

Neel Alias Niranjan Majumdar

Vs

The State of West Bengal

Writ Petition No. 77 of 1972

(J. M. Shelat, H. R. Khanna JJ)

23.05.1972

JUDGMENT

SHELAT, J. –

1. The District Magistrate, Howrah passed on June 12, 1971, the impugned order of detention under sub-section (1) read with sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970, directing the petitioner's detention thereunder. The order stated that the District Magistrate was satisfied that it was necessary to do so in order to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order. On June 13, 1971, the petitioner was accordingly arrested and detained in Dum Dum Central Jail.

2. The grounds of detention served on the petitioner at the time of his arrest read as follows :

(1) On August 17, 1970 at about 02.00 hours you and your associates Bhaja alias Tarapada Ghosh, Bablu, Kartic and others attacked the members of R. G. Party who were on duty nearer Jatadhari Park by hurling bombs towards them. When chased by them, you and your associates again hurled bombs towards them and managed to escape and thereby disturbed public order.

(2) On April 10, 1971 at about 16.00 hours, you and your associates being armed with sword assaulted one Basudeb Laha of 56/18, Banarjee Bagan Lane at Sambhu Haldar Lane near Jatadhari Park causing injuries on his person. When objected by the members of the public, you also terrorised them by brandishing the sword.

(3) On May 1, 1971 at 15.00 hours, you and your associates Tapan Kartic and others being armed with bombs and other deadly weapons demanded money from one Banshi Show of 28, Haraganj Road, P. S. Malipanchgor. When refused, you and your associates assaulted him. The local people and the neighbouring shop-keepers objected. At this you and your associates became more violent and terrorised them by throwing bombs towards them. Consequently they became panicky and fled away.

3. Sub-section (1) read with sub-section (3) of Section 3 of the Act authorises inter alia a District Magistrate to direct detention of any person in respect of whom he is satisfied that such detention should be ordered with a view to prevent him from acting prejudicially to the security of the State of West Bengal, or the maintenance of public order. Sub-section (2) of Section 3 contains a special definition of the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" to mean the acts enumerated in clauses (a) to (e) thereof. Clause (d),

which is the only relevant clause for purposes of this petition provides as follows :

"(d) Committing, or instigation any person to commit, any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959, or the Explosive Substances Act, 1908, where the commission of such offence disturbs, or is likely to disturb, public order."

4. It is not disputed that the petitioner's alleged activities set out in grounds (1) and (3) of the said grounds of detention fell under clause (d) being offences under the Explosive Substances Act, 1908, and also being such that they did or were likely to disturb public order. The only contention raised for our determination was that activities set out in ground No. (2), namely, causing injuries with a sword, would constitute an offence under Section 324 of the Penal Code, and offence neither punishable with death nor life imprisonment, not imprisonment for a term of sovereign years. Therefore, ground No. (2) would be, it was urged, a ground which would not fall under the said definition, and would, therefore, be an extraneous ground rendering the impugned order invalid.

5. The contention in our view has no substance as the offence alleged in ground No. (2) would fall under clause (d) of Section 3(2) of the Act inasmuch as it will be one punishable under the Arms Act LIV of 1959.

6. Under Section 2(1)(c) of the Arms Act, the word 'arms' inter alia means articles of any description designed or adapted as weapons for offence of defence, and includes firearms, sharpedged and other deadly weapons. A sword is thus arms within the meaning of this definition. Section 3 of the Act then prohibits, among other things, possession of firearms or ammunition except under a licence issued under the Act or the rules made thereunder. So far as arms, other than firearms, are concerned, Section 4 empowers the Central Government, if it is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest, that acquisition, possession or carrying of arms, other than firearms, should also be regulated, it may by notification direct that this section shall apply to the area specified in such notification, and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification, except under a licence issued under the provisions of the Act or the rules made thereunder. Once, therefore, such a notification is issued under the Act or the rules made thereunder, and that notification specifies any arms, e.g., a sword, possession of or carrying such a sword without licence in the specified area would be an offence under the Arms Act. Section 25(1)(b) provides that whoever acquires, has in his possession or carries in any place specified by notification under Section 4 any arms of such class or description as have been specified in that notification in contravention of that section shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

7. It, however, appears that no such notification as contemplate by Section 4 of the 1959 Act has been issued. But in 1923 such a notification bearing reference number Political (Police) Department Notification No. 787 PL, dated March 9, 1923 was issued under Section 15 of the earlier Indian Arms Act, XI of 1878, which was in terms similar to Section 4 of the present Act. The question is, whether Act XI of 1878 having been repealed, the said notification under Section 15 thereof can still be said to be operative ? Section 46(1) of the Arms Act, 1959 repealed the preceding Act of 1878. Its sub-section (2) provides that notwithstanding such repeal and without prejudice to Sections 6 and 24 of the General Clauses Act X of 1897 a licence granted under the repealed Act and in force immediately before the commencement of the new Act shall continue, unless sooner revoked, for

the unexpired period for which it had been granted or renewed. Section 46(2) thus saves only licences issued under the Arms Act.

8. Section 6(b) of General Clauses Act, however, provides that where any Central Act or regulation made after the commencement of the Act repeals any earlier enactment, then, unless a different intention appears, such repeal shall not "affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder". Section 24 next provides that where any Central Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any notification issued under such repealed Act shall, so far as it is inconstant with the provisions re-enacted, continue in force and be deemed to have been made under provisions so re-enacted unless it is superseded by any notification or order issued under the provisions so re-enacted. The new Act nowhere contains an intention to the contrary signifying that the operation of the repealed Act or of a notification issued thereunder was not to continue. Further, the new Act re-enacts the provisions of the earlier Act, and Section 4 in particular, as already stated, has provisions practically identical to those of Section 15 of the earlier Act. The combined effect of Sections 6 and 24 of the General Clauses Act is that the said notification of 1923 issued under Section 15 of the Act of 1878 not only continued to operate but has to be deemed to have been enacted under the new Act.

9. Possession of arms, such as a sword, without a licence or contrary to the terms and conditions of such a licence would thus be an offence punishable with imprisonment under the Arms Act, 1959. Though the possession and carrying a sword were alleged to have been committed in 1970, that is, after the repeal of the Arms Act, 1878, the said notification of 1923 issued under the repealed Act would, despite its repeal, continue to be in force and its provisions would be deemed to have been enacted under the new Act by virtue of Section 24 of the General Clauses Act.

10. This was the construction placed upon these two sections by this Court in the Chief Inspector of Mines v. Lala Karam Chand Thapar ((1962) 1 SCR 9 : AIR 1961 SC 838 : (1961) 2 Cri LJ 1.), where the question as to the meaning of Section 23 of the General Clauses Act arose. In that case, the directors of a colliery company and its managing agents were prosecuted under the Mines Act, 1952 for violation of Coal Mines Regulations of 1926 made under Mines Act, 1923, which was repealed by 1952 Act. Repealing the contention that the prosecution in respect for the violation of those regulations made under the repealed Act was unauthorised and invalid, the Court construed Section 24 of the General Clauses Act to mean that when an earlier Act is repealed by a later Act, which re-enacted the provisions of the earlier Act, Regulations framed under the repealed Act continue in force and are deemed to have been made under the provisions so re-enacted, and must be so construed as to have continuity of force, and are to be regarded as laws in force at the date of the offence within the meaning of Article 20(3) of the Constitution. In that case, the breach of those Regulations took place before the commencement of the new Act. Even then the prosecution under the new Act was held to be valid on the ground that the Regulations were deemed to have been made under the new Act. In the present case, the offence of being in possession of an carrying a sword without licence took place after the commencement of the new Act of 1959. The said notification, by virtue of Section 24 of the General Clauses Act having to be deemed to have been made under Section 4 of the Arms Act, 1959, the notification was in force on the date of the alleged offence.

11. The offence thus fell under the Arms Act, 1959, and that being so, acts set out in ground No. (2) were covered by clause (d) of Section 3(2) of the Act. Consequently, that ground cannot be said to be extraneous to the Act.

12. This being the only contention arising for our consideration and it having failed, the petition fails and is dismissed.

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