

PETITIONER:
AJAIB SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT:
02/02/1965

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
RAO, K. SUBBA (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1965 AIR 1619 1965 SCR (2) 845
CITATOR INFO :
D 1969 SC 483 (11)

ACT:

Defence of India Act, 1962 (Act 51 of 1962), s. 3(2)(15)(i)-
Defence of India Rules, 1962 r. 30A-Power of Detention-
Exercise By whom.

Code of Criminal Procedure, 1898 (Act 5 of 1898), ss. 10(1),
10(2) & 11--Additional District Magistrate-Invested with
powers under s. 10(2)-Whether District Magistrate--Officer
Incharge of District Magistrate's Office-But absence of
Appointment under s. 10(1)-If District Magistrate.

HEADNOTE:

The Additional District Magistrate of Amritsar who was invested with the powers of a District Magistrate under s. 10(2) of the Code of Criminal Procedure, 1898 was under instructions from the State Government in charge of the office of the District Magistrate, when the District Magistrate was transferred. No order appointing him as District Magistrate as required by s. 10(1) of the Code was however passed. During the period he was in charge of the office of the District Magistrate he passed an order detaining the appellant under r. 30(1)(b) of the Defence of India Rules, 1962. In appeal by special leave from Punjab High Court, it was contended by the appellant, that in the absence of an order under s. 10(1) of the Code the Additional District Magistrate could not be the District Magistrate for the purpose of passing an order of detention under Defence of India Act and the Rules, and consequently the order of detention passed by him was without authority and liable to be set aside.

HELD : The order of detention was not in accordance with the Defence of India Act and Rules and must be set aside, as he was not then the District Magistrate, but only an Additional District Magistrate. [852 F]

The Defence of India Act and the Rules show unmistakably that the powers of detention can only be exercised by the State Government or an officer or authority to whom it might be delegated but who shall in no case be lower in rank than

a District Magistrate. An Additional District Magistrate is below the rank of a District Magistrate. [849 E-F; 851 H-852 A]

Even if an Additional District Magistrate had been appointed with all the powers under the Code and also under any other law for the time being in force, he was still not the District Magistrate unless the Government appointed him as such under s. 10(1) of the Code of Criminal Procedure. [850 D-E]

Even if an officer was exercising the powers of the District Magistrate on there being a vacancy in the office of the District Magistrate he was still not the District Magistrate until he was appointed as such under s. 10(1) of the Code of Criminal Procedure. [850 F-G]

The instructions could not take the place of a notification under s. 10(1) of the Code. [851 C-D]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 252 of 1964.

Appeal by special leave from the judgment and order dated July 30, 1964 of the Punjab High Court in Criminal Miscellaneous No. 742 of 1962.

M. C. Setalvad, and Naunit Lal, for the appellant.

J. N. Kaushal, Advocate-General for the State of Punjab and R. N. Sachthey, for the respondents.

The Judgment of the Court was delivered by Wanchoo J. This appeal by special leave from the judgment of the Punjab High Court was heard on January 20, 1965. We then pronounced a short order allowing the appeal and directing the release of the detenu and indicated that reasons would follow later. We now proceed to give the reasons.

The appellant was detained under r. 30 (1) (b) of the Defence of India Rules (hereinafter referred to as the Rules) by an order passed by Shri Lal Singh on June 30, 1964. That order was passed by Shri Lal Singh as District Magistrate of Amritsar. The only point that has been urged before us on behalf of the detenu is that Shri Lal Singh was not the District Magistrate of Amritsar on June 30, 1964 and therefore he had no power to pass the order of detention under the Defence of India Act, No. 51 of 1962, (hereinafter referred to as the Act and the Rules).

It is necessary to set out certain facts with respect to the position Shri Lal Singh was occupying on June 30, 1964 when the order of detention was passed. It appears that Shri P. N. Bhalla was the District Magistrate of Amritsar in April 1964. He was ordered to be transferred to the Secretariat by an order passed on April 23, 1964. At that time Shri Lall Singh was the Additional District Magistrate of Amritsar and had been inter alia invested under S. 10 (2) of the Code of Criminal Procedure (hereinafter referred to as the Code) with all the powers of a District Magistrate under the Code or under any other law for the time being in force by an order which had been passed on April 10, 1963. Further when the order of transfer of Shri Bhalla was made, instructions were issued that Shri Bhalla should hand over charge to Shri Lall Singh, Additional Deputy Commissioner, Amritsar who would hold the current charge of the post of Deputy Commissioner, Amritsar, till further orders. It appears that Shri Bhalla handed over charge of the office of the Deputy Commis-

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sioner to Shri Lall Singh on the afternoon of May 15, 1964 in accordance with the instructions above mentioned, and thus Shri Lall Singh was in current charge of the office of Deputy Commissioner, Amritsar from May 16, 1964. No order appointing Shri Lall Singh as District Magistrate of Amritsar as required under s. 10 (1) of the Code was passed. But as Shri Lall Singh was already invested as an Additional District Magistrate with all the powers of the District Magistrate under the Code and under any other law for the time being in force, he carried on the duties of the office of the District Magistrate also. At the same time it may be noted that no other officer was posted as District Magistrate from May 16 till June 30, 1964 when the order of detention was passed. The new District Magistrate Shri Iqbal Singh took over charge as District Magistrate, Amritsar, on July 1, 1964 and Shri Lall Singh was then appointed as District Magistrate, Hissar.

On these facts the contention on behalf of the detenu is that Shri Lall Singh was not the District Magistrate of Amritsar on June 30, 1964, even though he signed himself as District Magistrate when he passed the order of detention. It is submitted that in the absence of an order under S. 10 (1) of the Code appointing Shri Lall Singh as District Magistrate of Amritsar, he could not be the District Magistrate of Amritsar for the purpose of passing an order of detention under the Act and the Rules, whatever might be his powers to carry on the administration of the district as an Additional District Magistrate and Additional Collector under the powers conferred on him by various notifications of April 1963. Consequently the order of detention passed by him on June 30, 1964, was without authority and liable to be set aside.

In reply, the learned Advocate General for the State of Punjab has raised two points. In the first place he urges that the notification delegating to all District Magistrates the State Government's powers to detain persons under r. 30 of the Rules is law and relies in this connection on the decision of this Court in *Jayantilal Amratlal Shodhan v. F. N. Rana*(1). It is further contended that by the notification of April 1963, Shri Lall Singh was invested with all the powers of a District Magistrate under the Code and under any other law for the time being in force and would therefore have the power to detain persons under the law contained in the notification delegating the power of detention to all District Magistrates. In the second place it is urged that as Shri Lall

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Singh was holding charge of the current duties of the office of the Deputy Commissioner and as no one else had been posted in Amritsar between May 16 and June 30, 1964 as District Magistrate he was in fact and in law the District Magistrate of Amritsar.

We do not think it necessary for purposes of this case to decide the first point raised by the learned Advocate General, for we have come to the conclusion that no officer other than the District Magistrate of a District can pass an order of detention under r. 30 of the Rules in view of the provisions of the Act and of the Rules to which we shall now refer. Section 3(1) of the Act gives power to the Central Government by notification in the Official Gazette to make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient

conduct of military operations, or for maintaining supplies and services essential to the life of community. Section 3 (2) then provides for the making of rules for various purposes without prejudice to the generality of the powers conferred by s. 3 (1), and the 15th clause thereof provides for detention. The relevant portion of that clause necessary for our purposes reads thus :-

"(15). Notwithstanding anything in any other law for the time being in force--

(i) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable, of being of hostile origin or having acted, acting, being about to act or being likely to act in a manner prejudicial to the defence of India and civil defence, the security of the State, the public safety or interest, the maintenance of public order, India's relations with foreign States, the maintenance of peaceful conditions in any part or area of India or the efficient conduct of military operations, or with respect to whom that authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner."

It would be seen that s. 3 (2) (15) (i) which is the source of power to detain according to the Rules to be framed thereunder itself

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lays down that the authority empowered to detain shall not be lower in rank than that of a District Magistrate.

Then we came to S. 40 (2) of the Act, which gives power to the State Government to delegate its powers to any officer or authority subordinate to it. This power of delegation, however, must be read harmoniously with s. 3 (2) (15) and therefore under S. 40 (2) the State Government cannot delegate its power to detain to any officer below the rank of a District Magistrate. Rule 30 of the Rules then provides for detention and under that rule the power is conferred on the Central Government or the State Government to detain any person. That power of the State Government can however be delegated under s. 40 (2) to any officer subordinate to it. But as we have already indicated the power of delegation must be read harmoniously with s. 3(2)(15) and therefore the State Government cannot delegate the power to detain to any officer who is lower in rank than the District Magistrate. The position is further clearly brought out in r. 30-A which provides for review of a detention order made by an officer. It is made clear there also that the officer shall in no case be lower in rank than a District Magistrate. The effect of these provisions thus is that the power of detention can either be exercised by the State Government or by its delegate who however can in no case be lower in rank than a District Magistrate. The Act and the Rules therefore show unmistakably that the power of detention can only be exercised by the State Government or an officer or authority to whom it might be delegated but who shall in no case be lower in rank than a District Magistrate.

We may in this connection contrast the language of S. 3 (2) of the Preventive Detention Act, No. 4 of 1950, which lays

down that any of the following officers, namely:-

- (a) district magistrates,
- (b) additional district magistrates specially empowered in this behalf by the State Government,
- (c)
- (d)

may exercise the powers conferred by S. 3 (1) (a) (ii) and (iii). If the intention under the Act and the Rules was that the Additional District Magistrate may also exercise the power of detention conferred thereunder we would have found a provision similar to that contained in the Preventive Detention Act.

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Two questions then arise on the view we hold that no officer below the rank of a District Magistrate can exercise the power of detention under the Act and the Rules. The first is whether Shri Lal Singh was the District Magistrate of Amritsar on June 30, 1964. Secondly if he was not the District Magistrate on that date, could he as Additional District Magistrate exercise the power of detention and that would depend upon whether an Additional District Magistrate is of the same rank as the District Magistrate or below him in rank? Now S. 10 (1) of the Code provides for the appointment of a District Magistrate and lays down that "in every district outside the presidency-towns, the State Government shall appoint, a Magistrate of the first class, who shall be called the District Magistrate". The appointment of a District Magistrate therefore has to be made under S. 10 (1). Section 10(2) then gives power to the State Government to appoint any Magistrate first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under the Code or under any other law for the time being in force as the State Government may direct. But even if an Additional District Magistrate has been appointed with all the powers under the Code and also under any other law for the time being in force, he is still not the District Magistrate unless the Government appoints him as such under S. 10 (1) of the Code. Further S. 11 of the Code envisages the contingency of the office of the District Magistrate becoming vacant. It provides that where this contingency arises, any officer succeeding temporarily to the chief executive administration of the district shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by the Code on the District Magistrate. But even if an officer is exercising the powers of the District Magistrate on there being a vacancy in the office of the District Magistrate he is still not the District Magistrate until he is appointed as such under s. 10(1) of the Code.

We have therefore to see whether Shri Lal Singh was appointed as District Magistrate of Amritsar under s. 10 (1) of the Code. As to that it is admitted that there was no notification appointing Shri Lal Singh as the District Magistrate of Amritsar under s. 10(1) of the Code. All that the Advocate General can point out is the instruction issued by the Governor of the Punjab when transferring Shri Bhalla who was the District Magistrate of Amritsar to the effect that Shri Bhalla should hand over charge to Shri Lal Singh who will hold the current

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charge of the office of the Deputy Commissioner, Amritsar. This means that there was a temporary vacancy on the transfer of Shri Bhalla and Shri Lal Singh temporarily succeeded to the chief executive administration of the

district. As such he would be entitled to exercise the powers of the District Magistrate under the Code under s.11. Further as he had been empowered as Additional District Magistrate to exercise powers of the District Magistrate under any other law for the time being in force:, he would exercise those powers also by virtue of being so authorised. But even though Shri Bhalla may have gone away after handing over charge on the afternoon of May, 15, 1964 Shri Lal Singh could not and did not become the District Magistrate of Amritsar in the absence of a notification under s. 10 (1) of the Code by the State Government. The instructions to which we have already referred cannot in our opinion take the place of a notification under s. 10 (1) of the Code. Therefore though Shri Lal Singh may be exercising all the powers of the District Magistrate by virtue of his being an Additional District Magistrate under the notification issued in April 1963 and also by virtue of s. 11 of the Code he was not the District Magistrate of Amritsar in law on June 30, 1964. It is true that when passing the order he showed his designation as District Magistrate and that may be because Shri Bhalla who was the District Magistrate had gone away and no other officer had replaced him till June 30, 1964. The transfer of Shri Bhalla would not automatically make Shri Lal Singh, the District Magistrate of Amritsar, in the absence of a notification under s. 10 (1) of the Code. When we say this we should not be understood to mean that a notification appointing a District Magistrate must necessarily recite in terms that it was being made under s. 10 of the Code; all that we mean is that there must be an order of the State Government appointing an officer as District Magistrate of the district. In the absence of such an order no officer can claim to be the District Magistrate of the district. The instructions which were issued in this case however do not say that Shri Lal Singh was being appointed the District Magistrate of the district in place of Shri Bhalla. If that were so, we would have found a proper notification to that effect, published in the Gazette. We, therefore, hold that Shri Lal Singh was not the District Magistrate of Amritsar when he made the order on June 30, 1964.

The next question is whether an Additional District Magistrate can be said to be of the same rank as the District Magistrate. We are clearly of the opinion that an Additional District Magis-

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trate is below the rank of a District Magistrate and cannot be said to be of the same rank as the District Magistrate. We may in this connection refer to s. 10(2) of the Code which shows that an Additional District Magistrate need not necessarily be conferred with all the powers of the District Magistrate under the Code or any other law for the time being in force. He can be an Additional District Magistrate though he may be exercising only some of the powers of the District Magistrate. Clearly, therefore, an Additional District Magistrate must be an officer below the rank of the District Magistrate. Further sub-s. (3) of s. 10 bears this out. That sub-section says that for certain purposes, the Additional District Magistrate shall be deemed to be subordinate to the District Magistrate. Therefore even if the Additional District Magistrate is invested with all the powers of a District Magistrate under the Code or under any other law for the time being in force he is still below the District Magistrate for certain purposes mentioned in s. 10(3) of the Code. Besides there is only one District Magistrate in a district and all other magistrates whether

they be Magistrates first class or even Additional District Magistrates must obviously be below him in rank. As s. 3 (2) (15) of the Act provides that the power of detention cannot be exercised by any officer below the rank of the District Magistrate, such power cannot be exercised by an Additional District Magistrate who is in our opinion an officer below the rank of a District Magistrate. The order of the detention passed by Shri Lall Singh on June 30, 1964 when he was not the District Magistrate of Amritsar but only an Additional District Magistrate is not in accordance with the Act and the Rules and must be set aside.

Appeal allowed.

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