

(1974) 04 CAL CK 0015
In the Calcutta High Court
Case No : Criminal Misc. Case No. 413 of 1974

Kishori Mohan Pal

APPELLANT

Vs

D.M. Birbhum and Others

RESPONDENT

Date of Decision : 30-04-1974

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)(a)(ii)
Maintenance of Internal Security Act, 1971 — Section 3(1)(2)

Citation : 78 CWN 694

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

Bench : Division Bench

Advocate : Prasun Chandra Ghose and Sourendra Prosad Talukdar, for the Appellant;Quadrat-E-Kabir for the State, for the Respondent

Final Decision : Allowed

Judgement

P.C. Borooah, J

1. The subject-matter of Challenge in this Rule by the detenu Kishori Mohan Pal is his detention pursuant to an order No. 589C dated 13th February, 1974 passed by Sri A.K. Majumdar, District Magistrate, Birbhum, in exercise of his powers conferred by sub-section (1) read with sub-section (2) of section 3 of the Maintenance of Internal Security Act, 1971. The object of detention was to prevent the detenu from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The ground of detention which was communicated to the detenu by an order No. 591C dated 13.2.74 reads as follows : --

On 27.1.74 at 3.30 a.m. you were found to export across the West Bengal-Bihar border near Musabanidanga, P.S. Rajnagar, District Birbhum, 12 qnts. 38 kgs. of paddy in 21 bags loaded in four carts with your associates Mongla Tudu of Tantloi, P.S. Baniswar, Dist. Santalparganas (Bihar) and others with the purpose of selling the stock at higher rate of Rs. 117/- per quintal of paddy in the shop of one Bhupati Charan Gorain of Bilkandi, P.S. Raniswar, Dt. Santai-parganas

(Bihar) after procuring the stock @ Rs. 78/- per quintal of paddy in this district, as stated by your associate Mongla Tudu. Being intercepted by the police party you and your associates fled leaving behind the aforesaid stock which was seized by the police, and subsequently your associates were arrested after a day and you surrendered in the Court at Suri on 1.2.74 and prayed for the return of the carts and paddy. By such illegal movement of paddy you violated the provisions of the West Bengal Rice (Control) Order, 1964 and the West Bengal Rice and Paddy (Restriction on Movement by Night) Order, 1969 and the resultant effect of such clandestine deal in the rice and paddy was the cultivators felt hesitant to sell their paddy to the purchasing centres of the Food Corporation of India which is the sole agent of the Govt. of West Bengal for the procurement of rice and paddy and of the rice mills and the procurement policy of the Government was threatened with a setback and thus you acted in a manner prejudicial to the maintenance of supplies and services essential to the community.

Mr. P.C. Ghose, learned Advocate appearing on behalf of the detenu petitioner, has submitted that on the same facts alleged against the detenu in the ground of detention a specific criminal case was started against him in the Court of the Sub-divisional Judicial Magistrate, Sun, being G.R. Case No. 100 of 1974 under sections 7(1) (a) (ii) of the Essential Commodities Act, 1955 and u/s 8 of the West Bengal Maintenance of Public Order Act, 1970 and the said criminal case is still pending. Mr. Ghose submits that in view of the fact that the impugned order of detention was passed during the pendency of the criminal case the detenu has been prevented from making an effective representation, because in order to make a representation he would have to disclose the defence which he would have taken in the criminal case. In support of his argument Mr. Ghose has drawn our attention to a" decision of the Supreme Court being Writ Petition No. 23 of 1974 and criminal Appeal No. 281 of 1973 (Biram Chand v. State of Uttar Pradesh & Ors.), the judgment of which was delivered on March 28, 1974.

2. Till the decision of the Supreme Court in the case of Biram Chand v. The State of Uttar Pradesh & Ors. the position of law as to the existence of parallel proceedings was the passing of an order of detention on a person during the pendency of a criminal proceeding on the same allegations would not per se make the order of detention incompetent nor could it be inferred that the order of detention was without any basis or was passed for mala fide reasons. The Supreme Court for the first time in the said case considered the question as to the effect of the detenu's right of making an effective representation when a criminal case was pending against him on the same facts as alleged against him in the ground of detention served upon him. The Supreme Court has also in the said case observed that there was no direct authority of the Court on that point.

3. Justice P.K. Goswami, delivering the judgment of the Court in the case cited by Mr. Ghosh, has observed as follows: --

Firstly whether the detenu can be said to be reasonably able to make an effective representation against this ground when he has been facing a trial in the criminal

courts. By disclosing his defence and certain facts, can he not complain that he "will be handicapped in defending himself in the criminal courts ? It is well settled that in a case of preventive detention the grounds must be clear and definite to enable the detenu to make an effective representation to the Government to induce the authorities to take a view in his favour. He must, therefore, have a real and effective opportunity to make his representation to establish his innocence. Being faced with a criminal prosecution which is pending against him all through, we are clearly of the view that the detenu has not got a proper and reasonable opportunity in accordance with law to make an effective representation against the impugned order of detention covered by the said proceeding.

Secondly, the question is whether it is open to the detaining authority to choose two parallel proceeding against the detenu as in this case. The fact that the ground of detention could be a subject matter of criminal prosecution is not enough to vitiate a detention order if the detaining authority does not choose to prosecute him and only passes an order of detention in accordance with law. In that case it will be no answer that the detenu must be prosecuted in the criminal court in an open trial. The choice of the authority concerned for the mode of tackling the the illegal activity cannot per se be illegal and the order of detention will be judged on its merits in accordance with the law laid down by this Court. The position will be however entirely different if the authority concerned makes an order of detention under the Act and also prosecutes him in a criminal case on the self-same facts. This, in our view, is totally barred. The detaining authority cannot take recourse to two parallel and simultaneous proceedings nor can 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 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.

4. The fact that a criminal case was pending against the detenu petitioner has been stated in paragraphs 8, 9 and 12 of the petition which has not been disputed by any counter-affidavit filed on behalf of the State. We must, therefore, proceed on the basis that a criminal case was started against the detenu on the same facts as stated in the ground of detention and the criminal case is still pending. The impugned order of detention having been passed and served on the detenu during the pendency of the criminal case, the detenu's right of making an effective representation has been affected. The order of detention, as such, must in view of the decision of the Supreme Court referred to above, be struck down as illegal.

5. Mr. Kabir, learned Advocate appearing on behalf of the State has also conceded that a criminal case is in fact pending against the detenu on the same allegations made against him in the ground of detention and the impugned order of detention was served upon him during the pendency of the criminal case. In view of the Supreme Court's decision cited by Mr. Ghose, Mr. Kabir could not

dispute Mr. Ghose's contention that the detenu has been prevented from making an effective representation and the order of detention as such has become bad.

6. As Mr. Ghose succeeds on this point, we need not enter into the other points urged by him. The application must, succeed. The Rule is made absolute. Let the detenu, who is on bail, be discharged from his bail bond.

H.N. Sen. J.

I agree.