

Omprakash

Vs

Commissioner of Police and Others

Writ Petition (Criminal) No. 172 of 1989

(S. R. Pandian, M. M. Dutt JJ)

24.10.1989

JUDGMENT

RATNAVEL PANDIAN J.-

1. This writ petition under Article 32 of the Constitution of India has been filed by the petitioner/detenu challenging the validity of the order of detention dated January 3, 1989 made by the detaining authority, namely, the Commissioner of Police, Ahmedabad city in exercise of the powers conferred on him under sub-section (1) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the 'Act') with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad city. The detaining authority further directed the petitioner/detenu to be detained in Sabarmati Central Jail in pursuance of the said detention order. The detenu has been furnished with copies of the grounds of detention and all the other materials inclusive of the statements of the witnesses on the basis of which the subjective satisfaction for passing this impugned order has been reached by the detaining authority. The pitch and substance of the alleged anti-social activities of the detenu as mentioned in the grounds of detention are that the detenu as bootlegger was engaged in unlawfully storing and selling the country made and foreign liquor at Dhabawali Chawl, Saraspur, Ahmedabad through himself and his associates and was also causing injuries to innocent persons of that locality by using lethal weapons thereby unleashing a reign of terror in the said area. In this regard four cases under the Bombay Prohibition Act; one under the Indian Arms Act and another under the Indian Penal Code have been registered. For a better understanding, we reproduce the relevant portion of the grounds of detention giving the details of the alleged anti-social activities of the detenu as found in the grounds of detention :

"Following cases under the prohibition law and under Indian Penal Code are registered against you in the police register and you are arrested in the said crimes :

#-----	No. Police Station	CR No.
Sections Materials seized	Remarks	
-----1.	Sherkotd 113/87 Prohibiti-	10 ltr. country Not on Act 66 liquor proved (b), 65(e)2. -do- 256/87 -do- -do- -do-3. -do- 325/88 -do- 162 ltr. 690 ml. Pending ltr. Country trial liquor4. DCB 12/88 -do- 52 ltr. 350 ml. -do- ltr. foreign liquor5. DCB 12/88 Arms Act Country made Pending 25(1)(c) revolver enquiry cartridges 66. Sherkotd 503/87 IPC 143, 147 Stick, pipe, Pending 149, 307, dharia, sword. trial 452 etc.

Thus, after careful consideration of the entire materials of the proposals it is found that by

possessing deadly weapons you are beating innocent citizens in public in the said area and creating fear by threatening and carrying on criminal anti-social activities by selling country and foreign liquor in the said area. In the said area under the allegation of police informants, you are beating the innocent citizens by show of deadly weapons. You are compelling the innocent persons to store the prohibited material in their house in the said are and upon their refusal you are beating them by showing deadly weapons. In the result, the atmosphere of risk to the person and properties of the residents in the said area has been created and thus you have become hindrance to the maintenance of public order."

2. In support of the above allegations the sponsoring authority has placed the statements of 4 witnesses recorded on January 1 and 2, 1989 whose names are not disclosed as permitted under Section 9(2) of the Act. According to the detaining authority the recourse for actions under Section 93 of the Bombay Prohibition Act or under Section 56(b) of the Bombay Police Act could not be of no avail.

3. Mr. B. K. Mehta, learned counsel appearing on behalf of the petitioner raised several contentions questioning the legality and validity of the order of detention, the main thrust of which being that the alleged illegal activities imputed to the detenu cannot be said to have either affected adversely or are likely to affect adversely the maintenance of public order as contemplated under the explanation to sub-section (4) of Section 3 of the Act. In support of his contention, strong reliance was placed on the decision of this Court in Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438). Since we are of the view that this writ petition can be disposed of on this ground alone, we do not propose to refer and deal with the other contentions.

4. Of the six cases mentioned in the table extracted above, it is not in dispute that the first two cases, namely CR Nos. 113/87 and 256/87 registered under the provisions of the Prohibition Act have ended in acquittal. The cases under Sl. Nos. 3, 4 and 6 are pending trial and the remaining case under Sl. No. 5 is pending enquiry. The only question that arises for our consideration is whether the observation made in Piyush Kantilal Mehta, case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438) could be made applicable to the facts of the present case. According to Mr. Mehta, the decision in Piyush Kantilal Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438) in which the allegation were similar to the allegations in the instant case is aptly and squarely applicable to the present case and as such the order is liable to be quashed on the ground that the alleged prejudicial activities of the detenu cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the are in question giving rise to the maintenance of public order. This contention is raised under Ground No. (A) to which the detaining authority has given his answer in the affidavit in reply stating, "the activities of the petitioner/detenu do fall within the purview of public order" within the meaning of Section 3(4) of the Act.

5. Mr. G. A. Shah, learned counsel appearing on behalf of the respondents vehemently urged that the detaining authority, considering the antecedents and the past anti-social activities of the detenu has made this impugned order with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad city and to ensure that the detenu's activities do not jeopardise the larger interest of the citizens of the said area. According to him, the decision in Piyush Kantilal Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438) has no application to the facts of the present case. He attempts to distinguish Piyush Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438) from the instant case on their facts stating that in Piyush Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438), there were only two incidents of which one had ended in acquittal and that the representation of the petitioner in that case was pending

before the Advisory Board, whilst in the present case there are six incidents and the Advisory Board had submitted its report opining that there is sufficient cause for the detention of the detenu.

6. The question for our consideration is whether the observation made in that decision, on its facts relating to the maintenance of public order is or is not applicable to the case on hand. Therefore, the attempt made by Mr. Shah to distinguish the cases on the facts by counting the number of incidents in each case and referring to the pendency or disposal of the representation has no relevance. In fact, in Piyush Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438) the detenu was caught red-handed possessing English wines with foreign marks without any legal pass or permit on April 13, 1988 and subsequently on another occasion he was caught while shifting 296 bottles of foreign liquors in an Ambassador car without any pass, permit or licence, that one of the cases had ended in acquittal and that the said detenu in that case also creating an atmosphere of fear and terror by wielding dangerous weapons, namely, knife and revolver and beating innocent people. One of us (Dutt, J.) speaking for the bench in the said Piyush Mukherjee v. State of West Bengal ((1969) 1 SCC 10 : (1969) 2 SCR 635 : 1970 Cri LJ 852), wherein the distinction between the 'law and order' and 'public order' has been clearly laid down and stated as follows :

"In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is bootlegger he cannot be preventively detained under the provision of the Act unless, as laid down in subsection (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld".

7. There is a series of decisions explaining what the expression 'public order' means. We feel that it is not necessary to refer to all those decisions but suffice to make reference to the following decision in addition in Piyush Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438).

8. This Court in Ashok Kumar v. Delhi Administration ((1982) 2 SCC 403 : 1982 SCC (Cri) 451) has observed : (SCC p. 410 para 13)

"It is the potentiality of the act of disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order."

9. See also Dr. Ram Manohar Lohia v. State of Bihar ((1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608), Arun Ghosh v. State of West Bengal ((1970) 1 SCC 98 : 1970 SCC (Cri) 67 : AIR 1970 SC 1228) and Ajay Dixit v. State of U. P. ((1984) 4 SCC 400 : 1984 SCC (Cri) 625)

10. The view expressed in Piyush Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 451) has been adopted by this Court in Rashidmiya @ Chhava Ahmedmiya Shaik v. Police Commissioner, Ahmedabad ((1989) 3 SCC 321 : 1989 SCC (Cri) 559) and Abdul Razak Nannekhan Pathan v. Police Commissioner, Ahmedabad ((1989) 4 SCC 43).

11. When the facts of the present case are examined in the light of the decision in Piyush Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438), we are of the view of that the observation made in Piyush Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438) is clearly applicable to the instant case. Further we are not impressed by the pleonastic contention based on an illogical reasoning advanced by Mr. G. A. Shah surcharged with undue emotion to overstate his case on this point pleading that there is massive material in the present case to sustain the detention order. As in Piyush Mehta case (1989 Supp 1 SCC 322 : 1989 SCC (Cri) 438), the materials available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act and as such, the order is liable to be quashed.

12. Accordingly, the writ petition is allowed and the impugned order of detention is quashed. We direct the detenu to be set at liberty forthwith.

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