Mohd. Dhana Ali Khan

Vs

State of West Bengal

Writ Petition No. 17 of 1975

(N. L. Untawalia, Syed Fazal Ali JJ)

11.04.1975

JUDGMENT

FAZAL ALI, J. –

1. The petitioner assails the order of detention passed against him on August 23, 1973 by the District Magistrate, 24 Parganas. A report was sent by the District Magistrate to the Government on August 27, 1973 and the detention was approved by the Government on August 30, 1973. On September 10, 1973, the detenu made a representation to the Government which was rejected on September 12, 1973. Thereafter the matter was referred to the Advisory Board and after obtaining its opinion the order of detention was confirmed by the Government on November 14, 1973. We might also state that a report to the Central Government was also made immediately after the order of detention was passed.

2. Mr. R. K. Jain appearing for the petitioner as amicus curiae has been of much assistance to us and has advanced five contentions before us. In the first place he submitted that there was sufficient delay on the part of the District Magistrate in submitting his report to the Government and the explanation given by him is not convincing. In the counter affidavit, however, the District Magistrate has explained that he had to pass almost eight order of detention on August 23 and all of them had to be typed out and as August 26, which was a Sunday had intervened, it was not possible for him to send the report to the Government earlier. In the circumstances, we are satisfied that the explanation given by the District Magistrate in his affidavit is convincing and satisfactory. In Writ Petition No. 23 of 1975 (Gopal Mandal v. State of W. B. decided on April 9, 1975) an identical explanation was given by the District Magistrate which was unheld by this Court. For this reason, the first contention raised by learned Counsel is overruled.

3. It was next argued that the order of the Government rejecting the representation of the petitioner is not a speaking order and therefore the detention is illegal. This matter appears to be concluded by a decision of this Court in John Martin v. W. B. ((1975) 3 SCC 835 : 1975 SCC (Cri) 255) following Haradhan Saha's case (Haradhan Saha v. State of W. B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816) where a similar argument put forward by this Court was rejected outright. This contention of the learned Counsel does not therefore survive.

4. It was next contended that the ground of detention served on him amounted to a single incident and had no causal connection with the disturbance of the public order. The ground served on the petition was as follow :

> That on August 3, 1973 between 2110 and 2120 hrs. you and your associates being

> armed with daggers, boarded a 3rd class compartment of SL 257 Up train of E. Rly., Sealdah Division at Gocharan R. S. and putting the passengers of the compartment to fear of death snatched away, a wristwatch and a gold necklace from one Nirmal Chatterjee and his wife in between Gocharan and Suryapur R. Ss. You then decamped with booty from the running train at Suryapur R. S.
>
> Your action caused confusion, panic and distrurbed public order there then.
>
> You have thus acted in a manner prejudicial to the maintenance of public order.
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> From a perusal of this we are unable to accept the contention of the petitioner that this ground has no nexus with the disturbance of public order. It is true that the ground contains a single incident of theft of valuable property from some passengers travelling in a running train and may amount to robbery. But that does not by itself take the case out of the purview of the provisions of the Maintenance of Internal Security Act. There are two pertinent facts which emerge from the grounds which must be noted. In the first place the allegation is that the petitioner had snatched away a wristwatch and a gold chain after putting the passengers of the compartment to fear of death. Secondly, the theft had taken place at night in a running train in a third class compartment and the effect of it would be to deter peaceful citizens from travelling in trains at night and this would undoubtedly disturb the even tempo of the life of the community. For these reasons we are satisfied that the ground mentioned in the order did have a nexus with the disturbance of public order.

5. The fourth contention put forward was that under Section 14 of the Maintenance of Internal Security Act it was open to the Central Government to revoke or modify the order of detention after must be some material to show that the Government of India applied its mind under Section 14. In the first place Section 14 merely confers a discretion on the Central Government to revoke or modify an order of detention made by the State Government. It does not confer any right or privilege on the detenu. It is for the Central Government to revoke or modify after the report is submitted to it. The mere fact that the Central Government does not choose to revoke or modify the order of detention without anything more cannot necessary lead to the irresistible inference that the Central Government failed to apply its mind. So far as the State Government is concerned, its duty comes to an end after it has sent a report regarding the detention order to the Central Government. In these circumstances, it cannot be said by any stretch of imagination that as Central Government did not apply its mind under Section 14 of the Act, this would invalidate the order of detention. There is no material before up to show that the Central Government did not apply its mind at all under Section 14 of the Act. The argument on this score is, therefore, rejected.

6. Lastly, it was contended that it would appear from the affidavit field by the District Magistrate that while detaining the petitioner the District Magistrate was not only influenced by the grounds served on the petitioner but also by other materials on the record. In paragraph 5 of the counter-affidavit the District Magistrate stated as follows :

> I say that I made the detention order after being bona fide satisfied from the materials on record (relating to the detention of the detenu) that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it is necessary to detain him under the provisions of the Maintenance of Internal Security Act, 1971. I further say that the ground furnished to the detenu is the only ground on

which I based my satisfaction for making the detention order.

It would thus appear that the District Magistrate has taken a contradictory stand. A close perusal of his counter affidavit would disclose that he was influenced not only by the ground which was served on the petitioner but also by other materials on the record. The history sheet of the detenu which was placed before the District Magistrate has been produced before us and we find that there were as many as four incidents many of which relate to thefts in running trains. It is true that in another place in his affidavit, the District Magistrate has stated that he was satisfied only on the basis of the incident mentioned in the ground served on the petitioner. But this is contradictory to what he has stated in the opening paragraph 5 of the counter affidavit. In these circumstances, therefore, we are satisfied that the District Magistrate before passing the order of detention had other material also before him. It cannot be said to what extent the District Magistrate was influenced by the order materials and not by the material which is mentioned in the ground of detention. Thus the order of detention suffers from a very serious infirmity which goes to the root of the matter. The liberty of the subject being an extremely precious right, where any infraction of such a right is involved the Court must act as a watchdog and a sentinel on the qui vive to see that every benefit of the lacuna goes to the detenu. We are fortified in our view by reason of the decision of this Court in Khudiram Das v. State of W. B. ((1975) 2 SCC 81 : 1975 SCC (Cri) 435) where their Lordships observed as follows : [SCC p. 96 : SCC (CRI) p. 450, para 13]

It is, therefore, not only the right of the court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other baisc facts or materials apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority.

Learned Counsel appearing for the State justified the order of detention on the ground that there is an express statement made by the District Magistrate that he was satisfied only on the incident mentioned in the ground of detention. This argument however is not tenable because it is not supported by a perusal of the affidavit field by the District Magistrate as a whole. We are therefore of the opinion that the order of detention must be set aside and the petitioner be set at liberty forthwith. The application is accordingly allowed and the rule is made absolute.

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