

(1982) 03 DEL CK 0017

In the Delhi High Court

Case No : Criminal Writ Appeal No. 126 of 1981

Bimla Dewan

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 04-03-1982

Acts Referred:

Citation : (1982) CriLJ 1095 : (1982) 21 DLT 341 : (1982) 3 DRJ 219

Hon'ble Judges : J.D. Jain, J; D.K. Kapur, J

Bench : Division Bench

Advocate : D.C. Mathur, N.K. PARMAR and D.R. Sethi, for the Appellant;

Judgement

D.K. Kapur, J.

(1) A Habeas Corpus petition under Article 226 of the Constitution has been moved by the petitioner in connection with the detention of her husband under the National Security Act, 1980. It is claimed that the detention order is without jurisdiction, arbitrary, mala fide and a colourable exercise of power for ulterior and collateral reasons. The detention is dated 25th Sept. 1981 and the grounds have been also been annexed to the petition. According to the petitioner, her husband has been conducting a business of running an eating house known as "Kamal Restaurant" the police officials in the locality have been seeking free entertainment and demanding gratification which the detenu has denied) Therefore, the police official have allegedly registered a number of false cases against him, but the detenu has always been acquitted or discharged in all of those cases.

(2) It is also submitted that the name of the detenu was included in the Surveillance Register and a history sheet was also opened, but this action was struck down in Criminal Writ No. 66 of 1977, decided by Talwar J. on 14th April, 1980. It is claimed that in spite of the decision in that Writ Petition, more false cases have been filed against the detenu.

(3) In addition, on 18th August, 1981, the police officers of Police Station Patel

Nagar had sealed the restaurant and a show case notice was also received on 22nd September, 1981, as to why the Certificate of Registration should not be cancelled. This was the subject-matter of Writ petition No. 2307 of 1981 which was also admitted and stay order passed.

(4) It is further submitted that the detention order purports to be issued with the object of stopping the detenu from indulging his alleged criminal activities which is not a ground for detention under the Act, and Therefore, the Act had been invoked for an ulterior purpose as any one indulging in criminal activities could be prosecuted under the normal penal laws. The National Security Act was not meant to detain citizens without trial in relation to offences in which they could be tried under the existing laws, hence the order was mala fide.

(5) Principally, the Writ Petition is Therefore, based on the contention that a number of cases have been instituted against the petitioner's husband which all resulted in his acquittal and the provisions of the National Security Act are being mis-used for the purpose of punishing the petitioner's husband for alleged offences in which his conviction could not be secured through the normal procedure in Court. This is allegedly a mis-use of the machinery set up under the Act which is for a quite a different purpose. It will be necessary to refer to the grounds of detention at a later stage, but it is more convenient now to examine the counter-affidavit which is of Shri P.S. Bhinder the then Commissioner of Police, Delhi. In this affidavit, it is stated that the detention was necessary in view of the long criminal history of the detenu. A representation against the detention was turned down by the Lt. Governor, but the matter had been placed before the Advisory Board whose orders were still awaited, (as on the date of the affidavit). According to the affidavit in reply, the detenu was a habitual law breaker running a restaurant which is the headquarter for nefarious criminal activities where cabaret dances were shown. It is also stated in the affidavit that the order of detention was necessitated in view of the past record and to prevent the detenu from indulging in criminal activities and this in maintaining public order. It is stated among other things in the affidavit as under :

" THE criminal history of the detenu, as mentioned in the grounds of detention, goes to show that he has been a serious threat to the maintenance of public order and whenever any Police Officer or any other Government agency has tried to intervene in the matter, he had assaulted, obstructed or attempted to murder those persons. The order of detention of the detenu was passed in these circumstances) because that was the only way to prevent him from acting in any manner prejudicial to the maintenance of public order. The application against the Police are false".

(6) The question to be decided in this case is whether the detention order under challenge can be passed in the particular circumstances of this case, wherein the detenu was proceed against the normal criminal courts and acquitted or discharged in all the cases which have been filed and, where certain other cases arc still under trial. Learned counsel for the petitioner contends that this is not

the object of the Act and has referred to a number of decided cases in support of his contention. On the other hand, learned counsel for the State has referred to certain other cases where a different view has been taken or at least, there is a difference, because the detentions have been upheld. We have to really see whether the case of the petitioner's husband falls in one class of cases or other; and even, to see whether there is any difference in the ratio of these cases, other than a difference resulting merely from the facts and circumstances being different in the various decisions. The majority of the decisions cited before us were under the Maintenance of Internal Security Act, 1971 (hereinafter referred to as "MISA"). It was pointed out that Section 3 of the National Security Act, 1980, is somewhat similar to Section 3 of "MISA". The power to detain under "MISA" was inter alia to prevent a person from acting in a manner prejudicial to the security of the State or the maintenance of public order. A similar power is contained in Section 3(2) of the National Security Act, 1980. In fact the other powers of detention set out in Section 3 of the National Security Act, 1980, are also similar if not the same/as those set out in "MISA". As we are not concerned with the other questions that may arise under either of the Acts, it may be observed here that we are only concerned a person who has been repeatedly acquitted in the Criminal Court should be prevented from acting in a manner prejudicial to maintenance of public order. The learned counsel for the petitioner argued that the reported judgments throw that the maintenance of public order is quite a different thing from maintaining the peace and a mere breach of the criminal law cannot be equated to a breach or infraction of public order. As this point has been very elaborately argued before us and both learned counsel have presented their case with rare skill, it has been left to us to determine whether the order passed against the petitioner's husband can be said to be one passed to prevent him from acting in a manner prejudicial to the maintenance of public order.

(7) In *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, , the order was passed under the defense of India Rules, 1962 Rule 30. This Rule also allowed a detention to prevent a person from acting in a manner prejudicial to the maintenance of public order. The Court came to the conclusion by its majority view that there is a difference between, "public order" and, law and order". It was held that the District Magistrate was facing a law and order problem which was different from a problem affecting "public order". Hidayatullah J. stated in the main judgment as follows:

" ONE has to imaging three concentric circles. Law and order represents the largest circular 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 effect law and order but not public order but not security of the State".

(8) It may here be mentioned that the order itself stated that the detenu was being detained "on the ground that his being at large is prejudicial to the public safety and maintenance of public order. It can thus be seen that order covered a

ground outside the scope of the Act as "public safety" was not a ground for detention. However, the observations regarding the scope of the term "public order" have been relied upon by counsel for the petitioner. It may also here be said that there were many earlier judgments of the Supreme Court showing the difference between "public order" public tranquilly and mere law and order which need not be referred to here. In *Nandalal Roy v. The State of West Bengal*, the Court held that the act set out in the grounds of detention did fulfill the test of being contrary to public order as the act was a serious one of throwing bombs upon a Railway Police Party. The Court held that it was a disturbance of the public order within the meaning given in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, . Similarly, another Bench of the Supreme Court held in *S.K. Kedar Vs. State of West Bengal*, , that the detenu when apprehended while removing material from the wagon attacked the Railway Protection Force with bombs and thus committed a breach of public order. In *Kanu Biswas Vs. State of West Bengal*, the detenu attacked the husband and wife in a third class compartment and thus acted in a manner contrary to public order. In *Sasti alias Satish Chowdhary Vs. State of West Bengal*, , the accusation was of cutting electric wires and thus creating complete dislocation of electric supplies. This also was held to be a breach of public order. In *Mohd. Salim Khan Vs. Shri C.C. Bose and Another*, the petitioner was discharged from a criminal prosecution and yet detained on the same ground, but the detention order was upheld on the ground that there may not be enough evidence to maintain a conviction, but still the detention could be ordered. In that case, the accusation was of hurting bombs at a bus belonging to a school.

(9) On the other hand, in *Arun Ghosh Vs. State of West Bengal*, , the order of detention was quashed on the ground the acts attributed to the petitioner were such that they may be anti-social activities like riot, assault, etc. but they were confide mainly to certain individuals. This judgment by Hidayatullah G. J. contained the following passage :

" TAKE the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. 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 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 way-laid 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 tranquility there is a vast difference.

(10) 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 disturb, 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".

(11) The line of distinction brought out by this example is illustrative of the difference between similar acts which may in the one case only affect law and order and in the other affect public order generally. If the acts affect the community or have the potential of doing so, then they can be called breaches of public order. However, if the acts are merely individual, in the sense, that they affect certain persons but do not trouble the rest of the community in any manner, then they cannot be termed to be breaches of public order.

(12) With this judgment may be contrasted another decision of the Supreme Court in *Sadhu Roy v. The State of West Bengal*, AIR 1975 S.C. 819 where a criminal case relating to theft of railway property was discharged because witnesses were afraid of giving evidence, but a detention order was passed. It was held that the Court must find out if the detention order had not been passed in the mala fide or a colourable manner. There was one vital point in the case which may make it distinguishable and that was that in the criminal case the petitioner's name was not in the First Information Report but was gathered in the course of investigation.

(13) A number of other judgments were also cited at the Bar which need not be referred to as the point has been well and truly settled by a series of decisions of the Supreme Court. We, would, Therefore, adopt the test of seeing whether the acts attributed to the detenu are such they can be said to public order, and if they are only breaches of law and order, then the detention will have to be held to be bad. The further question, will be whether the fact that the petitioner has previously been detained under "MISA" and also, the fact that he has been acquitted in majority of the cases mentioned in the detention order, "will also have a very great bearing on the way in which the present petition has to be decided.

(14) It is now necessary to set out the grounds of detention of the petitioner's husband in extenso so that the same can be examined. The grounds are as follows:

" OFFICE of the Commissioner of Police, Delhi. Grounds of detention of of Shri Dev Raj Dewan @ Dewan @ Deva S/o Ishwar Dass R/o H.N. 53, Gadodia Road, 146/2, Than Singh Nagar, Kamal Restaurant, Anand Parbat, Delhi.

Dev Raj Dewan @ Deva S/o Ishwar Dass R/o H.N. 53 Gadodia Road, 146/2 Than Singh Nagar, Kamal Restaurant Anand Parbat, Delhi is an active bad character of P.S.Patel Nagar, Delhi includes in acts of violence , assault on public servant murder, attempt to murder riots, cases under the excise Act and Arms Act and other criminal activities. His criminal activities came to notice for the first time when he was arrested vide case Fir No. 194 dated 13-7-65 U/s 307, 353,1332, 224, 225 IPC-.

(15) P.S. Sarai Rohilla. In this case he was convicted on 12-4-66 by the Court of S.R. Seth, Assist .Sessions Judge, Delhi to under 1" years R.I. for the offence U/s 225 Indian Penal Code but he was acquitted by the Court of Sh. Mohan Lal, Addl: Sessions judge, Delhi on 5.10.66 and since then he has engaged himself in the commission of illegal acts and offences against person and property involving force and violence. He has been arrested in the criminal cases mentioned below.

(16) This is a very lengthy document, but it gives details of numerous cases in which the detenu was prosecuted, though unsuccessfully. (The acts attributed to the detenu were such that it cannot be said that they were mere infractions of law and order and did not effect public order. Some of the acts were directed against persons exercising lawful authority" some of the acts were directed against Government servants and some of the acts involved illicit trade in liquor. Some of the acts were directed against the police, some against, the Excise authorities and so on. It is another matter that the cases failed in court.) The real question is whether the acts were such that they could be said to be prejudicial to the maintenance of public order? It clearly appears that they were opposed to public order.

(17) The real problem is whether these acts can be looked at after the detenu was acquitted. Several of the cases referred to earlier were cases in which criminal resections were withdrawn and the person was detained.

(18) The purpose of detention is not punishment, but prevention. The past conduct of the detenu is the only determinant for finding out whether a detention order is necessary. It appears to us that the Police Commissioner had to act on the basis of the past record. We are supported in this view by a recent judgment of the Supreme Court in *Fitrat Raza Khan Vs. State of Uttar Pradesh and Others*, , wherein it was stated:-

" THE past conduct or antecedent, history of a person can appropriately be taken into account in making a detention order. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order."

(19) In this case, many of the acts attributed to the detenu are quite old, so a question might well arise whether there was any reformation of the detenu in the meantime. In this connection, it may be mentioned that several of the items mentioned above, such as (xxv),(xxvi),(xxvii) and (xxix) are pending in Court and many of other items are under investigation, so it cannot be said that the past history is state and cannot be taken into considerations

(20) In the circumstances, we are of the view that the acts attributed to the detenu cannot be said to be unconnected with a breach of public order.

(21) It is stated in the grounds of detention that the activities of the detenu show that he is a desperate and dangerous character and has been acting in a manner

prejudicial to the maintenance of public order and he is continuing his activities.

(22) In the circumstances this inference from past conduct cannot be described as being mala fide, nor can it be said that the order has been passed for ulterior purposes) We accordingly dismiss this writ petition.