State of U. P.

Vs

Kamal Kishore Saini

Criminal Appeal No. 531 of 1986

(A. P. Sen, B. C. Ray JJ)

06.11.1987

JUDGMENT

B. C. RAY, J. –

1. This appeal by special leave is against the judgment and order passed by the High Court of Judicature at Allahabad in Writ Petition Nos. 6823 of 1985 and 6522 of 1985. The facts giving rise to this appeal are as follows :

2. The respondent Kamal Kishore Saini was detained under Section 3(2) of National Security Act, 1980 by an order served on him on November 28, 1985 on three grounds which are stated hereunder :

> (1) That on June 4, 1985 one Jeet Narain Awasthi, resident of Indira Nagar, Police Station Ghazipur, Lucknow lodged a first information report at Police Station Ghazipur that on the night of June 4/5, 1985 his younger brother Vishnu Narain Awasthi at about 20 hours had left to sleep in house No. 2040 of Indira Nagar, Lucknow occupied by Sri R. S. Raghuvanshi since Sri Raghuvanshi had gone out to Jaunpur, his home town and had entrusted custody of his house to the said Vishnu Narain Awasthi. At 11.00 in the night some persons informed the complainant that his brother had been shot by certain persons and when the complainant reached the spot he found Vishnu Narain Awasthi lying in a pool of blood and he had already died. It is alleged that on the basis of the FIR on June 4, 1985 Crime No. 101 of 1985 under Section 302 of the Indian Penal Code was registered at the Ghazipur Police Station against unknown accused. The names of the detenus, it is said figured during investigation and the charge-sheet has been submitted in the concerned court which is pending trial.
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> (2) That on June 13, 1985 one Baldeo Prasad Awasthi, resident of Ismailganj, Police Station Ghazipur, Lucknow lodged a first information report at Police Station Alambagh, Lucknow that his son Ram Kumar and his son-in-law, Nand Kishore had gone to meet an accused in the District Jail where the complainant also reached at about 1.30 p.m. but they could not meet the accused. Ram Kumar and Nand Kishore proceeded towards home on one rickshaw while the other rickshaw was being occupied by the complainant. When they reached a little distance from the jail, near the residence of the Jail Superintendent, at about 1.45 p.m. Rajiv Hazra and Kamal Kishore Saini, the two detenus and one Anandi Shukla, said to be an accomplice of one Ram Gopal, came Kishore and the complainant and fired at them. The

complainant as also Ram Kumar and Nand Kishore ran helter-skelter when the accused are said to have chased Ram Kumar for about 200 steps and fired twice or thrice as a consequence of which Ram Kumar fell dead on the spot and Nand Kishore as also the rickshaw-puller and the complainant sustained injuries. On this basis Crime No. 222 of 1985 under Section 302/307 of the Indian Penal Code was registered on June 13, 1985 at about 14.30 hours at Police Station Lucknow in which both the petitioners and Anandi Shukla were named. After investigation a charge-sheet has been submitted to the court which is pending consideration.

(3) That on August 16, 1985 at about 14.10 hours Head Constable 129 C. P. Balram Pandey of the Reserve Police Lines, Lucknow lodged a first information report at Police Station Qaiserbagh, Lucknow that on the same day he was on duty along with other policemen in the Judicial Lock-up, Collectorate, Lucknow. It was alleged that the complainant accompanied by other policemen on duty were bringing back accused after their production in the court of the Chief Judicial Magistrate, Lucknow. Both the detenus (petitioners) proceeded towards an accused, Vijay Pratap Singh, whereupon Vijay Pratap Singh, in panic, tried to retract and turned back when Rajiv Hazra is said to have given a call that it was appropriate time to finish the enemy who was before them as a result of which both the detenus took out their pistols and Kamal Kishore Saini, the detenu, with the intention of killing Vijay Pratap Singh fired at him which resulted in injuries to him and since this incident thither and an atmosphere of terror spread over the area. On the basis of this FIR Crime No. 450 of 1985 under Section 307/34 of the Indian Penal Code was registered at the Qaiserbagh Police Station on August 16, 1985 and after investigation, the charge-sheet has been submitted which is under consideration.

3. The other detenu Rajiv Hazra was served with a detention order on identical grounds by the District Magistrate, Lucknow.

4. The said order of detention was challenged in two writ petitions filed before the High Court of Allahabad under Article 226 of the Constitution of India praying for a writ of mandamus or order or direction in the nature of writ of habeas corpus for producing the body of the respondent along with other respondent detenus before the court and for quashing of the order of detention. In the said order of detention it has also been stated that the District Magistrate after considering the fact that since the two detenus/petitioners had filed applications for bail which were pending before the court and for which the detenus were likely to be released on bail, passed the impugned order of detention after being subjectively satisfied that the petitioners on their release from jail will participate in activities prejudicial to the maintenance of public order. The grounds of detention were duly served on the detenus mentioning therein that the detenus may make representation to the State Government against the said order of detention and the same would be placed before the Advisory Board before whom the detenus would be afforded opportunity of personal hearing.

5. The petitioners along with other detenus contended in the writ petitions that as regards the ground No. 1 the detenus were not afforded a fair and reasonable opportunity of making an effective representation before the State Government under Section 10 of the National Security Act (Act 65 of 1985) inasmuch as they had not been supplied with the relevant documents in support of the grounds except the first information reports and copies of extract of charge-sheet submitted in the two cases. It has been further submitted that the statements recorded under Section 161 of the Code of Criminal Procedure which form a part of the charge-sheet and accompanied by the same, were

not supplied to the two detenus along with the grounds. It has been further submitted that the petitioners were not named in the FIR, the basis on which their complicity came to be known, is the material found in the course of the investigation. It has been submitted that the detenus as such could not make an effective representation in the absence of these relevant material documents. As regards the third ground it has also been submitted that an application was filed by three undertrials Rajendra Singh, Pooran Mal and Jhamman on October 8, 1985 addressed to the Judicial Magistrate, Lucknow submitted to the Superintendent District Jail, Lucknow for being forwarded to the Magistrate stating that some unknown persons had fired at Vijay Pratap Singh, and Kamal Kishore Saini and other persons' names had been implicated falsely. It has also been contended therein that in the bail applications moved on behalf of the petitioners before the Sessions Judge, Lucknow, this fact was also mentioned. This bail application was moved much before the order of detention which was passed on November 28, 1985. These relevant materials were not produced before the detaining authority for his consideration before the passing of the order of detention. As regards the first two grounds Nos. 1 and 2, it has been contended further that they pertain to the maintenance of law and order and not to public order.

6. After hearing the learned counsel for the parties the High Court of Allahabad held that so far as ground No. 1 was concerned the respective detenus were denied a fair and reasonable opportunity to represent against the order of detention and the detention order thus stood vitiated. It was also held that the incidents referred to in ground Nos. 1 and 2 do not affect public order inasmuch as the reach and effect and the potentiality of the said incidents did not create any terror and panic in the locality. These incidents are confined to particular persons. It has also been held that relevant materials such as the application of the three undertrials as well a the statement in the bail application of the detenus referring to the statement of the undertrials that the detenus had been implicated falsely were not placed before the detaining authority and as such the order of detention passed by the detaining authority was invalid and bad inasmuch as there was no proper subjective satisfaction of the detaining authority due to non-consideration of the application of the co-accused and the police report. The order of detention was therefore, quashed by the High Court.

7. Against this order the instant appeal has been filed on special leave. The learned counsel appearing on behalf of the State-appellant, did not question before us the validity and legality of the finding of the High Court insofar as it relates to the non-supply of the relevant and vital materials, that is, the statements recorded under Section 161 of the Code of Criminal Procedure so far as ground No. 1 of the order of detention is concerned, to the detenus and also of the non-placement of the application made by the co-accused before the Judicial Magistrate to the effect that the detenus were falsely implicated in said case as Vijay Pratap Singh was fired at by some unknown assailants and this fact was also mentioned in the bail application made by the detenus before the court and the police report submitted thereon. The only challenge made on behalf of the appellant is to the finding of the High Court to the effect that the incidents referred to in ground Nos. 1 and 2 created only law and order problem and it did not affect public order. In other words, the even tempo of the life of the community has not at all been affected by the said incident. It is relevant to mention in this connection that the names of the detenus were not mentioned in the FIR in respect of incident in ground No. 1 and the basis of their complicity came to be known only in the material found in the course of the investigation. The detenus were supplied only with the copy of the FIR and also extract of the charge-sheet and not the statements under Section 161 of the Code of Criminal Procedure. It is undisputed that the charge-sheet was subsequently submitted in the court and the respondents were furnished with the copies of the statements recorded under Section 161 of CrPC long after the passing of the order of detention communicating the grounds of detention. Similarly, with regard to ground No. 3, the application of the co-accused as well as the statement made in the

bail application filed on behalf of the detenus alleging that they had been falsely implicated in the same case and the police report thereon, were not produced before the detaining authority before passing of the detention order. The High Court, therefore, was justified in holding that the assertion made in the return that even if the material had been placed before the detaining authority, he would not have changed the subjective satisfaction as this has never been accepted as a correct proposition of law. It is incumbent to place all the vital materials before the detaining authority to enable him to come to a subjective satisfaction as to the passing of the order of detention as mandatorily required under the Act. This finding of the High Court is quite in accordance with the decisions of this Court in the case of Asha Devi v. K. Shivraj ((1979) 1 SCC 222 : 1979 SCC (Cri) 262) and S. Gurdip Singh v. Union of India (AIR 1981 SC 362 : (1981) 1 SCC 419 : 1981 SCC (Cri) 168).

8. The High Court has found that the incidents mentioned in ground Nos. 1 and 2 are confirmed to law and order problem and not public order inasmuch as these incidents concerned particular individuals and do not create any terror or panic in the locality affecting the even tempo of the life of the community. This Court in the case of Dr. Ram Manohar Lohia v. State of Bihar ((1966) 1 SCR 705 : AIR 1966 SC 740 : 1966 Cri LJ 608) has observed :

The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. There are three concepts according to the learned Judge (Hidayatullah, J.) i.e. "law and order", "public order" and "security of the State". It has been observed that to appreciate the scope and extent of each of them one should imagine three concentric circles. The largest of them represented law and order, next represented public order and the smallest represented the security of the State. An act might affect law and order but not public order just as an act might affect public order but not the security of the State".

9. Similar observation has been made in the case of Arun Ghosh v. State of W. B. ((1970) 3 SCR 288 : (1970) 1 SCC 98 : 1970 SCC (Cri) 67). The observation is to the following effect : (SCC pp. 99-100, para 3)

Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. 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 law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different.

10. In the case of Pushkar Mukherjee v. State of W. B. (AIR 1970 SC 852 : (1969) 1 SCC 10), it has been observed by this Court : (SCC pp. 14-15)

The 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. In this connection we must draw a line of demarcation between serious and aggravated forms 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. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act. A District Magistrate is therefore entitled to take action under Section 3(1) of the Act to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

11. In the case of Ashok Kumar v. Delhi Administration ((1982) 2 SCC 403 : 1982 SCC (Cri) 451) to which one of us was a party, this Court while dealing with the distinction between "public order" and "law and order" observed that : (SCC pp. 409-10, para 13)

The true distinction between the areas of 'public order' and 'law and order' lies not in the nature or 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 contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and 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.

12. Considering all these decisions we have held in the case of Gulab Mehra v. State of U. P. ((1987) 4 SCC 302 : 1987 SCC (Cri) 721) that whether an act relates to law and order or to public order depends upon the effect of the act on the life of the community or in other words the reach and effect and potentiality of the act; if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order.

13. In the instant case, the criminal acts referred to in ground No. 1 are to the effect that on June 4, 1985 at about 11 p. m. some persons informed the complainant that his brother has been shot by some persons and when complainant reached the spot he found his brother Vishnu Narain Awasthi lying in the pool of blood and he had already died. Crime Case No. 109 of 1985 under Section 302 IPC was registered at Ghazipur Police Station. This incident is confined to individual persons and it is private crime as distinct from public crime. It does not in any way affect the even tempo of the life of the community nor does it affect the peace and tranquillity of people of that particular locality where the crime has been committed. So far as the second crime referred to in ground No. 2 is concerned, it is to the effect that the complainant went to Lucknow Jail along with his son, Ram Kumar and son-in-law, Nand Kishore to see an accused in the District Jail. They could not meet the accused. Ram Kumar and Nand Kishore proceeded towards home in one rickshaw while the complainant was coming by another rickshaw. When they reached a little distance from the jail near the residence of the Jail Superintendent at about 1.45 p.m. the detenus Rajiv Hazra and Kamal Kishore Saini along with another one Anandi Shukla said to be the accomplice of one Ram Gopal, came on a scooter, stopped it and challenged Ram Kumar and Nand Kishore and the complainant. They fired at them. The complainant, Ram Kumar and Nand Kishore ran helter-skelter. The accused chased Ram Kumar and fired twice or thrice and in consequence of it Ram Kumar fell dead on the spot and Nand Kishore and the rickshaw-puller sustained injuries. On these basis Crime Case No. 222 of the 1985 under Section 302/307 IPC was registered on June 13, 1985. This firing was made in a public street during the daytime. This incident does affect public order as its reach and impact is to disturb public tranquillity and it affects the even tempo of the life of the people in the locality where the incident is alleged to have occurred. Therefore, the finding of the High Court with regard

to this incident that it did not disturb in any way the public order is not legal and valid.

14. As regards the incident referred to in ground No. 3, that is, the complaint regarding the firing by Kamal Kishore Saini, the detenu on Vijay Pratap Singh, an undertrial prisoner, in the court compound while he was being taken back from the court by the complainant and other policemen on duty, it undoubtedly affects public order inasmuch as the firing of shot in the court compound created panic and terror in the minds of persons present there and thus it affects the even tempo of the life of the community in that place. This incident certainly affects public order and not merely law and order inasmuch as the reach, effect and potentiality of the act purports to disturb the even tempo of the life of the community i.e. the people of that area.

15. The impugned order of detention was clamped on November 28, 1985 and the period of one year as provided in Section 13 of the National Security Act has also expired. Moreover, we have already upheld the finding of the High Court that the order of detention is illegal and bad for non-supply of vital documents to the detenus to enable them to make an effective representation against the grounds of detention and as such their right to make an effective representation as contemplated under Article 22(5) of the Constitution of India has been infringed rendering the impugned order as illegal and bad. Furthermore, the non-production of relevant materials i.e. the statement of the undertrial prisoners in their application in the court that the detenus had been falsely implicated in the Crime Case No. 450 of 1985 under Section 307/34 IPC as mentioned in ground No. 3 and also the statement to that effect in the bail petition and the police report thereon, before the detaining authority for his consideration before passing the order of detention, renders the order of detention invalid and illegal.

16. For the reasons aforesaid we dismiss the appeal.

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