

State of U. P.

Vs

Hari Shankar Tewari

Criminal Appeal No. 106 of 1987

(Ranganath Misra, J.)

(CJI R. S. Pathak, Ranganath Misra, M. M. Dutt JJ)

25.02.1987

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave is directed against the order of the Division Bench of the Allahabad High Court by which it has quashed an order of detention of the respondent made under Section 3(2) of the National Security Act (hereinafter referred to as 'the Act'). The High Court relied upon a decision of a Full Bench of that court in *Ashok Dixit v. State* (Habeas Corpus Petition No. 11161 of 1984, dated August 1, 1985 in the Allahabad High Court (FB)) for its conclusion that the detention of the respondent was bad in law. The majority opinion of the Full Bench, as far as relevant said :

A solitary assault on one individual which may well be equated with ordinary murder can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act. It can only raise a 'law and order' problem and no more. Assaulting an individual in a bus or train on account of enmity may affect only certain individuals; but if the assault is made indiscriminately in the bus or train and passengers are harassed indiscriminately, the same would be likely to endanger public order as this kind of incident is bound to have such impact that it will disturb the even tempo of life of the community. The act of incident which may be attributed to the detenu may be reprehensible and yet if it concerns only specific individuals and it has no impact on the general members of the community and has no potentiality of disturbing the even tempo of life of the people, it cannot be held to be an activity prejudicial to public order.

2. The Full Bench in its turn referred to several decision of this Court in its attempt to bring out a distinction between the concepts of law and order and public order and one of such decisions of this Court is the case of *Pushkar Mukherjee v. State of West Bengal* ((1969) 2 SCR 635 : (1969) 1 SCC 10 : AIR 1970 SC 852 : 1970 Cri LJ 852). This Court said therein : (SCC p. 16)

The difference between the concepts of 'public order' and 'law and order' is similar to the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and Social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished 'public' and 'private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while

others directly injure the public interest and affect individuals only remotely. (See Dr. Allen's Legal Duties, p. 249.) There is a broad distinction along these lines, but differences naturally arise in the application of any such test.

3. It is claimed that these observations of this Court were taken as the guideline by the Full Bench to ascertain whether the allegations brought the case within the purview of public order. Learned counsel for the appellant has strongly canvassed that the test laid down by Dr. Allen was not applicable to judge the validity of a detention offer and the High Court has gone wrong in quashing the detention of the respondent.

4. It has not been disputed at the Bar that public order and law and order are two distinct concepts. There is abundance of authority of this court drawing the distinction between the two. In the case of Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia ((1960) 2 SCR 821 : AIR 1960 SC 633 : 1960 Cri LJ 1002), Subba Rao, J. as he then was, spoke for the court thus :

The expression "public order" has a very wide connotation. Order is the basic need in any organised society. It implies the orderly state of society or community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge Court of America "the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery" .... It (public order) ... is synonymous with public peace, safety and tranquillity.

5. In Ram Manohar Lohia v. State of Bihar ((1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608), Hidayatullah, J., as he then was, speaking for the majority view observed :

One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State

6. In In re Sushanta Goswami case ((1969) 3 SCR 138 : (1969) 1 SCC 273 : AIR 1969 SC 1004), this Court observed : (SCC p. 276, para 5)

[T]he contravention of any law always affects order but before it can be said to affect public order it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is not necessarily sufficient for action under the Act but a disturbance which will affect public order can alone justify detention under that head.

A Constitution Bench was again called upon to deal with this problem. In case of Madhu Limaye v. Ved Murti ((1971) 2 SCR 742 : (1970) 3 SCC 738), Hidayatullah, C.J., speaking for the court observed : (SCC p. 756, para 20)

In our judgment, the expression 'in the interest of public order' in the Constitution is capable of taking within itself not only those acts which disturb the security of the State or act within order publique as described but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression 'in the interest of public order' is very wide.

In *Kanu Biswas v. State of West Bengal* ((1972) 3 SCC 831 : 1973 SCC (Cri) 16) this Court stated : [SCC p. 834, SCC (Cri) p. 19, para 7]

The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, ... is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law an order or public order, as laid down in the above case (*Arun Ghosh v. State of W. B.*, (1970) 3 SCR 288 : (1970) 1 SCC 98 : 1970 SCC (Cri) 67 : 1970 Cri LJ 1136), is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of society undisturbed ?

In *Babul Mitra v. State of West Bengal* ((1973) 1 SCC 393 : 1973 SCC (Cri) 353), this Court observed : [SCC p. 396, SCC (Cri) 356, para 7]

The distinction between "law and order" "public order" has been pointed out succinctly in *Arun Ghosh v. State of West Bengal* (*Arun Ghosh v. State of W. B.*, (1970) 3 SCR 288 : (1970) 1 SCC 98 : 1970 SCC (Cri) 67 : 1970 Cri LJ 1136). According to that decision the true distinction between the areas of "law and order" and "public order" is one of "degree and extent of the reach of the act in question upon society". The court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different."

A three Judge Bench examined the same point in *Kuso Sah v. State of Bihar* ((1974) 2 SCR 195 : (1974) 1 SCC 185 : 1974 SCC (Cri) 84 : 1975 Cri LJ 543). Referring to the facts, the court observed : [SCC pp. 186-87, SCC (Cri) pp. 85-86, para 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 v. State of West Bengal* ((1969) 2 SCR 635 : (1969) 1 SCC 10 : AIR 1970 SC 852 : 1970 Cri LJ 852) a line of demarcation must be drawn between serious and aggravated form 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* ((1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608), 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 which is the next circle representing public order and the smallest circle represents the security of the State. "Law and order" comprehends disorders of less gravity than those effecting "public order", just as "public order" comprehends disorders of less gravity than those affecting the "security of State."

In *Ram Ranjan Chatterjee v. State of West Bengal* ((1975) 3 SCR 301 : (1975) 4 SCC 143 : 1975 SCC (Cri) 400 : AIR 1975 SC 609), dealing with the same question, this Court Stated : [SCC p. 146, SCC (Cri) p. 403, para 8]

It may be remembered that qualitatively, the acts which affect 'law and order' are not different from

the acts which affect 'public order'. Indeed, a state of peace or orderly tranquillity which prevails as a result of the observance or enforcement of internal laws and regulations by the government, is a feature common to the concepts of 'law and order' and 'public order'. The distinction between the areas of 'law and order' and 'public order' as pointed out by this Court in *Arun Ghosh v. State of West Bengal* (*Arun Ghosh v. State of W. B.*, (1970) 3 SCR 288 : (1970) 1 SCC 98 : 1970 SCC (Cri) 67 : 1970 Cri LJ 1136). "is one of degree and extent of the reach of the act in question on society". It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of the public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of public, it would raise a problem of law and order only. These concentric concepts of 'law and order' and 'public order' may have a common 'epicentre', but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting 'public order' from that concerning 'law and order'.

In *Ashok Kumar v. Delhi Administration* ((1982) 2 SCC 403 : 1982 SCC (Cri) 451) this Court reexamined the question and stated : [SCC pp. 409-10, SCC (Cri) p. 457, para 13]

The true distinction between the areas of 'public order' and 'law and order' lies not in the nature of quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concept of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different context and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.

7. These are sufficient to draw the conclusion that conceptually there is difference between law and order and public order but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. We may now refer to two cases of this Court for that purpose. In *Arun Ghosh case* (*Arun Ghosh v. State of W. B.*, (1970) 3 SCR 288 : (1970) 1 SCC 98 : 1970 SCC (Cri) 67 : 1970 Cri LJ 1136) Chief Justice Hidayatullah stated thus : [SCC p. 100, SCC (Cri) pp. 69-70, para 3]

Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chambermaids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies.

Equally useful would be reference to two other cases. Mathew, J. in *S. K. Kedar v. State of West Bengal* ((1972) 3 SCC 816 : 1973 SCC (Cri) 1) approved the ratio of the decision referred to above

and indicated : [SCC p. 818, SCC (Cri) p. 3, para 6]

The question whether a person has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is one of degree and the extent of the reach of the act upon the society. An act by itself is not determinative of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of the law and order.

In Nagendra Nath Mondal v. State of West Bengal ((1972) 1 SCC 498 : 1972 SCC (Cri) 227), the court observed as follows : [SCC pp. 502-03 : SCC (Cri) p. 231, para 13]

The target of arson ... was an educational institution and particularly the registers and other papers maintained by it. The object obviously was vandalism, to disrupt its working by burning its records and to create a scare so that neither the teaching staff nor the pupils would dare attend it for prosecution of studies ... The acts in question, no doubt, would be acts similar to those committed by a person who resorts to arson, but in the circumstances were acts different in potentiality, and therefore, fell within the definition of Section 3(2)(b) (amounted to affecting public order).

8. In the final analysis, therefore, one has to turn to the facts of each case to ascertain whether the matter relates to the larger circle or the smaller circle. An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquillity. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. No hard and fast rule can really be evolved to deal with problems of human society. Every possible situation cannot be brought under watertight classifications and a set of tests to deal with them cannot be laid down. As and when an order of detention is questioned, it is for the court to apply these well known tests to find out whether the impugned activities upon which the order of detention is grounded go under the classification of public order or belong to the category of law and order.

9. The criticism of learned counsel for the appellant against the ratio in Pushkar Mukherjee case ((1969) 2 SCR 635 : (1969) 1 SCC 10 : AIR 1970 SC 852 : 1970 Cri LJ 852) in perhaps not warranted. We have pointed out above that the ratio of that decision has been approved in several later cases. The reference to Dr. Allen's Classification was obviously intended to bring into bold relief the basic distinction. The guidelines indicated in that judgment in another part falls in line with the general principles adopted by this court in several authorities. We do not find that the Full Bench of the Allahabad High Court adopted any wrong basis to draw the difference between the two concepts.

10. In our opinion, it is unnecessary to examine the facts of this case to find out whether the grounds furnished in support of the order of detention related to public order or not. The respondent suffered detention for a major part of the period covered by the order and was released when the High Court quashed it. The detention being one of 1984, in normal course, would have lapsed more than eighteen months back. The appeal fails and is dismissed.

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