

Israil Sk.

Vs

The District Magistrate of West Dinajpur and Others

Writ Petition No. 332 of 1974

(P. N. Bhagwati, N. L. UntwaliaJJ)

26.11.1974

JUDGMENT

UNTWALIA, J. -

1. The sole petitioner in this petition under Article 32 of the Constitution of India was ordered to be detained by the District Magistrate of West Dinajpur, West Bengal, in exercise of his powers under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971. The District Magistrate felt satisfied that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The petitioner has filed this petition from jail for releasing him from jail custody by grant of a writ of habeas corpus. The order of detention was made against the petitioner on June 20, 1972 in pursuance of which he was arrested and put in prison on June 22, 1972. The grounds of detention were also served upon the detenu on June 22, 1972 and they read as follows :

You are being detained in pursuance of a detention order made in exercise of the power conferred by sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) on the ground that you have been acting in a manner prejudicial to the maintenance of supplies and services essential to the community, as evidenced by the particulars given below :

1. That on May 13, 1972 at about 12-15 hours you along with your associates were found carrying 11 bundles - weighing 300 kgs. of telegraph copper P.S. area near Farm Colony, P.S. Islampur through the open field. Being challenged by the public, you and your associates stated that you were carrying an ailing Muslim lady inside the cart but the public being suspicious searched the cart and found 11 bundles of copper wire inside the cart. The public seized the article, arrested you with your associates and produced at Islampur P.S. on May 13, 1992.

From the above, it is clear that you are acting in a manner prejudicial to the maintenance of supplies and services essential to the community causing serious disruption to the communication system affecting operation of communication facilities to the public.

2. Learned Counsel who assisted the Court a amicus curiae on behalf of the petitioner made the following submissions :

(1) That a single act of carrying telegraph copper wire in a bullock cart could not reasonably, justifiably and legally lead to the conclusion that the petitioner was acting or likely to act in

a manner prejudicial to the maintenance of supplies and services essential to the community.

(2) That the reasoning given for discharge of the petitioner in the criminal case that witnesses were not coming forth to support the prosecution was false and contrary to the statement made in the grounds.

(3) That the petitioner was illiterate and the grounds were not explained to him in his mother tongue.

3. There is absolutely no substance in the last two points urged on behalf of the petitioner. They may be shortly disposed of thus. At the time the petitioner was intercepted with his associates while carrying the telegraph copper wires, members of the public were not under any fear or terror but subsequently it is not unreasonable to think that because of terrorizing by the petitioner or his associates they were not prepared to give evidence in court. It is a matter of common knowledge that witnesses are terribly afraid of deposing against hardened criminals. It is well settled that the mere fact that the detenu was discharged in a criminal case does not mean that a valid order of detention could not be passed against him in connection with those very incidents vide *Sri Ramayan Harija v. State of W. B.* (1973) 2 SCC 315 : 1973 SCC (Cri) 264). Counsel on behalf of the State showed us from the original file that the person who served the grounds on the detenu had explained the grounds in Bangla to the petitioner, which was his mother tongue. The serving officer had made an endorsement to this effect in the Service Report and as a matter of fact the petitioner had filed his representation in the same language.

4. Learned Counsel for the petitioner placed reliance upon the decision of the Division Bench of this Court to which one of us was a party in case of *Debu Mahto v. State of W. B.* ((1974) 4 SCC 135 : 1974 SCC (Cri) 274) to substantiate his first point. In that case on the facts and in view of the nature of the act alleged, it was said :

We fail to see how one solitary isolated act of wagon breaking committed by the petitioner could possibly persuade any reasonable person to reach the satisfaction that unless the petitioner was detained he would in all probability indulge in further acts of wagon breaking. No criminal propensities for wagon breaking could reasonably be inferred from a single solitary act of wagon breaking committed by the petitioner in the circumstances of the present case.

The Court, however, immediately hastened to add :

We must of course make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances.

In the case of *Anil Dey v. State of W. B.* ((1974) 1 SCC 514 : 1974 SCC (Cri) 550) the past act alleged was only one to justify the order of detention against the detenu. He with his associates was said to have committed theft in respect of signal materials. The Court rejected the argument that the detention order based on a single instance was too flimsy, too alien or too remote to bear a

reasonable nexus with the two-fold requirements of subjective satisfaction and activity prejudicial to the maintenance of supplies and services essential to the community in these terms : "It is self-evident that sophisticated signal equipment cannot be removed by a layman or a tyro. Indeed, it requires a certain measure of technical skill and electrical expertise." In the same volume namely (1974) 4 SCC is the report of a decision of this Court at page 548 in the case of Madhab Roy alias Madha Roy v. State of W. B. (1974) SCC (Cri) 584) One of us speaking for the Divisional Court was concerned with the justifiability of the detention order on a single solitary act of the detenu. The same reasoning was adopted in these terms :

Now, cutting and removal of copper return feeder wire of railway traction is a sophisticated and complex operation which requires technical skill and expertise and is not the work of a layman or a novice. It postulates experience acquired as a result of a course of such or similar activities and also suggests that it is a part of an organised activity of "a complex of agencies collaborating to remove, secret and sell" such stolen goods. This activity has very serious and disturbing consequences and it can well be part of a plan of sabotage which brings to a grinding halt the movement of trains.

5. In the instant case it is said that the petitioner with his associates was found carrying 11 bundles of telegraph copper wires weighing 3 quintals in a bullock cart from Bihar side to Islampur. Carriage of such a huge quantity of copper wires could not be an isolated act unconnected with the design of theft of telegraph copper wires and their disposal. It must have been as a result of a criminal design and conspiracy hatched up by the petitioner and his associates to indulge in the nefarious act of removal and disposal of telegraph copper wires. Such acts were likely to cause serious disruption to the communication system affecting operation of communication facilities to the public. The past act, undoubtedly, if true, showed that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community. If not detained, he was likely to indulge in such activities in pursuance of his design and conspiracy. It is not an ordinary case of finding a person once in possession of stolen goods of ordinary type. To find a man carrying such huge quantity of telegraph copper wires could reasonably satisfy the detaining authority that he was acting and was likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community. The petitioner and his associates acted like seasoned criminals when on being challenged by the public, they said that they were carrying an ailing Muslim lady inside the cart which on search was found to be a "lady" of 11 bundles of copper wire.

6. No other infirmity in the detention of the petitioner could be pointed out or found. The petition therefore is dismissed and the rule is discharged.

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