

(1989) 11 AHC CK 0016

In the Allahabad High Court

Case No : Civil Misc. Habeas Corpus Writ Petition No's. 12115, 12116 and 12117 of 1989 & Civil Misc. Habeas Corpus Writ Petition No. 12115, 12116 and 12117 of 1989

Hira Lal

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 23-11-1989

Acts Referred:

National Security Act, 1980 — Section 3(2)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1990) 1 AWC 262

Hon'ble Judges : Giridhar Malaviya, J;B.P. Singh, J

Bench : Division Bench

Advocate : Jagdish Singh Sengar, for the Appellant;

Final Decision : Dismissed

Judgement

G. Malaviya, J.—These three petitions have been filed by Sri. Hira Lal, Harbansh and Munna Lal who have all been detained by separate orders of the District Magistrate, Allahabad dated 29-3-1989 passed u/s 3(2), of the National Security Act on the ground that the Petitioners were affecting the maintenance of public order.

2. The main contention of Sri. Jagdish Singh Sengar learned Counselfor the Petitioners is that the detention order must fail as the activity of the Petitioners is not referable to a problem of the maintenance of public order but is confined to the problem of law and order. Since in all the three petitions one of the activities of the Petitioners was of 3rd March, 1989 and was the common activity, learned Counselfor the Petitioners contends that he was confining his arguments in respect of this activity alone because if he could not succeed in proving that the activity dated 3-3-1989 of the Petitioners was not an activity connected with the maintenance of public order, then it would be no use his arguing the case on the basis of other activities. In view of this fact it will be relevant to quote briefly the

activities of the Petitioners dated 3-3-1989 which translated briefly would be as follows:

on 3-3-1989 Sri. Lal Ji Vaish Chairman of the Town Area Committee along with his friends Kinai Lal and Kanhaiya Lal was sitting at his shop. At about 7 P.M. the Petitioner along with associates armed with country made pistol suddenly entered the shop. Harbans told Lal Ji that he would not be able to save himself on that day. Kinai Lal and Kanhaiya Lal, friends of Lal Ji aforesaid, stood up and wanted to catch hold of the intruders, when Harbans and Surendra Singh fired upon Kinai Lal with the result that he fell down in front of the shop. Hira Lal also fired on Kanhaiya Lal which hit him on his right elbow: Harbansh thereafter with a view to kill Lal Ji fired on him but the shot missed and Lal Ji fell inside his room. Another shot fired by Surendra Singh hit Gulab Chandra alias Lallu brother of Lal Ji Vaish. The other associates of the Petitioners also fired many shots. Hira Lal shouted that no person should be spared that day. He also came on the road and declared in a loud voice threatening the market people that whosoever gave evidence against them or would report at the police station he would also meet the same fate. All the miscreants thereafter left the place. No one could have the courage to chase them. Kinai Lal had succumbed to his injuries on the spot itself. On the basis of this incident a report Under Sections 147, 148, 149, 307, 302 Indian Penal Code for crime No. 14 of 1989 was registered at the police station Koraon in which after investigation charge sheet had been submitted. The ground mentioned that on account of the activity of the Petitioners and their associates in which indiscriminate firing was resorted to in an open market, people were threatened with the consequences of the death, the shop keepers left their shops and there was a near stampede in the market out of the fear. Even the traffic was disrupted. Terror prevailed in the entire area as also its surrounding areas. A sense of insecurity and fear was generated in the town and normal life became disturbed. To check the deteriorating situation and to instil the confidence, PAC had to be deployed in the area but still people had the sense of insecurity.

3. The ground mentioned in support of the detention order further mentions that the Petitioners were in jail but were trying to get released on bail- As there was apprehension that if released on bail in near future they would again indulge in similar activities which were calculated to affect the maintenance of public order, the detaining authority was satisfied that in case the Petitioners indulged in similar activities again that would disrupt the maintenance of public order. Consequently with a view to maintain the public order the orders of detention were passed against the Petitioners.

4. Learned Counsel for the Petitioners contended that the Petitioners in the above mentioned incident had gone and fired in the shop of Lal Ji Vaish, Chairman of the Town Area Committee, Koraon, district Allahabad on account of personal enmity and as such, even if their action was really very shocking to the viewers, it could not really create any sense of insecurity in the minds of people at large in the said locality, as according to the learned Counsel for the Petitioners, they would

not be having any apprehension that the Petitioners would act against them also in similar fashion. According to learned Counsel for the Petitioners the incident might have really created a problem for the maintenance of law and order, but it could not be a ground which should be said to have affected the maintenance of public order. Learned Counsel for the State however contended that it was not the fact of the Petitioners going to the shop of Lal Ji Vaish and killing one person and injuring others which was a matter concerning the public order but their subsequent act and its effect upon the locality which was calculated to affect the maintenance of public order. Learned Government Advocate points out that coming out on the road, firing indiscriminately and declaring loudly to all the people in the market that if any person gave evidence against them or reported the matter to the police station, was an act which affected the maintenance of public order. He contends that the immediate effects of this indiscriminate firing, which fact has also been taken into consideration in the said ground, viz. that there was a near stampede on account of the people fleeing from their shops, the traffic getting disrupted and ultimately posting of PAG to instil confidence, leaves no room to doubt that on account of the activity of the Petitioners the public order had been disturbed.

5. As has been pointed out by a large number of judgments of the Supreme Court and the High Courts the line of demarcation is really thin when finding out whether a particular activity could affect the maintenance of public order or the law and order. However it is always the effect of a particular act which has to be judged to assess the degree and the extent of its reach on the society to find out whether the said activity had affected even tempo of the life of community or not. As the facts of no two cases can be identical, hence it is clearly not possible to hold only on the basis of any case decided whether one particular incident was related to the problem of maintenance of public order or law and order.

6. What appears to be the striking feature of this case is that because of the threat extended by the Petitioners the people in general and not any particular individual got scared. The very fact that PAC had also to be deployed, clearly indicates that even tempo of life of the community had been affected. It is consequently not possible to accept the contention of learned Counsel for the Petitioners that the activity of the Petitioners mentioned in this ground relating to the incident dated 3-3-1939 was not involving the disturbance of public order.

7. Learned Counsel for the Petitioners relied on the case of Arun Ghosh v. State of West Bengal AIR 1970 SC 1229 as also the case of Shyamal Chakraborty Vs. The Commissioner of Police, Calcutta and Another, in support of his contention that every criminal activity could not be an activity affecting the maintenance of public order. He also relied on the Full Bench decision of this Court in the case of Shesh Dhar Mishra v. Superintendent, Naini Central Jail 1985 ALJ 1223 asserting that the full bench had categorically found that almost in identical circumstances the activity could not be treated to have the effect of maintenance of public order. He referred to the majority judgment of the Full Bench and contended that

in the case of Sheshdhar Mishra also ground No. 2 revealed that the Petitioners had threatened the witness of Crime No. 6 of 1984 and told them to file affidavits and then relied on the observations in paragraphs 32 and 33 in which on the facts and circumstances of that case the Judges taking the majority view found that when threat was given to individual witnesses without any show of force or any other overt act, that threat could not be held to be affecting even tempo of the life of community and as such had no potentiality or propensity to affect the public order. The facts of the Full Bench case were thus completely different from the facts of the present case. In the instant case not only that the Petitioners had declared that any person giving evidence against them from the public would meet the "same fate meaning thereby that such witness would be killed, but the petitioner also had resorted to indiscriminate firing in an open place of a crowded market. Moreover the effect which was generated thereafter and the measures taken by the administration viz. deployment of PAC to bring back the situation to normal, is a very distinctive and clear feature which leaves no room to doubt that the incident had affected the maintenance of public order.

8. Sri Prem Prakash learned Government Advocate thereafter placed reliance on the case of Ayya alias Ayub Vs. State of U.P. and Another, as also on the case of the Supreme Court reported in State of U.P. Vs. Kamal Kishore and Another, and the case of Yogendra Murari Vs. State of U.P. and Others, to contend that where, on account of, a particular incident, the terror is spread in the entire area and all the shop keepers in the nearby locality had to close down their shops because of the panic and fear the incident should be treated as having created public order problem. These cases do support the contention of the learned Government Advocate that the incident in the present case is also of a nature which was calculated to affect the maintenance of public order.

9. It was next contended by Sri Jagdish Singh Sengar learned counsel for the petitioners, that there had been inordinate delay in disposal of the representation made by the petitioners. Referring to the case of Hira Lal he said that the representation made by him on 13-4-1989 was forwarded by the District Magistrate to the government on 17-4-1989. After it was received by the government on 19-4-1989 the government again sent it back to the District Magistrate for his comments. The District Magistrate forwarded his comments to the detaining authority which was received by the government on 21-4-1989. Thereafter the government took six days' time to dispose of the representation by rejecting it on 27-4-1989. According to the learned counsel for the petitioners four days' time spent for sending the representation along with the comments to the government and six days' time taken in disposal of the representation by the government at the second stage was enough to vitiate the continued detention of the petitioners inasmuch as the petitioners' valuable right to have his representation considered expeditiously was violated in these cases. In this case it is relevant to note that the District Magistrate who had passed the detention order in this case was no more alive. Under the circumstances a counter affidavit on behalf of the detaining authority was filed by

Sri Harish Chandra Chaudhary, Joint Secretary in the Ministry of Home (Confidential Section) of the U". P. Government by perusing file of the District Magistrate, Allahabad. In paragraph 13 of the said counter affidavit it was mentioned that .the petitioners* representation dated 13-4-1989 was received in the office of the District Magistrate on 14-4-1989 which was a public holiday being "Rain Nawmi." On the next day the representation was sent to the Senior Superintendent of Police, Allahabad to make available the comments of the police on the said representation, as the same were considered necessary. The police had to get its comments from police station-Koraon, Circle Officer (Oy. Supdt. of Police) Meja with the result that the Senior Supdt. of Police, Allahabad sent his comments to the District Magistrate on the petitioner's representation on 18-4-1989. The District Magistrate then prepared his own comments on 20-4-1989 and sent it to the Government on the same day where it was received on 21-4-1989. Thus it WM1 be seen that there was absolutely no inaction on the part of the District authorities in the matter of representation of the petitioners. Hence allegation of any delay in the disposal of the representation at the level of the district authorities is not substantiated.

10. Taking into account the question of delay in disposal of the representation by the government it will be relevant to refer to paragraph 5 of the counter affidavit of Sri. Banshi Dhar Pandey, Upper Division Assistant in the Confidential Section 6 of the U.P. Government which says that two identical representations dated 13-4-1989 one addressed to the Secretary, Ministry of Home Affairs, New Delhi and the other to the Home Secretary, U.P. were received by the government. It is thus obvious that since the representations were addressed both to the Government of India as also U.P. Government, the District Magistrate, Allahabad vide his letter dated 17-4-1989 forwarded one representation directly to the government for transmitting it to the Government of India along with his letter dated 17-4-1989. This representation was received in the concerned section of the State Government on 19-4-1989 As the State Government had not received any comments from the District Magistrate along with the representation, it sent back the representation to the District Magistrate for his comments on the same day. In the meanwhile the District Magistrate had obtained comments from the police, as mentioned above, with the result that on 20-4-1989 representation along with the comments was again sent back to the State Government on 21-4-1989. On 22-4-1989 the State Government got a copy of the representation made and placed before the Advisory Board, The representation meant for the Central Government along with the comments of the District Magistrate, Allahabad was also sent to the Ministry of Home Affairs, New Delhi on the same day 23-4-1989 was Sunday and on 24-4-1989 the case of the Petitioners was fixed for bearing before the Advisory Board where the file of the Petitioner had to be taken up. On 25-4-1989 the section concerned of the State Government prepared a detailed note on the representation of the Petitioner and placed it for consideration of the Joint Secretary, Home. On 26th and 27th April, 1989 the representation was examined by the Joint Secretary (Home), Special

Secretary (Home) and the Home Secretary himself. On 27-4-1989 itself the representation was finally placed for final orders and the State Government by its order dated 27-4- 1989 rejected the representation of the Petitioner which fact was conveyed to the Petitioner through the district authorities on 29-4-1989 A perusal of these dates would go to show that at no point of time there was any inaction on the part of the Respondents in the disposal of the representation of the Petitioners. This point, therefore, also fails. No other point was pressed in this petition.

11. There is no merit in these petitions which are accordingly dismissed.