

Sahib Singh Dugal

Vs

Union of India

Writ Petition Nos. 55 and 56 of 1965

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

30.07.1965

JUDGMENT

WANCHOO, J. -

These two writ petitions under Art. 32 of the Constitution for a writ of habeas corpus raise common questions and will be dealt with together. We may set out the facts in one of the petitions (namely Petition 55) in order to highlight the points raised on behalf of the petitioners. It is unnecessary to refer to the facts in the other petition as they are similar except that in the other case the original arrest took place on December 6 instead on December 8.

Sahib Singh Dugal, petitioner, was employed in the Posts and Telegraph Directorate of the Central Government. He was arrested on December 8, 1964 and put in jail as an under trial prisoner for an offence under s. 3 of the Official Secrets Act. Various remands were taken up March 11, 1965 in connection with the criminal case against the petitioner. It appears that besides Dugal, eight other persons were also involved in the case under s. 3 of the Official Secrets Act, including Jagdev Kumar Gupta petitioner in petition No. 56 of 1965. On March 11, 1965, the Deputy Superintendent of Police who was apparently in-charge of the investigation made a report to the court to the effect that all the nine persons involved in that criminal case might be discovered during the investigation. Consequently, the magistrate discharged all the nine persons including Sahib Singh Dugal and Jagdev Kumar Gupta petitioners and they were released from jail that very evening. Immediately after Sahib Singh Dugal came out of the jail,

The case of the petitioners before us is two-fold. In the first place they rely on the decision of this Court in Rameshwar Shaw v. District Magistrate, Burdwan (1) [1964] 4 S. C. R. 921 and their case is that in view of that decision the order of their detention and the service of that order the illegal and they are therefore entitled to release. In the second place, it is urged that the order of detention is mala fide in the circumstances of the case and therefore should be set aside. The Union contests the petitions and urges that Rameshwar Shaw's case has no application to the present cases and that there was no mala fide intention in making the orders of detention.

We shall first consider whether the orders in the present cases are covered by the decision of this Court in Rameshwar Shaw's case and should therefore be set aside. It is necessary in this connection to refer to the facts in that case. Rameshwar Shaw was ordered to be detained by an order passed on February 9, 1963. This order was served on him on February 15, 1963. At that time he was in Burdwan jail. He had been in that jail for sometime past in connection with a criminal complaint pending against him. Therefore, both when the order was passed and when it was served on Rameshwar Shaw, he was already in jail in connection with the criminal case pending against him

and it was not known how long he would remain in jail in that connection. It was also impossible to say at that stage whether he would be convicted in the criminal case or acquitted. It may be mentioned that that was a case of detention under the Preventive Detention Act where grounds and particulars are supplied to the detenu. But the main quest authority had to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If such a person was already in jail custody for an indefinite length of time it could not be postulated about him that if he was not detained he would act in a prejudicial manner.

This matter was again considered by this Court in *Smt. Godavari Shamrao v. The State of Maharashtra*. (2) A. I. R. [1964] S. C. 1128. That was a case where a certain person had been detained under the Defence of India Rules. Later, this order was revoked and another order was passed to remove some technical defects. The latter order was challenged as illegal as it was passed at the time when the person concerned was in detention and it was also served on her in jail. This Court held that the second order of the State Government after it had decided to revoke the earlier order was perfectly valid so far as the time of making the order was concerned and its service on the detenu who was detained not as an undertrial or as a convicted person could not be assailed, and the case of *Rameshwar Shaw* was distinguished.

It will be noticed that the facts of the present two cases differ from the facts of *Rameshwar Shaw's* case in one material particular. *Rameshwar Shaw* was in jail in connection with the criminal case pending against him for an indefinite duration. The order of detention as well as the service of that order was made on *Rameshwar Shaw* when he was in jail for an indefinite period in connection with the criminal case pending against him. In the present cases it is true that the petitioners had been in jail for about three months before the order of detention was made against them. But there is a significant difference in the present cases, namely, that the executive authorities had decided that the criminal case against the petitioners could not succeed for want of sufficient evidence and applied for the discharge of the petitioners. It was in these circumstances that the executive authorities decided to pass an order of detention. So on March 11 a report was made to the magistrate that the petitioners should be di

The next contention on behalf of the petitioners is that the order is mala fide. The reason for this contention is that it was originally intended to prosecute the petitioners under s. 3 of the Official Secrets Act and when the authorities were unable to get sufficient evidence to obtain a conviction they decided to drop the criminal proceedings and to order the detention of the petitioners. This by itself is not sufficient to lead to the inference that the action of the detaining authority was mala fide. It may very well be that the executive authorities felt that it was not possible to obtain a conviction for a particular offence under the Official Secrets Act; at the same time they might reasonably come to the conclusion that the activities of the petitioners which had been watched for over two years before the order of detention was passed were of such a nature as to justify the order of detention. We cannot infer merely from the fact that the authorities decided to drop the case under the Official Secre

The petitions therefore fail and are hereby dismissed.

Petitions dismissed.

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