

Kuso Sah

Vs

The State of Bihar and Others

Writ Petition No. 1607 of 1973

(Y. V. Chandrachud, P. K. Goswami, S. N. Dwivedi JJ)

08.11.1973

JUDGMENT

CHANDRACHUD, J. –

1. By this petition for the writ of habeas corpus, the petitioner challenges an order of detention dated April 2, 1973 passed by the District Magistrate, Monghyr with a view to preventing the petitioner from "acting in any manner prejudicial to the maintenance of public order and the maintenance of supplies and services essential to the community".

2. The grounds of detention served on the petitioner on April 6, 1973 are divided into two parts, the first part referring to acts prejudicial to the maintenance of public order and the second to those prejudicial to the maintenance of supplies and services essential to the community.

3. Two out of the three grounds mentioned in the first part read thus :

" (b) On 20.1.1.71 at about 2 a.m. he and his brother, Garib Sao were leading two trucks with stolen Railway property in a car bearing No. WBJ 6949. On the railway crossing near Jamui Railway Station other standing trucks on the road caused a bottleneck in his hurried journey. This led to a clash and his men assaulted the truck drivers and threatened them with the help of the public while he managed to escape along with his brother in the car bearing No. WBI 6948. This car is registered in the name of his brother Rabig Sao. A case was registered in this connection vide Lakshmipur P.S. Case No. 9 (1) 71.

(c) He assaulted Shri Ram Singhasan Rai, Astd. Supdt. Commercial Taxes. Intelligence Branch, Bhagalpur who had gone to his factory in course of his duties and discharge of his legal obligations as Asst. Supdt. Commercial Taxes Intelligence Branch and in connection therewith he has been arrested in Jamalpur P.S. Case No. 21 dated 29-8-72 under sections 148, 333, 307, 325 etc. I.P.C."

4. These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. As observed in Pushkar Mukherjee and Others v. The State of West Bengal a line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public

interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. In *Dr. Ram Manohar Lohia v. State of Bihar and others*, Hidayatullah, J., has expressed this concept picturesquely by saying that one has to imagine three concentric circles : law and order represents the largest circle within three concentric circles : law and order represents the largest circle within which is the next circle representing public order and the smallest circle of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State".

5. The facts set out in ground (b) of the first part refer to no more than a stray and simple fracas arising out of a traffic bottleneck on a public street. Those set out in ground (c) refer to an assault on a public servant, undoubtedly reprehensible if true, but not of the kind that would reasonably affect public order.

6. Thus, two of the grounds on which the order of detention rests bear no rational connection with "public order", in the interests of which the petitioner was ordered to be detained. This Court in *Pushkar Mukherjee's case* (supra) observed : "that it is well established that the constitutional requirement that the grounds must not be vague must be satisfied with regard to each of the grounds and therefore even if one ground is vague and the other grounds are not vague the detention is not in accordance with procedure established by law and is therefore illegal. " The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. In *Motilal Jain v. State of Bihar and Others* this Court observed : "the subjective satisfaction of the detaining authority must be properly based on all the reasons on which it purports to be based. If some out of those reasons are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the authority would have been on the exclusion of those reasons. To uphold the order on the remaining reasons would be to substitute the objective standards of the Court for the subjective satisfaction of the authority."

7. The order of detention expressly states that it was passed with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of public order and the maintenance of supplies and services essential to the community. The statement of grounds contains at the end the assertion that the District Magistrate was satisfied that if the petitioner was allowed to remain at large he will indulge in activities prejudicial to the maintenance of public order and supplies and services essential to the community. The two reasons, maintenance of public order and maintenance of supplies and service essential to the community, cannot therefore be bifurcated and considered in separate compartments. The subjective satisfaction of the detaining authority embraces both the reasons and since two out of the three grounds mentioned in the first part are irrelevant, the entire order is illegal.

8. For these reasons we set aside the order of detention. We had earlier directed on the conclusion of the arguments that the petitioner be set at liberty forthwith.

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