
(1974) 05 CAL CK 0019

In the Calcutta High Court

Case No : Criminal Misc. Cases No. 721 and 722 of 1974

Gurupada Nayak

APPELLANT

Vs

District Magistrate Burdwan and Others

RESPONDENT

Date of Decision : 24-05-1974

Acts Referred:

Essential Commodities Act, 1955 — Section 7(i)(a)(ii)

Citation : 78 CWN 978

Hon'ble Judges : P.C. Borooah, J;H.N. Sen, J

Bench : Division Bench

Advocate : Dilip Kumar Dutt and Vijay Kumar Khanna, for the Appellant; Pramodranjan Roy and Uma Sanyal for the State, for the Respondent

Judgement

P.C. Borooah, J.—The detenus in these two Rules, namely, Saktipada Nayek and Siddheswar Nayek were detained pursuant to orders of detention being passed against them on January 18, 1974 by the District Magistrate, Burdwan, u/s 3 of the Maintenance of Internal Security Act, 1971 with the object of preventing them from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. The grounds of detention in both the cases are identical. It has been submitted before us by Mr. Dilip Kumar Dutt, learned advocate appearing on behalf of the petitioner in the two Rules, that over the incident mentioned in the ground of detention a specific criminal case being Burdwan P.S. Case No. 10 dated 5.1.74 (D.E.B.G.R. Case No. 2 of 1974) u/s 7(i) (a) (ii) of the Essential Commodities Act, 1955 was started against the detenus in the court of the Sub-divisional, Judicial Magistrate, Burdwan Sadar. Saktipada Nayek was released on bail by the learned Magistrate on January 5, 1974 and Siddheswar Nayek on January 10, 1974. After they had been released on bail, both of them were taken into custody on March 24, 1974 when the impugned orders and the orders containing the ground of detention were served upon them. As such, according to Mr. Dutt, the detention orders have been vitiated as the detenus did not get a proper and reasonable opportunity to make effective representations against the impugned orders.

2. Mr. Pramodranjan Ray, learned Junior Govt. Advocate appearing on behalf of the State, does not dispute the fact that a specific criminal case was pending against the detenus on the same allegations as made against them in the ground of detention. Mr. Ray has, however, submitted that the case was at the stage of investigation and the charge-sheet had not yet been submitted.

3. The Supreme Court in the case of *Biram Chand v. The State of Uttar Pradesh and Ors.* (being Writ Petition No. 23 of 1974) was dealing with several grounds of detention. Ground No. 8 was the subject-matter of a criminal case with reference to the first information report dated July 3, 1973. It is thus clear that in respect of the incident mentioned in ground No. 8 no charge-sheet had been submitted but a criminal proceeding was pending. Ground Nos. 9 and 10 in the said case were however covered by a criminal case with reference to a first information report dated August 5, 1973 and the relative charge-sheet dated September 19, 1973 pending in the criminal court at Varanasi.

4. The Supreme Court in striking down the order of detention in the said case observed as follows : --

The detaining authority cannot take recourse to two parallel and simultaneous proceedings nor can it take recourse to a ground which is the subject-matter of a criminal trial as in the case of the first information report dated 5th August, 1973 furnishing the grounds Nos. 9 and 10 of the detention order. That fact itself introduces a serious infirmity in the order of detention for which the same must be held to be invalid.

5. From the observations aforesaid it is clear that the Supreme Court had debarred a detaining authority from detaining a person on a ground which was the subject-matter of a criminal proceeding or a criminal trial. This is also obvious from the fact that in striking down the impugned order the Supreme Court took into consideration and specifically referred to Ground No. 8 in which only a First Information Report had been lodged and Ground Nos. 9 and 10 which covered a case in which charge-sheet had been submitted.

6. In a case where only the First Information Report had been lodged and investigation was pending, and the person concerned was taken into detention on the same allegations as made against him in the pending criminal proceeding, he would in making his representation against the order of detention have to disclose his defence and other facts. By doing so he is bound to be prejudiced in his defence in the criminal court if the authorities concerned choose to revoke the detention order and proceed with the criminal case after plugging up the loopholes, if any, in the prosecution case. Moreover, by disclosing his defence, an accused would be severely handicapped in defending himself in the criminal court. In view of what has been stated above and in view of the decision of the Supreme Court in *Biram Chand's* case which was followed by us in the case of *Kishori Mohan Pal v. The State of West Bengal* being Criminal Miscellaneous Case No. 413 of 1974, we must strike down the order of detention as illegal.

The Rules are therefore made absolute. Let the detenus, who are on bail, be discharged from their bail bonds.

H.N. Sen, J

I agree.