
(1999) 09 OHC CK 0009
In the Orissa High Court
Case No : OJC. No. 5722 of 1999

Madhu alias Madhusudan Raj	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (1999) 09 OHC CK 0009

Hon'ble Judges : B.P. Das, J;A. Pasayat, J

Bench : Division Bench

Advocate : M.R. Panda and D.K. Biswal, for the Appellant;

Final Decision : Dismissed

Judgement

A. Pasayat, C.J.—In this habeas corpus application, Petitioner Madhu alias Madhusudan Raj (hereinafter referred to as the "detenu") calls in question legality of the order of his detention passed by the District Magistrate, Cuttack in exercise of powers conferred by Sub-section (2) of Section 3 of the National Security Act, 1980 (in short, the "Act"). By order dated 18.9.1998 the said order of detention was passed on the ground that the detenu was acting prejudicial to the maintenance of public order. It was indicated in the grounds of detention that the detenu was creating havoc in different areas by indulging in anti-social activities and thereby adversely affecting the public peace and order. The very appearance of the detenu in the locality made the people panic stricken and he did not allow the peace loving citizens to carry out their normal avocations. Despite the fact that he was arrested and forwarded to custody in several cases: his anti-social activities did not decrease. He came out on bail and committed further offences more vigorously, and he was involved in many criminal cases. Various acts of violence were described. Last such incident was on 18.8.1998, when it was found that the detenu was terrorising the local shop-keepers for collection of "Dada Chanda" in front of New Kalika Hotel situated on the road connecting Dolamundai and Badambadi. The detenu was standing on the middle

of the road with a Bhujali in his hand and was shouting in filthy language to kill anyone who would come near him to protest against his action. The innocent local shopkeeper of that area were so much terrified that they closed down their shops in order to save life and property from destruction by the detenu. Everyone around became panic stricken by such action of the detenu and they started running helter skelter in order to save their lives. A scene of isolation prevailed and the normal traffic on the road was paralysed and public order was grossly disturbed. The people of the locality were so afraid of the anti-social activities of the detenu that none dared to resist him.

The Police Officer who was in charge of patrol duty in that area with the help of other available police personnel daringly faced the detenu showing tremendous courage on his part and captured the detenu. It was indicated that the detenu was in the habit of committing crimes deliberately in presence of large number of 140 people and in public places with a view to creating fear psychosis. The detenu had made representations to the Central and State Governments which were turned down.

2. In support of the application, learned Counsel for the detenu submitted that the activities described can at the best said to be law and order situation and not public order situation.

The learned Counsel for State submitted that the grounds of detention reveal the magnitude of terrorisation made by the detenu and as to how the community was affected by his anti-social activities.

3. It is the impact upon the society and not few individuals which is distinctive feature between "law and order" and "public order". While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community, taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of degree and extent of reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effects is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on its facts.

4. The distinction between the areas of "law and order" and "public order" is one

of degree and extent of the each of the act tin question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct/from a wide spectrum of public, it could raise the problem of law and order only. The position has been illuminatingly stated in *Durgesh Chandra Saha Vs. Bimal Chandra Saha and others*, ; *Arun Chose v. State of West Bengal* 1970 SCC (Cri.) 67; *Ram Ranjan Chatterjee v. State of West Bengal* 1975 SCC (Cri.) 400 and *Ashok Kumar v. Delhi Administration* 1982 SCC (Cri.) 451. The above legal ratio is based on the legal ratio held in *Arun Ghosh's* case (supra) and other authorities referred to above. A close perusal of the same would clearly indicate that it is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order always and distinguishes it from the law and order. If the degree or the gravity of the crime or the incident is such that it would reach the society affecting the very tempo of life of the community or a segment of it, would be breach of public order; if not then only breach of law and order. To identify the act, i.e., whether an act amounts to a breach of public order or law and order, it has to be seen whether the propensity and potentiality of the Act would affect or reach the even tempo of life of a segment of the community or not. If the propensity or potentiality remains within a few individuals and does not reach even a segment of the community there is no difficulty at all to term such an act as a breach of law and order; but if the propensity and potentiality of one act would affect the tempo of life of a segment of the community, one can unhesitatingly say that it affects the public order and comes within the teeth of public order as per the ratio of the Apex Court held in the aforesaid cases. Therefore, each case is to be determined on the facts and circumstances of every given case and every case has to be decided on its own merits and facts and circumstances.

5. The activities highlighted in the grounds of detention clearly reflect the impact of the activities on the society. Therefore, there is no substance in the plea of the Petitioner that the detention is unwarranted, as the effect of activities of the Petitioner cannot be called as "law and order" situation but "public order".

That being the position, we find no merit in the writ application, which is accordingly dismissed.

B.P. Das, J.

6. I agree.