
(1983) 04 CAL CK 0008
In the Calcutta High Court

Lakhi Chand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-04-1983

Acts Referred:

Police Act, 1861 — Section 29

Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : 86 CWN 585

Hon'ble Judges : G.N. Roy, J

Bench : Single Bench

Advocate : Sudipta Maitra, for the Appellant; P.K. Ghose, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Ray, J.—This writ petition is moved with notice to the respondents and Mr. Ghose has appeared for the Railway respondents, it appears that the petitioner, a Crane Hook Man, was posted at Liluah Workshop of the Eastern Railway. According to the petitioner, on 23rd February, 1982, the petitioner was apprehended by the members of the Railway Protection Force and the petitioner was taken to the Government Railway Police Station at Liluah and according to the petitioner a seizure list was prepared showing that an iron shart was recovered from the possession of the petitioner which belonged to the railway and the petitioner was forced to sign the said seizure list. The petitioner stated in paragraph 10 of the writ petition that on the said allegation, the Liluah Railway Police Station started a case against the petitioner u/s 3 of the Railway Property (Unlawful Possession) Act. The petitioner was thereafter produced before the learned Sub-divisional Judicial Magistrate, Howrah, and was ultimately released on bail. It is the admitted case of the petitioner that the petitioner has been detained in police custody for more than 48 hours before he was actually released on bail by the learned Sub-divisional Judicial Magistrate. After the said detention made the Works Manager (M) of the said Liluah Railway Workshop passed an order on 21st March, 1982, stating that as the petitioner was detained

in custody for a period exceeding 48 hours, the petitioners should be deemed to have been suspended with effect from the date of detention, namely, 23rd February, 1982, in terms of Rule 5 (2) of the Railway Servants' (Discipline & Appeal) First Amendment Rules, 1980. In the instant writ petition, the petitioner challenges the legality and the validity of the said order of suspension passed against the petitioner under Rule 5 (2) (a) of the Railway Servants' (Discipline & Appeal) Rules, 1968. For the purpose of appreciating the contentions raised by Mr. Maitra appearing on behalf of the petitioner, the relevant provisions of Rule 5 of the said Rules is set out hereunder :

5- Suspension :- (1) A railway servant may be placed under suspension (a) where a disciplinary proceeding against him is contemplated or is pending; or (b) where, in the opinion of the authority competent to place a railway servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the State or (c) where a case against him in respect of any criminal offence, is under investigation, inquiry or trial : (2) A railway servant shall be deemed to have been placed under suspension by an order of the competent authority :- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours.

It is contended by Mr. Maitra on behalf of the petitioner that the Railway authorities had no jurisdiction whatsoever to place the petitioner under suspension or to treat the petitioner as if he is deemed to have been suspended under Rule 5 (2) (a) because no criminal charge as contemplated within the meaning of Rule 5 (2) (a) was made against the petitioner. He has contended that the "criminal charge" as contemplated in Rule 5 (2) (a) will only mean that the police after investigation has filled a formal charge sheet before the criminal court so that there is a formal criminal accusation against the delinquent railway servant. Mr. Maitra has contended that the expression "other wise" as appearing in Rule 5 (2) (a) must be governed by the principle of ejusdem generis and as such the order of detention was passed without any authority whatsoever. Mr. Maitra has also contended that detention in "custody" as appearing in Rule 5 (2) (a) must mean detention in judicial custody and not detention in police custody. As in the instant case, the petitioner was not detained in judicial custody for more than 48 hours or for any day, no action under Rule 5 (2) (a) can be taken.

2. In support of this contention Mr. Maitra has referred to a decision of this court made in the case of Sunil Kumar Ghosh Vs. State of West Bengal and Others, . In the said decision an offence within the meaning of section 29 of the Police Act, 1861. was taken into consideration for the purpose of deciding as to whether or not the offence u/s 29 is a criminal charge. The learned Judge has held that obviously an offence u/s 29 of the Police Act, namely, violation of duty or wilful breach or neglect of any lawful order is not a charge of an offence included in the Indian Penal Code which constitutes the general law of crimes in the country but the said offence u/s 29 of the Police Act is an offence created by a special

statute, namely the Police Act, to be met with by a statutory penalty. This court has held in the said decision that the dictionary meaning of the word "charge" in the legal sense is "accusation". "Criminal charge" therefore, would mean accusation of a "crime". The dictionary meaning of the word "crime" again is an "act punishable by law" (Shorter Oxford Dictionary). To punish means to "inflict penalty on an offender". If these dictionary meanings prevail, any offence which is created by any statute and is punishable by any penalty imposed thereby would be included within the concept of a "criminal charge". In my view, the aforesaid decision does not in any way help the petitioner. On the contrary it supports the contention that if an accusation is made for which a person is liable to be penalised under any law of the country then in law a charge is constituted. It is not necessary to consider whether a formal charge sheet has either been submitted by the police or the learned Magistrate has framed a formal charge. There is no manner of doubt that an accusation was made against the petitioner for unlawfully possessing a railway property and on the said charge of possessing unlawfully railway property, the petitioner was arrested by the police and was detained in police custody for more than 48 hours until the petitioner was released on bail by the learned Magistrate. In my view, the contention of Mr. Maitra that for the purpose of giving effect to Rule 5 (2) (a), the delinquent officer must be detained in judicial custody cannot be accepted. It has nowhere been stated in Rule 5(2) (a) that for the purpose of enforcing Rule 5(2) (a), the delinquent officer is required to be detained in judicial custody and not in any other custody. Both the police custody and the judicial custody are authorised in law and if a person is lawfully detained in police custody, in my view, Rule 5 (2) (a) is applicable.

3. Mr. Maitra has next contended that Rule 5 (2) (a) is ultra vires because a railway officer may be kept in suspension for indefinite period simply because the said officer has been arrested on some accusation and has been kept either in police custody or in judicial custody for more than 48 hours. He submits that rule 5(2) suffers from excessive delegation without any guide line and on that score it should be struck down. It however, appears to me that under sub-rule 5 (a) of Rule 5, the order of suspension made or deemed to have been made under the said Rule shall continue to remain in force until the same is modified or revoked by the authority competent to do so. It is, therefore, quite clear that under sub-rule 5 (a) of Rule 5, in appropriate cases, the railway administration can modify or revoke the order of suspension passed or deemed to have been passed under the provisions of Rule 5. It, therefore, cannot be contended that once a delinquent is deemed to have been suspended there is no way out for him and he has to suffer suspension indefinitely ever if the authorities are satisfied that further suspension is not warranted and on that score Rule 5 (2) (a) should be struck down on the ground of excessive delegation without any guide line. In this connection Mr. Maitra has also referred to a decision of the Madras High Court made in the case of State of Madras vs. K.A. Joseph reported in AIR 1970 Madras 155. In the said decision, it has been held that there is a very clear and distinct

principle of natural justice, that a delinquent is entitled to ask, if he is suspended from his office because of grave averments or grave reports of misconduct, that the matter should be investigated with reasonable diligence, and that charges should be framed against him within a reasonable period of time and an officer cannot be placed under suspension, for indefinite period. In the instant case, it does not appear that the petitioner has made any prayer before the learned Magistrate for discharging the petitioner for the failure of the police to submit any charge sheet within a year against the petitioner without any just cause. The petitioner has also not made any representation to the rail way department to consider that it will not be desirable to direct the petitioner to continue in suspension for any longer period in the facts and circumstances of the case. Accordingly the question of violation of any principle of natural justice by keeping the petitioner in indefinite. suspension without any just cause does not arise. Hence, no action is called for in the instant writ petition and the same is accordingly dismissed. By way of abundant caution it is made clear that this Court has not considered the propriety of the arrest of the petitioner made by the Police and the petitioner will be entitled to take appropriate action in law in the said criminal case and also in the matter of continence of the deemed order of suspension passed against the petitioner by the railway department and the concerned authorities will be free to decide the of the petitioner in accordance with law.

There will be no order as to costs.