the petitioner on 30th December, 1995 alleging commission of offences punishable under Sections 506 (2), 507 and 114 of Indian Penal Code. On the basis of the First Information Reports lodged by the persons concerned, the police has investigated the cases and taken necessary steps in the matters, and it was stated before us that the Magistrates concerned have taken cognizance and issued process in those cases.

Section 151 appears under Chapter XI of the Code of Criminal Procedure which relates to preventive action of the police. Sub-section (1) thereof empowers a police officer to arrest, without orders from a Magistrate and without a warrant, a person designing to commit any cognizable offence. Section further requires that such an arrest should be made only if it appears to such police officer that the commission of the offence cannot be otherwise prevented. Sub-section (2) of Section 151 of the Code of Criminal Procedure places a limitation on the period of detention by providing that no person arrested under sub-section (1) shall be detained in custody for a period exceeding 24 hours from the time of his arrest, unless his further detention is required or authorized under any other provisions of this Code or any other law for the time being in force.

A mere perusal of Section 151 of the Code of Criminal Procedure makes it clear that the conditions under which a police officer may arrest a person without an order from a Magistrate and without a warrant, have been laid down in Section 151. He can do so only if he has come to know of a design of the person concerned to commit any cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise prevented. The Section, therefore, expressly lays down the requirements for the exercise of the power to arrest without an order from a Magistrate and without warrant. If these conditions are not fulfilled and, a person is arrested under Section 151 of the Code of Criminal Procedure, the arresting authority may be exposed to proceedings under the law. Sub-section (2) lays down the rule that normally a person so arrested shall be detained in custody not for a period exceeding 24 hours. It, therefore, follows that in the absence of anything else, on expiry of 24 hours, he must be released. The release, however, is not insisted upon only when his further detention is required or authorized under any other provision of the Code or of any other law for the time being in force. It, therefore, follows that if before the expiry of 24 hours of detention it is found that the person concerned is required to be detained under any other provision of the Code of Criminal Procedure, or of any other law for the time being in force, he may not be released and his detention may continue under such law or such provision of the Code. The detention thereafter is not under Section 151 of the Code of Criminal Procedure but under the relevant provision of the Code or any other law for the time being in force as the case may be. Section 151, therefore, only provides for arrest of a person to prevent the commission of a cognizable offence by him. The provision by no stretch of imagination can be said to be either arbitrary or unreasonable or infringing upon the fundamental rights of a citizen under Articles 21 and 22 of the Constitution of India.

In *Joginder Kumar v. State of U.P. and Ors* : [1994] 4 SCC 260 this Court observed : -

''8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one

hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered...''

This Court laid down certain requirements in *Joginder Kumar (supra)* for effective enforcement of the fundamental rights inherent in Articles 21 and 22(1) of the Constitution of India which require to be recognized and scrupulously protected. The requirements laid down are as follows : -

''1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

2. The police officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with''.

In *D.K. Basu v. State of West Bengal*, [1997] 1 SCC 416 this Court has issued requirements to be followed in all cases of arrest and detention till legal provisions are made in that behalf as preventive measures. The requirements laid down are : -

''(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after

the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee. This Court has also cautioned that failure to comply with the requirements aforesaid, shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for Contempt of Court.

Counsel for the petitioner submitted that such requirements must be laid down in the case of an arrest under Section 151 of the Code of Criminal Procedure. Counsel for the respondents conceded that the requirements laid down in Joginder Kumar (supra) and D.K. Basu (supra) apply also to an arrest made under Section 151 of the Code of Criminal Procedure. As we have noticed earlier, Section 151 of the Code of Criminal Procedure itself makes provision for the circumstances in which an arrest can be made under that Section and also places a limitation on the period for which a person so arrested may be detained. The guidelines are inbuilt in the provision itself. Those statutory guidelines read with the requirements laid down by this Court in Joginder Kumar (supra) and D.K. Basu (supra) provide an assurance that the power shall not be abused and in case of abuse, the authority concerned shall be adequately punished. A provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional, merely because the authority vested with the power may abuse his authority. Since several cases of abuse of authority in matters of arrest and detention have come to the notice of this Court, this Court has laid down the requirements which have to be followed in all cases of arrest and

detention.

We, therefore, find no substance in the contention that Section 151 of the Code of Criminal Procedure is unconstitutional and ultra vires the constitutional provisions.

The next question is whether any interference by this Court is called for in the criminal proceedings pending against the petitioner. As we have noticed earlier, these proceedings have been initiated by private persons, namely respondents 5 to 7. So far as the police authorities are concerned, namely respondents 2 to 4, they are performing the statutory duties enjoined upon them. Those proceedings are not motivated by any personal animosity of the police officials concerned. The proceedings have been initiated on complaints made by private persons under the law and the proceedings are pending before the Courts which have jurisdiction to deal with them. The High Court has examined the matter and has come to the conclusion that those proceedings do not deserve to be quashed under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure. We entirely agree with the High Court.

We find no merit in this appeal and the same is accordingly dismissed.