

Lallan Prasad Chunnilal Yadav

Vs

S. Ramamurthi and others

Criminal Appeal No. 360 of 1992

(M. M. Punchi JJ)

02.07.1992

JUDGMENT

1. Special leave granted. Learned counsel have been heard in this matter relating to a preventive detention.

2. This criminal appeal in substance is a petition for habeas corpus in which challenge has been made to the detention order dated 1-6-1991 effected on 21-7-1991, whereunder the appellant was detained under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981. The attempt of the appellant to challenge the detention order failed twice before he approached the third time in a writ petition before Bombay High Court on a new ground. That challenge too failed which has given rise to this appeal. But here the said ground too has been abandoned and the only ground to which the appellant has now shifted in his special leave petition is that acts attributed to the appellant which furnish grounds for his detention, do not fall squarely within the activity/ activities in any manner prejudicial to the maintenance of "public order" even though he may be termed as a "bootlegger". Strong reliance has been placed on a decision of this Court in *Omparkash v. Commissioner of Police*, AIR 1990 SC 496 wherein in the facts of that case it was found that the material available on the record was not sufficient and adequate for holding that the alleged prejudicial activities of the detenu had either affected adversely, or were likely to affect adversely, the maintenance of "public order" as envisaged under section 4(3) of the Gujarat Prevention of Anti Social Activities Act, 1985, - a measure akin to the Maharashtra statute afore-named. On the other hand, learned counsel for the State of Maharashtra relied on a decision in *Mrs. Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra*, (1992) JT 1 (SC) 502 : (AIR 1992 SC 979) in which this Court has drawn distinction between activities affecting "public order" and those which affect the maintenance of "law and order". This Court observed (para 18 of AIR) :

"The objectionable activities of a detenu have, therefore, to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. If the society, and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of public order and are not merely prejudicial to the maintenance of 'law and order'."

3. The facts in that case when analysed led to the conclusion that the activities of the detenu were prejudicial to the maintenance of "public order". Now the exercise herein is whether the acts attributed to the appellant are in any manner prejudicial to the maintenance of "public order"?

4. The order of detention was passed by the Commissioner of Police, Greater Bombay on June 1, 1991. It was put into effect by detaining the appellant on 21-7-1991. The grounds of detention were furnished to him. Since they are lengthy in text, it would be prudent to resort to brevity by condensing them as follows :

1) On 20-11-1990 a Police party going on a jeep, on suspicion stopped near the car of the appellant and overpowered the appellant and his associate to thwart their effort to run away. In the body and dicky of the car there was contraband liquor in tubes which led to registration of case under the relevant provisions of Bombay Prohibition Act, 1949 and admission of the guilt was attributed to the appellant. The appellant was on bail.

2) On 25-1-1991 the police party spotted the appellant with his associate in handling rubber tubes containing liquor at a particular place. The appellant's effort to run away proved futile as he tumbled down and was apprehended. The liquor was taken into possession. Case under the Bombay Prohibition Act was registered against the appellant and he was on bail.

3-6) Four residents of the locality had told the police during enquiries that the appellant was a bootlegger and the witnesses were afraid to depose against him for fear of reprisal at his end. The gists of statements, where and when such men had been threatened on four individual occasions were detailed in ground Nos. 3, 4, 5 and 6 and some threatening words were attributed to the appellants, besides his having assaulted them with fists and kicks.

5. Now the question arises whether these prejudicial acts are of such a quality that it may be termed as disturbing "public order"? Are these of such intensity, magnitude and spread that they rise from the level of prejudicial to "law and order" to become prejudicial to "public order"? And parallelly which ratio of the two aforesaid cases would govern the fate of this case? It is obvious that the two cases under the Bombay Prohibition Act, 1949 registered against the appellant could legitimately provide the subjective satisfaction to the detaining authority that the appellant is a "bootlegger" but the instances aforementioned, spread over a time, in which the appellant is attributed to have threatened individuals by speaking words or giving them fists and kicks blows could in no event be summed up as activities prejudicial to maintenance of "public order". Rather these are activities patently prejudicial to maintenance of "law and order". The power to make orders of detention stem from the satisfaction of the detaining authority with respect to any person with a view to preventing him from acting in any manner prejudicial to the maintenance of "public order" and not prejudicial to the maintenance of "law and order". Logically the case of the appellant deserves to follow the course as treated by this Court in Omparkash's case (AIR 1990 SC 496) (supra). And on that premise the order detaining the appellant need be and is hereby quashed.

6. The appeal is allowed quashing the impugned order of detention. The appellant be released forthwith. Appeal allowed.

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