
(1967) 11 CAL CK 0003
In the Calcutta High Court
Case No : Criminal Misc. Case No. 362 of 1967

Gunadhar Santra

APPELLANT

Vs

District Magistrate

RESPONDENT

Date of Decision : 08-11-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 491
Preventive Detention Act, 1950 — Section 3, 3(2)

Citation : (1969) 1 ILR (Cal) 409

Hon'ble Judges : Amaresh Roy, J;A.N. Chakravarty, J

Bench : Division Bench

Advocate : Sankardas Banerjee and Swadesh Bhusan Bhunia, for the Appellant;
S.N. Banerjee, D.L.R. and Dilip Kumar Dutta, for the Respondent

Judgement

Amaresh Roy, J.—This Rule was issued by our brothers R.N. Dutt and N.C. Talukdar, JJ. on September 4, 1967, upon an application under Article 226 of the Constitution of India and also u/s 491 of the Code of Criminal Procedure made by Gunadhar Santra, praying for a writ in the nature of habeas corpus in respect of the detenu Bishnupada Santra who is now being detained in the Midnapore Central Jail by dint of an order made by the District Magistrate of Midnapore in exercise of his powers u/s 3(2) of the Preventive Detention Act of 1950 (IV of 1950). The Rule on being issued has been served on the three Respondents, i.e., the District Magistrate, Midnapore, the Superintendent of Midnapore Central Jail and also the State of West Bengal. The Learned Deputy Legal Remembrancer, Mr. Sambhunath Banerjee, has appeared on behalf of the Respondents, but there has not been filed any affidavit on behalf of the Respondents by way of making a return to the Rule. The learned Deputy Legal Remembrancer mentions the reasons why he has advised the parties he is representing not to use any affidavit; those reasons will appear when we deal with the merits of the case later.

2. The order of detention was made by the District Magistrate, Midnapore, Sri S.

Chatterjee, on August 17, 1967, and copy thereof has been annexed to the petition moved in this Court as annEx. "A". The learned Deputy Legal Remembrancer has also produced before us the original order No. 345C dated Midnapore, August 17, 1967. The order is in these terms:

Government of West Bengal Office of the District Magistrate, Midnapore, Order No. 345C.

Dated, Midnapore, the 17th August 1967.

Whereas I am satisfied with respect of the person known as Shri Bishnupada Santra son of Shri Gunadhar Santra of Santipur Machada, P.S. Tamluk,, district Midnapore, that with a view to performing him from acting in a manner prejudicial to the maintenance of supplies and service essential to the life of the community it is necessary so to do.

Now, therefore, in exercise of the powers conferred by Section 3(2) of the Preventive Detention Act, 1950 (Act IV of 1950) I make this order directing that the said Shri Bishnupada Santra be detained.

Given under my hand and seal of office.

Sd/- S. Chatterjee 17.8. (S. Chatterjee) District Magistrate, Midnapore

3. Mr. Sankardas Banerjee, appearing in support of the Rule, has drawn our attention not only to the order of detention above quoted, but also to the grounds of detention for contending that some of the grounds are couched in language which is so vague as would not enable the detenu to make an effective representation against the order of detention. We need not go into that question about the vagueness of the grounds of detention, because our task has been simplified by the learned Deputy Legal Remembrancer himself by drawing our attention to the terms of the order of detention itself. It is pointed out that in the text of that order instead of saying "with a view to preventing" what appears, both in the copy that was served on the detenu as also the original produced before us by the learned Deputy Legal Remembrancer from the Government file is "with a view to performing". Besides that inaccuracy we have to notice also that the first paragraph commencing with the words "Whereas I am satisfied" ends with the words "it is necessary so to do" and both in the original as also in the copy served on the detenu there appears a full stop after the word "do". We asked the learned Deputy Legal Remembrancer what would be the matter of which this first paragraph of the order mentions the satisfaction of the District Magistrate about. The learned Deputy Legal Remembrancer in his accustomed fairness conceded that by the effect of the full stop after the word "do" there has been brought about the effect not only that the satisfaction mentioned in the first paragraph is disconnected from the order of detention that appears in the second paragraph of the order, but also the sentence in the first paragraph bears no meaning at all; because of the effect of the full stop after the word "do", the phrase "so to do" stands disjuncted from the second paragraph and no meaning

can be attributed to what is meant by the word "so".

4. A reference to Webster's Dictionary of English Language clearly shows that in punctuation full stop (.) marks a period indicating the full pause closing a complete sentence, and also marking the end of a declarative sentence as distinguished from the other kinds of punctuation by colon (:) or semi-colon (;) or comma (,) which only separate co-ordinate clauses of the same sentence, with varying degrees of distinctiveness. By use of full stop (.) at the end of the first paragraph of the order No. 345C the sentence is not complete and, therefore, does not convey what the satisfaction was about and its connection with the direction to detain.

5. This being the defect in the order of detention itself, the Learned Counsel for the Petitioner, Mr. Sankradas Banerjee, has contended that it is not a proper, valid or effective order of detention under the Preventive Detention Act, 1950. The learned Deputy Legal Remembrancer has not urged before us any cogent reason for not accepting Mr. Sankradas Banerjee's contention. It is not difficult for us to see the reason why it has not been possible for the Learned Counsel for, the State to argue with any cogency against the contention raised on behalf of the Petitioner. In several well-known decisions of the Supreme Court it has been emphasised that an order made under a statute of the nature of Preventive Detention Act for putting a citizen of India under restraint need have to strictly comply with the form and letter insisted upon and if that compliance is wanting, that is not a proper order that can be allowed to deprive the citizen of his liberty. In this respect there is no difference in principle between the Preventive Detention Act, 1950, and the Defence of India Rules framed under the Defence of India Act, 1962. That has been acceded to by the learned Deputy Legal Remembrancer himself. We may refer to the decision of the Supreme Court in Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, in which it has been said,

The detention of a person without a trial is a very serious encroachment on his personal freedom, and so at every stage all questions in relation to the said detention must be carefully and solemnly considered.

6. In delivering the judgment in the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, , it has been observed by Sarkar, J. (as his Lordship then was):

If a man can be deprived of his liberty under a rule by the simple process of the making of a certain order, he can only be so deprived if the order is in terms of the rule. Strict compliance with letter of the rule is the essence of the matter. We are dealing with a statute which drastically interferes with the personal liberty of people, we are dealing with an order behind the face of which a Court is prevented from going. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu.... If for the purpose of justifying the detention such compliance by itself is enough, a non-compliance must have a contrary effect.

In the same case Hidayatullah, J. has said:

When the liberty of the citizen is put within the reach of authority and the scrutiny from Courts is barred, the action must comply not only with the substantive requirements of the law but also with forms which alone can indicate that the substance has been complied with.... No doubt what matters is the substance but the form discloses the approach of the detaining authority to the serious question and the error in the form raises the enquiry about the substance....

7. The requirement of Section 3 of the Preventive Detention Act, 1950, is that the detaining authority, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

(iii) the maintenance of supplies and services essential to the community...it is necessary so to do, make an order directing that such person be detained.

This is the form that has been laid down by the Statute and if there is any deviation either in the form or letter then the terms of the Statute has not been complied with.

8. Remembering the tests laid down by the Supreme Court in the passages quoted above, a comparison of the requirement of Section 3 of the Preventive Detention Act, 1950, with the terms of the order made in this case by the District Magistrate, Midnapore, show clearly not only verbal deviation but also complete absence of care and caution that is necessary for the detaining authority in arriving at the subjective satisfaction. That lack of care and caution undoubtedly shows that the detaining authority in the present case, i.e., the District Magistrate, Midnapore, did not apply his mind and the satisfaction purported to be recorded in the order is no more than a jargon. It falls far short of the subjective satisfaction of that detaining authority that alone can clothe him with the jurisdiction to rob the citizen of his personal liberty. We are grateful to Mr. Sambhunath Banerjee, the learned Deputy Legal Remembrancer, for drawing our attention to another decision of the Supreme Court in Jagannath Misra Vs. State of Orissa, where Wanchoo, J. (as his Lordships then was) in delivering the judgment of the Court has said:

In view of this specific provision in the Act it is incumbent upon the authority which is passing an order...taking away the liberty of a citizen of this country that it should act with due care and caution and see that the person detained is so detained on grounds which justify the detention in the interest of the country. Further, the proceedings in the matter of detention and the order of detention should show that it had acted with all due care and caution and with the sense of responsibility necessary when a citizen is deprived of his liberty without trial.

9. From what we have said above we are of the view that in the present case the authority concerned has not acted in the manner required by law, because it appears clear that he did not apply his mind properly before making the order of

detention. For that reason the order in question is not an order under the Preventive Detention Act and the person detained is entitled to be released. As we have held that the order of detention itself is bad, there is no need to discuss the vagueness of the grounds of detention complained of by Mr. Sankardas Banerjee on behalf of the Petitioner.

10. We, therefore, make the Rule absolute and direct that the detenu Bishnupada Santra be released from detention and set at liberty forthwith.

A.N. Chakravarty, J.

11. I agree.