Lal Kamal Das

Vs

The State of West Bengal

Writ Petition No. 507 of 1974

(V. R. Krishna Iyer, R. S. Sarkaria JJ )

16.01.1975

JUDGMENT

SARKARIA, J. -

1. The petitioner challenges the order of his detention made under the Maintenance of Internal Security Act, 1971 by the District Magistrate, 24-Parganas on the ground that it was necessary to prevent him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community.

2. The impugned order was made on March 4, 1947. It was founded on a simple, solitary incident of theft of anticreep wire from the railway installations between Gobardanga and Machhalandapur in Bongaon section of Eastern Railway. The report to the State Government under Section 3(3) of the Act was made by the District Magistrate on March 5, 1947. The order of detention was approved by the State Government on March 11, 1974, and on the same day, the fact was reported by it to the Central Government. Pursuant to the order of detention, the petitioner was detained on March 13, 1974 and the grounds of detention were served on him the same day.

3. The contention of Mr. P. S. Khare, appearing as amicus curiae for the petitioner, is that this was a case of theft simpliciter for which he could easily be prosecuted under the ordinary penal law and that the averment in the counter-affidavit to the effect that the prosecution witnesses, out of fear, were not coming forth to give evident is something which no reasonable man can believe. This is a case in which the power of preventive detention, according to the Counsel, has been exercised in a colourable manner to subvert the process of a criminal trial. Reliance has been placed on the decision of this Court in Sri Lal Shaw v. State of W. B. ((1975) 1 SCC 336 : 1975 SCC (Cri) 172.); and Noor Chand Sheikh v. State of W. B. ((1975) 3 SCC 306 : 1974 SCC (Cri) 914.).

4. As against this, Mr. Chatterjee, learned Counsel appearing for the State contends that the averments in the counter-affidavit show with sufficient clarity that the detention order was passed because the prosecution against the petitioner was foredoomed to failure by reason of the witnesses not coming forward to depose against him. It is maintained that there is nothing in the Act which precludes the detaining authority from basing the order on such an instance of prejudicial activity. Counsel has cited Kartic Chandra Guha v. State of W. B. (AIR 1974 SC 2149 : (1975) 3 SCC 490 : 1975 SCC (Cri) 82.) in support of his contentions.

5. The striking feature of this case is that the petitioner has been preventively detained for committing an offence of simple theft for which he could be dealt with under the ordinary penal law. He was arrested by the police in connection with that theft and forwarded to a Judicial

Magistrate. The impugned order was passed when the petitioner was in jail custody. While it is true that in theory, an order of preventive detention can be validly passed against a person in jail custody on the same facts on which he is being prosecuted, such an order is often vulnerable to the charge that it has been passed as a colourable exercise of jurisdiction. The reason is that the scheme of Section 3 of the Act postulates that the person against whom the detention order is made has freedom to act in a prejudicial manner. In such cases, therefore, in response to rule nisi the respondent State must disclose full facts showing how in spite of the detenu being in jail, it was reasonably possible to apprehend that he was likely to act in the same prejudicial manner in future. All the circumstances showing inter alia that the jail custody of the detenu was not going to be long and why he was or was about to be discharged by the court must be set out.

6. In the instant case in the counter it is said that the prosecution of the petitioner could not be pursued because the witnesses being afraid were not willing to give evidence in court against him. This explanation is so repugnant to reason and reality that it cannot be swallowed even by an ultra-credulous man without straining his credulity to the utmost.

7. It may be remembered that the power under Section 3 of the Act can be exercised only if the detaining authority, on the basis of the past prejudicial conduct of the detenu is satisfied about the probability of the latter acting similarly in future. This means the past activity of the detenu on the basis of which such a prognosis is made, must be reasonably suggestive of a repetitive tendency or inclination on the part of the detenu to act likewise in future. A simple, solitary incident of theft, such is the one in the present case, without anything more, is hardly suggestive of such a tendency. Here, it is not alleged that the commissioner of theft was accompanied by violence or show of force. Nor is it alleged that it was committed openly or in a daring fashion by overawing or overcoming resistance from any quarter, whatever. The theft was committed stealthily before 6 a.m. presumably under cover of night. Nor is it clear from the grounds that a large number of persons were concerned in this theft. All that is alleged is that the petitioner and his associates committed this theft. The number of the "associates" has not been indicated. Since the petitioner or any of his 'associates' was not arrested on the scene of occurrence, the chief witness against him would be only the police officer who arrested him and recovered the stolen property, if any, from him. We therefore, find it impossible to accept the fanciful plea set up in the counter for not following up the prosecution of the petitioner in court.

8. In Sri Lal Shaw's case (supra), this Court had to deal with somewhat similar situation and situation and Chandrachud, J. speaking for the Court, made the following observations which are fully applicable to the case in hand : [SCC pp. 338-339 : SCC (CRI) pp. 174-175, Para 5]

This strikes us as a typical case in which for no apparent reason a person who could easily be prosecuted under the punitive laws is being preventively detained. The Railway Property (Unlawful Profession) Act, 29 of 1966, confers extensive powers to bring to book persons who are found in unlawful possession of railway property. The first offence is punishable with a sentence of five years and in the absence of special and adequate reasons to be mentioned in the judgment the imprisonment shall not be less than one year. When a person is arrested for an offence punishable under that Act, officers of the Railway Protection Force have the power to investigate into the alleged offence and the statement recorded by them during the course of investigation do not attract the provisions of Section 162, Criminal Procedure Code (see Criminal Appeal No. 156 of 1972 decided on 23.8.74 (State of U. P. v. Durga Prasad, (1975) 3 SCC 210 : 1974 SCC (Cri) 828.)). If the facts stated in the ground are true, this was an easy case to take to a successful termination. We find it impossible to accept that the prosecution could not be proceeded with as the witnesses were

afraid to depose in the public against the petitioner. The Sub-Inspector of Police who made the Panchnama, we hope, could certainly not be afraid of giving evidence against the petitioner. He had made the Panchnama of seizure openly and to the knowledge of the petitioner. Besides, if the petitioner's statement was recorded during the course of investigation under the Act of 1966, that itself could be relied upon by the prosecution in order to establish the charge that the petitioner was in unlawful possession of railway property.

9. Kartic Chandra's case (supra) cited by Mr. Chatterjee is of no assistance to him. That was not a case where the detention order was based on a single isolated theft. The criminal acts which were the foundation of the detention order in that case were accompanied by violence. Moreover the circumstances in which the petitioner therein, was discharged by the Court, were fully disclosed and satisfactorily explained in the counter.

10. In the light of the above discussion, we have no hesitation in holding that in this case, the power under the Act has been exercised in a casual, "care-fee" and colourable manner.

11. We, therefore, allow the writ petition, quash the impugned order, make the rule absolute and direct that the petitioner be released forthwith.

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