

Gopal Bar

Vs

State of West Bengal

Writ Petition No. 508 of 1974

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

20.01.1975

JUDGMENT

SARKARIA, J. -

1. The petitioner challenges the validity of the order of his detention made under Section 3 of the Maintenance of Internal Security Act, 1971, by the District Magistrate, Howrah. The order states that the detention has been made with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the life of the community. The order is founded on two incidents, the facts of which were incorporated in the grounds of detention and read as under :

1. On February 19, 1973 at 20.07 hrs. at Belanagar railway station you along with your associates being armed with deadly weapons like bombs, daggers etc. stopped train No. 72 Dn. in between Km post No. 10/20 to 10/31 and committed theft in respect of 13 pkgs. by breaking open the wagons. On being challenged by the R.P.F. party you and your associates attacked them by pelting stones and hurling bombs in order to take away the stolen properties by scaring them away. The R.P.F. party warned against the firing when you and your associates could make good escape with 3 pkgs. leaving behind 10 nos. pkgs. which were recovered by them. As a result of this incident train services in Howrah Burdwan chord line was seriously disrupted.

2. On March 1, 1973 at 08.30 hrs. at Howrah goods yard you along with your associates being armed with deadly weapons like bombs, daggers etc. committed theft of batteries from an empty rake which was stabled near location box No. 34 in between Chandmari Bridge and Flyover Bridge. The R.P.F. party tried to resist when you and your associates attacked them by pelting stones and hurling bombs in order to take away the stolen batteries by scaring them away. When the R.P.F. party warned against firing you and your associates fled away with the stolen batteries leaving behind two batteries which were recovered by the R.P.R. men. As a result of this train services in Howrah Burdwan main and chord lines were seriously disrupted.

2. In respect of the incident of February 19, 1973, G.R.P.S. Case No. 63 under Section 147/336/307/461/379, Penal Code and Sections 3 and 5 of the Explosive Substances Act was registered with the police on February 21, 1973. Another case was registered with the police under the aforesaid sections of Penal Code and of the Explosive Substances Act in respect of the second incident, dated March 1, 1973. The petitioner was not named in the F.I. Rs. His complicity was revealed during investigation of the above cases. He was arrested by the police on March 22, 1973 in connection with those cases. He was forwarded to a Judicial Magistrate, who however 'freed' him from custody on June 16, 1973. Pursuant to the order of detention, he was taken into custody soon

after his release. The final report by the police to the Judicial Magistrate in those cases was made on August 18, 1973 with a prayer that the detinue be discharged from the said cases as the witnesses, being afraid of the detinue, who was a dangerous character, were not willing to depose against him in court. In consequence, the Magistrate discharged the petitioner in those cases on August 18, 1973.

3. The first contention of Mr. Aneja, learned Counsel appearing as amicus curiae for the petitioner is that the second ground of detention was not germane to the object of supplies and services essential to the community. The contention must be repelled. The second ground speaks of theft of batteries from an empty rake which was stabled between Chandmari Bridge and Flyover Bridge at Howrah goods railway yard. When the R.P.F. party intervened, the miscreants attacked them by hurling bombs and succeeded in removing forcibly the stolen property to some distance. According to the counter this had resulted in disruption of the train services. Batteries are essential equipment. The mere fact that at the time of theft the rake lay stabled, and was not in motion, does not mean that the theft of this essential equipment would not prejudicially affect the smooth and systematic running of the trains.

4. Next it is contended by Mr. Aneja that these were simple cases of theft and that the explanation given in the counter-affidavit for not proceeding with the prosecution of the petitioner for substantive offences, is too unreasonable to be believed by any reasonable man. Stress has been laid on the fact that the only material witnesses in these cases would be the members of the Railway Protection Force who could not be expected to be afraid of the petitioner or his associates. In support of this contention reliance has been placed on the decision of this Court in *Srilal Shaw v. State of W. B.* ((1975) 1 SCC 336).

5. It appears to us that the ratio of Sri Lal Shaw's case (supra) is not applicable to the facts of the present case. Here, the detention order was founded on two incidents relating to the commission of theft of railway equipment. The miscreants were armed with deadly weapons including bombs which they actually hurled at the Railway Protection Force. On the second occasion on March 1, 1973, they had actually succeeded in cowing down the Railway Protection Force. Further point to be noted is that the petitioner was not named in the F.I.Rs. nor was he identified at the time of these incidents by the Railway Protection Force. Consequently, in order to bring home those offences, prosecution had to examine some private persons to connect the petitioner with the commission of these offences. In the circumstances of the case, therefore, it would not be extravagant or frivolous to say that the prosecution witnesses, particularly those who were not members of the R.P.F., being afraid were not willing to depose against the petitioner in open court. In the counter, the District Magistrate who had passed the impugned order of detention, has categorically averred :

Both the acts stated in the grounds of detention were committed by the detinue along with his associates in quick succession and in course of about 10 days. The nature of acts, the manner in which the same were committed, the effect and result of said activities upon the community and the disruption in smooth running of train services between Howrah-Burdwan main and chord line were taken by me into consideration before making the order of detention. I carefully scrutinised the materials on record in support of the grounds of detention collected by officers experienced in investigating cases of the kind stated in the grounds of detention and was satisfied about the authenticity of the same. The daring acts committed by the detinue showed a course of conduct and tendency which satisfied me that it was necessary to make the order of detention of the said detinue-petitioner.

6. There is no good ground to reject these averments. We therefore negative the second contention,

also. The petition fails and is dismissed. Rule discharged.

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