

ALLAHABAD HIGH COURT

Shravan Kumar Gupta

Vs.

Superintendent District Jail

Criminal Misc. Writ No. 1893 of 1956
(V. Bhargava and Sahai, JJ.)

12.09.1956

JUDGMENT

V. Bhargava, J.

1. This petition under Article 226 of the Constitution and Section 491 of the Code of Criminal Procedure was presented by Shravan Kumar Gupta requesting this Court for issue of a writ of Habeas Corpus in respect of 8 persons Radhey Shyam, Joshi, Pujari Tika Ram, Thakur Lakhi Singh, Bharat Singh, Loharey Singh, Teja Singh, Hoti Lal and Ram Singh, who were being detained in the district jail Mathura under warrants issued to the jail authorities by the Sub-divisional Magistrate Chhata. The circumstances under which these persons were detained, as given by Shravan Kumar Gupta, are that all these 8 persons as well as the petitioner Shravan Kumar Gupta are members of the District Hind Kisan Panchayat, Mathura or the District Socialist Party of Mathura. These two parties decided to hold a Workers' Training Camp with some public meetings on the 6th, 7th and 8th of August, 1956 in village Chaumha Sub-Division Chhata, district Mathura. The place for the camp so fixed is a local compound belonging to Thakur Har Govind Singh. When the camp actually came to be held, however, it was found that that compound was not spacious enough and consequently the camp was held under a neem tree near a grove known as Bairagion Ki Baghechi. On the evening of the 7th August, 1956 Radhey Shyam and Thakur Lakhi Singh were approached by the District Magistrate of Mathura, the Superintendent of Police, Mathura, and the Sub-Divisional Magistrate, Chhata with a request that they should desist from holding their public meeting the next day under the neem tree as a meeting organized by the Congress was going to be held in Bairagion Ki Baghechi and that meeting was to be addressed by Shri Charan Singh, the Minister for Revenue. These two persons refused to comply and insisted that their meeting would be held under the neem tree. On 8th August, 1956 at about 8 a.m. all these eight persons who are under detention assembled under the neem tree and, while they were occupied in making preparations for the meeting, the station officer of police station Chhata came there with a number of constables, snatched away the mike which was being installed and flung it away. The sub-inspector and the constables shouted that they would not tolerate the audacity of any meeting being held at the instance of the detenus when another public meeting was going to be addressed by the Minister for Revenue close by.

The police arrested all these 8 persons and took them in custody after dragging them along the ground and forced them into a vehicle. These persons were then taken to the police station Chhata and were confined in a very small cell wherein they were huddled together with great difficulty. On 9th August, 1956, the detenus were taken out of the police lock-up and were sent to the district jail, Mathura at about 10-30 a. m. They were kept waiting outside the jail. At about 3 p. m. they were admitted in the Jail. In the meantime, at about 11 a. m. an application was made by one Radhey Shiam Chaturvedi, appearing as counsel for all these persons who had been detained, before Shri Tejpal Singh, Sub-divisional Magistrate Chhata alleging that more than 24 hours had elapsed since the arrest of the detenus and they had not yet been produced before any magistrate so that their detention had become illegal. The prayer was that the station officer of the police station Chhata be directed to release the detenus. A further prayer made was that a note be made on the application that the detenus had not till then been produced before any magistrate. The learned sub-divisional Magistrate merely marked that application to the Assistant Public Prosecutor. Later on, at about 2-30 p.m., the same counsel on behalf of the detenus moved another similar application before the same learned Sub-divisional Magistrate and that was also sent to the Assistant Public Prosecutor for his report. It was further alleged that, even though a number of days had passed thereafter, no written order under Section 112 of The Code of Criminal Procedure had been served on the detenus. It was contended on behalf of the detenus that they are respectable and law abiding citizens and they never behaved in any manner likely to cause even an apprehension of breach of the peace and their conduct was throughout peaceful and non-violent. Charges were brought against the officers of the district for improper conduct on the ground that the authorities were acting in favor of the Congress party and against the parties of the detenus.

2. In reply to this petition, four affidavits were filed on behalf of the opposite parties. One affidavit was filed by Gopinath Varma Jailor in charge district jail Mathura in whose custody these persons were being detained. He asserted that the persons were admitted to jail on the 9th August, 1956 at 2 p. m. under warrants signed by the Sub-divisional Magistrate Chhata directing their detention under Sections 151, 117 and 107 of the Code of Criminal Procedure except in the case of Bharat Singh in whose warrant the provisions of law mentioned were Sections 151 and 117 of the Code of Criminal Procedure only. The warrants originally granted a remand for five days upto the 14th August, 1956, whereafter a further remand of ten days was granted. The detenus were actually sent for production before a Sub-Divisional Magistrate on the 25th August, 1956, and thereafter their warrant was endorsed for production on 3rd September, 1956, which was the next date fixed for hearing of the case against these detenus. The subsequent movement and detention of the detenus which was regulated by the orders of this Court as a result of the presentation of the present petition, need not be mentioned. The second affidavit filed was by Sri Tejpal Singh, Sub-divisional Magistrate Chhata, who stated that a case under Sections 107 and 117 of the Code of Criminal Procedure was pending against these detenus in his court and the 3rd September, 1956 was the date last fixed for hearing of that case. Shri Tejpal Singh further averred that all these detenus were produced before him on the 5th August, 1956 at about 10-15

a. m. when he had told them the grounds of their detention. The third affidavit was by Shri Dharam Vir Singh, Assistant Public Prosecutor, Mathura.

He admitted the receipt of the first application of 9th August, 1956 which was presented by the counsel for the detenus before the Sub-Divisional Magistrate of Chhata and which was forwarded to him for report by the Sub-divisional Magistrate Chhata. He denied that any second application presented on behalf of the detenus were sent to him. Lastly, an affidavit was sworn by Ram Singh, head constable Chhata, who stated that these detenus were taken to police station Chhata at 10-15 a. m. on 8th August, 1956 and were kept in the police lock up till 8-55 a.m. on 9th August, 1956. At that time, they were handed over to his custody to be taken to Mathura and to be produced before the Sub-divisional Magistrate Chhata at his residence. He, thereupon, took all the detenus to the residence of the Sub-divisional Magistrate Chhata and actually produced them before him at 10-15 a.m. Jail warrants for remanding them to custody were then prepared and signed by the sub-divisional Magistrate Chhata Shri Tejpal Singh. After these detenus had been produced before the sub-divisional Magistrate Chhata, they had been put in the lock up and entries with regard to that action had been made in the lock up register. Some time was also spent in serving food to the detenus before they could be taken to jail. After the receipt of the warrants from the sub-divisional Magistrate, the detenus were taken by the head constable to jail where they were handed over by him to the custody of the jailor.

3. In reply to these four affidavits, a rejoinder affidavit was filed by one of the detenus Lakkhi Singh. In this affidavit besides a number of points alleged in reply to the facts given in the counter affidavit, Lakkhi Singh purported to make some new allegations on a number of facts. We do not propose to take any notice of those new allegations of facts on the ground that, when this rejoinder affidavit was filed, learned counsel for the petitioners was told that these new allegations could not be considered unless an opportunity was given to the opposite parties to file counter affidavits in order to controvert those allegations. Learned counsel for the petitioners thereupon, conceded that those portions of the rejoinder affidavit, in which new facts were alleged, should be ignored by the Court as he was not prepared that the case be adjourned for the purpose of granting time to the opposite parties to file counter affidavits in respect of those allegations. So far as this rejoinder affidavit deals with the facts brought out in the counter affidavits filed on behalf of the opposite parties, only a few points need be mentioned. It was stated in this rejoinder affidavit that the detenus had been arrested on 8th August, 1956 at about 8 a.m. and they were taken immediately to police station Chhata where they remained in the lock up till about 9 a. m. on the 9th August, 1956. It was alleged that no jail warrants were either got prepared or signed by the Sub-divisional Magistrate Chhata at any time in the presence of the persons detained.

The deponent denied on behalf of all the detenus, any knowledge of any jail warrants or orders of remand procured from the Sub-divisional Magistrate Chhata in their absence. They denied that any food was served to them before they were lodged in jail. Lakkhi Singh further reaffirmed the original assertions made by Shravan Kumar Gupta, petitioner, that their actual admission in Jail at Mathura took place at about 3 p. m. This assertion was made after Lakkhi Singh deponent had

read the counter affidavit filed by Shri Gopinath Varma, Jailor of the District Jail of Mathura, in which it was stated that the admission in Jail took place at 2 p. m.

It was, further, alleged that the authorities never cared to tell the detenus as to what specific acts they were guilty of or what offence was alleged against them for which they were being arrested. The rejoinder affidavit also contains further facts relating to what happened in the Court of the Sub-divisional Magistrate, Mathura on the 20th and 25th of August, 1956. There were also assertions that the record of the case pending in the court of the Sub-divisional Magistrate had been manipulated and interpolations made therein, and of the documents, particularly the two applications presented on behalf of the detenus on 9th August 1956, had been removed from the record. It was, however, admitted that on an inspection later on, the first of those two applications was found on the record. In view of these circumstances, we considered it necessary to summon the record of the case pending in the court of the Sub-Divisional Magistrate Chhata and that record has also been produced before us today.

4. It would appear from the facts alleged on behalf of the detenus as mentioned above that they challenged the validity of the initial action taken by the police in arresting them on the ground that the arrest was mala fide and the detenus had committed no acts at all on the basis of which it could be held that there was any reasonable apprehension of breach of the peace on their part. It appears from the report submitted by the police to the Sub-divisional Magistrate for taking proceedings against these detenus under Sections 107 and 117 of the Code of Criminal Procedure that according to the police the acts which had been committed by the detenus on the morning of the 8th August, 1956 were such that there was imminent danger of breach of the peace taking place. Such questions of fact cannot be investigated in a petition under Article 226 of the Constitution or Section 491 of the Code of Criminal Procedure. If and when the proceedings under Section 107 of the Code of Criminal Procedure are proceeded with in the court of the Sub-Divisional Magistrate where they are pending, such questions of fact would be investigated by that court after evidence on behalf of both the parties has been recorded. It is not possible for this Court to give any findings on such questions of fact. So far as this petition is concerned, the Court has to proceed on the basis that the allegations made by the police may be correct so that proceedings against the detenus could be taken on the basis of those allegations.

The allegations were subsequently to be scrutinised by the appropriate court dealing with the proceedings in accordance with the provisions of the Code of Criminal Procedure. On the basis that the allegations made by the police in their report to the Sub-divisional Magistrate may be correct, we are unable to hold that the police were unjustified in arresting the detenus on the morning of 8th August, 1956. The actual time of arrest in this case is material in order to judge whether the police authorities did or did not comply with the requirements of Article 22 of the Constitution. In the rejoinder affidavit filed by Lakhi Singh detenu it has been asserted that these persons were arrested at about 8 a.m. We are, however, unable to accept this assertion in view of the statement made on behalf of the detenus themselves by their counsel Shri R. S. Chaturvedi in his first application which he presented before the Sub-divisional Magistrate Chhata on the 8th August, 1956. In that application it was alleged that all these detenus were arrested at 9 a.m. on

the 8th August, 1956. This was the version given on behalf of the detenus at the earliest stage possible after their arrest and, when the detenus themselves gave the time of arrest as 9 a.m., it is clear that the subsequent affidavit giving the time as 8 a.m. is false. The motive for the change of the time appears to be that, according to the counter affidavit filed by Ram Singh head constable, these detenus were taken out of the police lock up at Chhata at 8.55 a.m. on the 9th August, 1956 for the purpose of being taken to Mathura and being produced before a magistrate. It appears that Lakhi Singh wanted to show that the detenus were despatched from police station Chhata more than 24 hours after their arrest and this is the reason why he alleged that the detenus had been arrested at 8 a.m. The admission made in the application presented on behalf of the detenus on the 9th August, 1956, however, shows that the detenus were arrested at 9 a.m. and not at 8 a.m. so that they were despatched from police station Chhata before the expiry of 24 hours from the time of arrest. There was again, therefore, no illegal detention in contravention of Article 22 of the Constitution at Chhata.

5. The detenus have asserted that, after they were despatched from the Chhata police station, they were taken straight to the District Jail at Mathura and were never produced before the Magistrate. We are unable to accept this assertion made on behalf of the detenus as being necessarily correct. As against the affidavit filed on this point by Shravan Kumar, the petitioner, and Lakki Singh detenus, we have before us the counter affidavits filed by Shri Tejpal Singh, sub divisional officer Chhata and Ram Singh head constable. Again there is a conflict between the two parties on a question of fact and in a writ petition we are not in a position to investigate this fact in detail. The petition has to be decided on the basis that the assertion made on behalf of the opposite parties in the affidavits filed by the Sub divisional Magistrate and Ram Singh, head constable, is correct. We, therefore, take it that the detenus were produced before the Sub divisional Magistrate Chhata at 10.15 a.m. on the 9th August, 1956. The subsequent applications and orders thereon which have been perused by us do not bear out the assertion made on behalf of the detenus that they were not produced before the Magistrate. The first application of 9th August, 1956 was sent by the Magistrate to the Assistant Public Prosecutor for report. The Assistant Public Prosecutor wrote down his report in which it was denied that the detenus had been sent to jail without being produced before any magistrate. It was also alleged that the grounds of arrest had been clearly indicated to them so that the detention in custody was not illegal. Shri Tejpal Singh also stated in his counter affidavit that he had informed the detenus of their grounds of detention. At this stage again, therefore, it has to be held that no illegality was committed, the detenus were produced before the Magistrate, the Magistrate stated to them the grounds of their detention and thereafter prepared their warrants for custody in jail.

6. The question, however, remains whether the subsequent detention of these eight detenus in district jail Mathura was under any valid order passed by the Magistrate and was consequently in accordance with law. The warrants which were signed by the Magistrate directing the jail authorities to keep these persons in their custody mentioned that these persons were detained under Sections 151, 107 and 117 of the Code of Criminal Procedure except in the case of Bharat

Singh in whose warrant there was no mention of Section 107 Criminal Procedure Code. Section 151 Criminal Procedure Code merely authorizes arrest by police without warrant from a magistrate and is not a provision of law under which a person can be detained by the jail authorities in their custody. Section 107 of the Code of Criminal Procedure is the provision of law under which it appears the proceedings against the detenus were pending in court. This makes it clear that these persons were arrested and were being detained in connection with the proceedings for prevention of breach of the peace under Section 107 Criminal Procedure Code and not on any allegation or suspicion that they had committed any offence as defined in the Code of Criminal Procedure.

Under these circumstances Section 167 Criminal Procedure Code was not applicable. That section only permits a magistrate to order remand to jail custody when a case relating to the commission of any cognizable or non-cognizable offence is being investigated and the order is to be for the period during which the investigation remains pending. In this case, it is clear that Section 167 of the Code of Criminal Procedure could not apply as there was no allegation at all that these detenus had committed any offence.

7. The point that we have to consider then is what power the Sub-Divisional Magistrate of Chhata had to direct the detention of these detenus in jail. When then are proceedings under Section 107 of the Code of Criminal Procedure or when proceedings under that provision are contemplated, the procedure to be adopted is laid down in Sections 112 to 118 of the Code of Criminal Procedure. Section 112 lays down the first step that has to be taken by the magistrate. When the magistrate acting under Section 107 deems it necessary to require any person to show cause under that section, he has to make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required. The order made by the magistrate has to be read over to the person in respect of whom such order is made if that person happens to be present in court under Section 113 of the Code of Criminal Procedure. In case such person is not present in court, the magistrate has to issue summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court. Under Section 117 of the Criminal Procedure Code, when an order under Section 112 has been read over or explained to a person under Section 113 or Section 114 of the Code of Criminal Procedure, the magistrate is required to proceed to enquire into the truth of the information upon which action was taken by him, and to take such further evidence as may appear necessary. Sub-section 3 of Section 117 in such circumstances empowers the Magistrate, if he considers that immediate measures are necessary for prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, for reasons to be recorded in writing, to direct the person in respect of whom the order under Section 112 has been made to execute a bond with or without sureties for keeping the peace or maintaining good behaviour until the conclusion of the enquiry and to detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded. These provisions of the Criminal Procedure Code thus lay down that, whenever proceedings under Section 107 of

the Code of Criminal Procedure are contemplated against any person the proceedings are to be initiated by preparing a notice under Section 112 of the Code and serving it on that person under Section 113 or Section 114 of the Code. The present case is one which would be governed by these provisions of law. When these detenus were produced before the Sub-divisional Magistrate at 10-15 a.m. on 9th August, 1956 and the report of the police indicated that they had been taken into custody for the purpose of taking proceedings under Section 107, the Magistrate should have then and there prepared a written order under Section 112 of the Code of Criminal Procedure and should have read over that order to these detenus and, if they so desired, should have explained the contents of that order to them. Until he had done so, his powers of remanding these detenus to custody under sub-section (3) of Section 117 of the Code of Criminal Procedure did not vest in him and could not be exercised by him. Even if an order under Section 112 of the Code had not been prepared by him earlier before these persons were taken into custody by the police, the Magistrate should have summoned these persons so that they could be produced before him and the order could be read out to them under Section 114 of the Code of Criminal Procedure. In either case, no warrants for remanding these persons for custody in jail could have been issued by the Magistrate until he had already made an order under Section 112 of the Code and had read out the contents of it to the persons concerned under Section 113 or Section 114 of the Code of Criminal Procedure. Even thereafter it was incumbent on the Magistrate under sub-section (3) of Section 117 of the Code to come to a finding that immediate measures were necessary for prevention of the breach of the peace or disturbance of the public tranquility and thereupon to direct these detenus to execute bonds with or without sureties for keeping the peace until the conclusion of the enquiry. After the Magistrate had taken all these steps, he could then direct detention of these persons in custody until such bonds were executed or until the conclusion of the enquiry in case no such bonds were executed. This position arising out of the provisions of the Code of Criminal Procedure shows that, though the detention of these detenus may have been valid until the time when they were produced before the Sub-divisional Magistrate at his residence at 10.15 a.m. on 9th August, 1956, the subsequent detention of these persons under the orders of the Sub-divisional Magistrate Chhata was not in accordance with law and was without any power vested in the Magistrate to direct their detention in jail.

8. This petition must consequently be allowed. We have to keep in view the fact that even till today no order in writing under Section 112 of the Code of Criminal Procedure has been made by the learned Magistrate, so that the detention in jail continues to be illegal. As a result, we allow this petition and direct that all these eight detenus Radhey Shyam Joshi, Pujari Tika Ram, Thakur Lakhi Singh, Bharat Singh, Loharey Singh, Teja Singh, Hoti Lal and Ram Singh shall be released forthwith.

These detenus are all present in Court today under the order of this Court and we have, therefore, had them released in our presence after pronouncement of this judgment. Learned counsel for the petitioners has urged that costs should be awarded to the petitioners against the opposite parties. We consider that this is an appropriate case where we should make no orders as to costs.

Petition allowed.

