

SUPREME COURT OF INDIA

Jagedev Kr. Gupta

Vs.

Union of India

Writ Petns.Nos.55 and 56 of 1965

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

30.07.1965

JUDGEMENT

WANCHOO, J.:

1. 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 Petitions 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 of December 8.

2. Sahib Singh Dugal petitioner was employed in the Posts and Telegraphs Directorate of the Central Government. He was arrested on December 8, 1964 and put in jail as an undertrial prisoner for an offence under S. 3 of the Official Secrets Act. Various remands were taken upto 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 discharged as sufficient evidence for their conviction could not 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, he was served with an order under R. 30(1) (b) of the Deference of India Rules (hereinafter referred to as the Rules). This order was passed by the Government of India and provided that Dugal be detained in order to prevent him from acting in a manner prejudicial to the Defence of India, public safety and India's relations with foreign powers. Dugal was then arrested and detained in the Central Jail. Tehar, New Delhi in accordance with the further order of the Government of India under R. 30(4) of the Rules.

3. 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*. AIR 1964 SC 334, and their case is that in view of that decision the order of their detention and the service of that order are 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. AIR 1964 SC 334, has no application to the present cases and that there was no mala fide intention in making the orders of detention.

4. We shall first consider whether the orders in the present cases are covered by the decision of this Court in *Rameshwar Shaw's* case, AIR 1964 SC 334, 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 question that was decided therein was that where a person was already in jail for an indefinite length of time in connection with a criminal case pending against him it would not be possible for the authority to come to the conclusion that such a person's detention is necessary in order to prevent him from acting in a manner prejudicial to the public safety etc. It was pointed out that the scheme of the Section postulates that if an order of detention is not passed against a person he would be free and able to act in a prejudicial manner; but when the person against whom an order is passed is already in jail for an indefinite length of time or for a long time to come (say when he is undergoing sentence of imprisonment for a number of years) it could hardly be said that such a person would act in a manner prejudicial to the public safety etc. unless he is detained. In such a case preventive detention would be unnecessary, for the person concerned is already in jail for an indefinite length of time or for a long time. In *Rameshwar Shaw's* case, AIR 1964 SC 334, he was in jail in connection with the criminal case pending against him for an indefinite length of time. It was in those circumstances that this Court held that the authority ordering detention could not legitimately come to the conclusion that the detention of the person was necessary to prevent him from acting in a manner prejudicial to

the public safety etc. for in coming to that conclusion the 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.

5. This matter was again considered by this Court in *Smt. Godavari Shamrao v. State of Maharashtra*, AIR 1964 SC 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*, AIR 1964 SC 334, was distinguished.

6. It will be noticed that the facts of the present two cases differ from the facts of *Rameshwar Shaw's* case, AIR 1964 SC 334, 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 those 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 discharged as there was not sufficient evidence for their conviction and on the same date the order for their detention was passed under the Rules. Further it was served on the petitioners immediately after their release from jail. In these circumstances, the ratio decidendi of *Rameshwar Shaw's* case, AIR 1964 SC 334, will not apply, for the authorities had decided to drop the criminal case and ask for the discharge of the accused. Then they considered whether there was justification for the detention of the petitioners under the Rules and decided to detain them. As was pointed out by this Court in *Rameshwar Shaw's* case, AIR 1964 SC 334, detention is made generally in the light of the evidence about the past activities of the person concerned. But these past activities should ordinarily be proximate in point of time in order to justify the order of detention. In the present cases the petitioners had been in jail for only three months before the order of detention was passed. It cannot be said that the conduct of the petitioners before this period of three months is not proximate enough to justify an order of detention based on that conduct. As a matter of fact, the affidavit on behalf of the Government of India is that the material in respect of the activities of the petitioners ranged over a period of two years before the date of detention and that was taken into account to come to the conclusion whether the detention under the Rules was justified or not. We are therefore of opinion that the petitioners cannot get advantage of the decision of this Court in *Rameshwar Shaw's* case, AIR 1964 SC 334, on the facts in the present cases.

7. 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 Secrets Act and thereafter to order the detention of the petitioners under the Rules that the order of detention was mala fide. As we have already said, it may not be possible to obtain a conviction for a particular offence; but the authorities may still be justified in ordering detention of a person in view of his past activities which will be of a wider range than the mere proof of a particular offence in a court of law. We are not therefore prepared to hold that the orders of detention in these cases were mala fide.

8. The petitions therefore fail and are hereby dismissed.

Petitions dismissed.