

Chaju Ram

Vs

The State of Jammu and Kashmir

Writ Petition No. 32 of 1970

(CJI M. Hidayatullah, A. N. Ray, I. D. Dua JJ)

03.03.1970

JUDGMENT

HIDAYATULLAH, C.J. -

1. The petitioner Chaju Ram was detained under the orders of the District Magistrate, Jammu passed under Section 3 (2) read with Section 5 of the Jammu and Kashmir Preventive Detention Act, 1964 on March 30, 1969. The order was served on him the same day and on the original order, we find an endorsement by the Station House Officer to the effect that in compliance with the District Magistrate's order, he arrested Chaju at 6-30 p.m. and that the contents of the order were explained to him in Urdu by reading over the same to him in token of which his thumb impression was obtained on the face of the order. Beneath this endorsement, there is a thumb-impression although it is not stated there whose thumb-impression it is. In any event, this was in compliance with the direction given in the order itself that notice of the order should be given to Sh. Chaju by reading over the same to him.

2. As required by Section 8 of the Act, grounds of the order of detention had to be disclosed to Chaju. It is claimed that this was done on April 6, 1969 and that order has been produced before us. The grounds stated as follows :

"1. That Shri Chaju, s/o Gura is (sic) conspiracy with some other leaders of Democratic Conference incited landless people of R. S. Pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm, with the full knowledge that such action on their part was likely to lead to disturbances in a sensitive border area.

2. As a result of his activities some area of the Nandpur Farm was occupied by landless people between March 18, 1968 to February 25, 1969 who also constructed 'Jhugies' on it. Chaju told them to persist in their illegal activities and urged them to resist violently any attempt to evict them. He told them the State Government would agree to allot this land to them only if a situation were created in which two or three persons were killed by police firing.

3. Squatters were evicted on March 26, 1968 some of whom offered resistance. Even after this, Chaju continued his campaign of asking people to forcibly occupy vacant Government land on a massive scale with the narrowed objective of replanting a 'Naxalbari' in our State."

We shall come to these grounds later. Chaju did not make a representation against his detention and on August 29, 1969, the Advisory Board held that the District Magistrate was fully justified and that

there was sufficient cause for his detention.

3. Chaju made a petition under Article 32 of the Constitution for his release by a writ of habeas corpus in this Court. Rule nisi on this petition was issued on December 2, 1969. The petition was made from jail and contained not much material except to say that he had been illegally detained for one year and was languishing in jail. In reply to the rule nisi, an affidavit was filed by the Additional Secretary to the Government of Jammu and Kashmir, Home Department. However, Chaju withdraw that petition with permission to file another petition and he has filed a second petition on January 20, 1970. In this petition he has stated in Paras 3, 4 and 5 that he was given some papers five days after Baisakhi (which fell on April 13, 1969) and being an illiterate person, he could not read the contents of the papers given. He also alleged that he was not explained the grounds of his detention and therefore he was deprived of his right of making a representation under the statute. He also alleged that the grounds on which his detention had been orders were vague and were not sufficient for him to make a representation if he cared.

4. At the hearing we confined the case only to these two points, namely, whether Chaju was served the grounds of detention on April 6, 1969 as claimed in the reply affidavit and whether the contents of the grounds were explained to him in a language understood by him, and secondly whether the grounds were sufficiently precise and detailed for Chaju to make a proper representation as he was entitled to do under the Preventive Detention Act.

5. In regard to the first question, there is an affidavit sworn to by the Under-Secretary to the Government filed in answer to the second petition made in this Court. It is stated in that affidavit that the grounds were duly served upon the detenu, and in token of his having understood the same, he affixed his thumb-impression thereon. In answer to the allegation that the grounds were served on him five days after Baisakhi, the affidavit does not seek to controvert it but only says that the detention order was duly read over to the detenu and the contents of the order explained to him in the language he understood. Therefore the claim of the Government is that on both the occasions, that is to say, when the detention order was served on him and also when the grounds were handed over to him, the contents of the documents were read over to him and translated to him in the language he understood (Urdu) and therefore there was compliance with the provisions of the law.

6. Now, if we accept the affidavit of the Government, it is obvious that the affidavit of the detenu must be false. Contrary-wise, if we accept the affidavit of the detenu, we must reject the material placed before us on behalf of the Government. In view of the contradictory nature of these two affidavits, we went into the matter very closely and satisfied ourselves which of the two affidavits is acceptable, giving all the benefit of doubt to the detenu. To begin with, the order of detention had an endorsement on it that the order should be communicated to Chaju by reading over the same to him. This was probably done because we find an endorsement of the Station House officer that he had read it over to him in Urdu. The thumb-impression of Chaju, but as he has not raised a controversy about it, we accept it as his.

7. In contrast to this order, the grounds of detention did not have an endorsement that the grounds should be explained to Chaju in the language he understood. In the affidavit in answer to the first petition, the grounds were filed but there was no endorsement on the copy of the grounds showing that it had been so read to him in Urdu and that he was explained the contents. Mr. Sachthey, however brought to our notice the original file in which the copy of the grounds which was served upon the detenu has an endorsement in Urdu that they had been read over and fully explained to him in Urdu. There is a thumb-impression and against the thumb-impression is noted that it is that of

Chaju. The date is April 6, 1969.

8. The question is whether in view of this endorsement we must hold that Chaju was properly explained the grounds of detention in Urdu which he understands. In our judgment, we cannot accept these documents at their face value. To begin with, the three endorsements on the copy, that is to say, (a) that the document was read over to him in Urdu, (b) the thumb-impression and (c) the note that it is the thumb-impression of Chaju, are in two different inks if not three. This raised a suspicion, that these might have been written later around the thumb-impression taken from Chaju as was done when the order of detention was served on him. It may be recalled that at that time also there was an endorsement in English that it had been read over to him, but nothing had been written around the thumb-impression of Chaju whether in Urdu or otherwise to show that the thumb-impression was that of Chaju. We looked carefully at the affidavit filed in this Court which is a cyclostyled document. We find in Para 6 a correction in a very significant place. This correction has been made by typing certain words in the place between two lines with an oblique showing that it is an omission. The words beneath those added words have been erased although some of them in part still appear. Now it is significant that the words which have been added are as follows :

"understood the same he";

and the para now reads as follows :

"Referring to Para 7 of the petition, I say that the grounds were duly served upon the detenu and in token of having understood the same he affixed his thumb-impression thereon ----- underlining by us."

The underlined words are the words which have been added in the place between the two lines. To appear that what has been erased must be some other words appropriate to what preceded and what followed. In our opinion the paragraph must have read :

"Referring to Para 7 of the petition I say that the grounds were duly served upon the detenu and in token of having received ----- the same he affixed his thumb-impression thereon." -----

The underlined words were erased and other substituted. There would be no occasion to erase one set of writing and write another if the words were there.

9. Of course Mr. Sachthy ingeniously suggests that this may be a case of erroneous typing necessitating the correction; but this correction comes at a significant spot after the detenu has sworn an affidavit that he was not explained the grounds of the detention in the language which he understood, and further the original document which is produced does not seem to bear authenticity because of the changes of ink. In these circumstances and regard being had to the fact that on the previous occasion in the affidavit there was no mention of having read over the grounds to him in the language he understood, we are constrained to hold that we should not go by the affidavit of the Under-Secretary, but in preference accept the affidavit of the detenu. The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right on making a representation. To hand over to him the document written in English and to obtain his thumb-impression on it in token of his having received the same does not comply

with the requirements of the law which gives a very valuable right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the detenu in his own language was not complied with.

10. Even as to the grounds, we have something to say. The grounds charge him with having conspired with some leaders of Democratic Conference and having incited landless people of R. S. Pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently any attempt to evict them. No details of the leaders of the Conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference took place, are mentioned. It would be impossible for anybody to make a representation against such grounds. These grounds, on the authorities of this Court, too numerous to be cited here, must be held to be vague. Therefore on both the twin grounds, namely, that he was deprived of his right to make a representation and also because the grounds in themselves were very vague, we must hold that there was no compliance with the law as laid down in the Jammu and Kashmir Preventive Detention Act. The result, therefore, is that the detention must be declared to be unlawful and Chaju must be declared to be entitled to his liberty. He is ordered to be released. The detenu was questioned by us and he expressed a desire that he may not be released in Delhi, because he has no means of going back. He asked to be released in Jammu. We direct therefore that he shall be taken back to the place where he was in detention in Jammu and released within the shortest possible time.

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