

(1951) 07 CAL CK 0020
In the Calcutta High Court
Case No : Criminal Misc. Case No. 253 of 1951

Raman Lal Rathi

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 30-07-1951

Acts Referred:

Constitution of India, 1950 — Article 20(2), 22, 226
Criminal Procedure Code, 1898 (CrPC) — Section 403, 491
Preventive Detention (Amendment) Act, 1951 — Section 10, 11, 3, 9
Preventive Detention Act, 1950 — Section 3, 7

Citation : AIR 1952 Cal 26 : 56 CWN 42 : (1953) 1 ILR (Cal) 89

Hon'ble Judges : P.B. Mukharji, J;Guha, J

Bench : Division Bench

Advocate : S.S. Mukherjee and Pritibhusan Barman, for the Appellant; N.K. Sen, for the Respondent

Judgement

P.B. Mukharji, J.—This Rule was obtained against the Commissioner of Police, Calcutta, the Superintendent of Presidency Jail and the State of West Bengal.

2. The applicant before us has been detained under the Preventive Detention Act, 1950, (Act IV of 1950) as amended by Act IV of 1951. The order of detention was made on the 10th July 1951 and served on the applicant on the next day, the 11th July, 1951. The grounds of detention were made out on the 12th July 1951 and communicated to the applicant on the 16th July 1951.

3. The order of detention has been challenged on three grounds. It is said first that the grounds communicated to the applicant are not sufficient, exact and precise and they are too vague. The second ground of attack upon the order of detention is that it is illegal because its purpose is to nullify an order of acquittal and two orders of discharge, passed by Courts of law in favour of the applicant in some criminal cases brought against him. Thirdly, the order of detention has been assailed on the ground that it is mala fide.

4. Another point of considerable importance has been urged on behalf of the

State. It has been argued that the structure of the Preventive Detention Act especially after its amendment is such that this application is premature and cannot be maintained before the Advisory Board examines the case of detention of the person concerned. In this case no representation has yet been made by the detenu and no reference has yet been made to the Advisory Board and the time for the same has not yet expired.

5. In order to decide the contention that the grounds supplied in this case are too vague and not sufficient, exact or precise, the grounds themselves should be examined. The grounds in this case are:

"1. That you, with the object of securing Indian Mill-made textile goods which are in short supply and smuggling the same out of Calcutta for extra profits, have been systematically engaging yourself in smuggling Mill made cotton goods out of Calcutta;

2. That on the 28th November, 1947, you smuggled 10 bales of new Textile goods out of Calcutta and these bales were intercepted and seized along with the truck carrying the same at Bongoan on the Pakistan border and that you produced a forged movement permit and were sent up in Bongoan P. S. Case No. 15 D/- 30-11-1947 and were convicted and sentenced to 2 years R. I. and to pay a fine of Rs. 1,000/- in default 6 months more;

3. That although you were finally acquitted of the charge against you in the aforementioned case by the Hon'ble High Court you have in the meantime secured a textile licence in the name of the firm Phusraj Maheswari at Burrabazar of which you are the sole proprietor and financing the same. Phusraj Maheswari was your partner in the name only.

4. That you have been disposing of cloth in an improper way through the agency of Baldeodas Kuthari, a relation and. realised higher prices, and that on 22-1-1951, your relation Baldeodas Kuthari when arrested on Harrison Road, for hawking cloth without a licence it was found that he was living in your Gaddi at 14, Pageyapatty and the sarees found in his possession were of the same mill and bearing the same number which were imported by you and apparently sold out.

5. That on 25-1-1951 you were arrested for your complicity in the above-mentioned case at Burrabazar in which the said Baldeodas was sent up for trial but you were discharged for want of sufficient evidence.

6. That you were again arrested in connection with N. D. P. P. Case No. 109 Dt. 25-5-51 (since transferred to Sec. D. Case No. 560 Dt. 26-5-51) for your complicity in the removal of textile goods which were seized during transit:

7. "That your local reputation is bad so much so that you are known as a smuggler and profiteer coupled with a tendency to thwart people whenever opposed in such nefarious activities."

6. These are the grounds on which the order of detention was made in the present case.

7. Sub-clause (5) of Article 22 of the Constitution enjoins upon the detaining authority the duty to communicate to the detenu as soon as may be the grounds on which the order has been made and the detaining authority should afford him the earliest opportunity of making a representation against the order. In that context the supply of the grounds and the opportunity of making a representation are to be read together so that if the grounds are too vague that they make representation ineffective or impossible in any real sense of the term, then such vagueness will be defeating the constitutional right of representation. When that is so, then the order of detention can be set aside.

8. The object of this constitutional safeguard appears to be this that the grounds must be such as to enable the detenu to make what has been called an "effective representation". Vagueness of grounds therefore is not an abstract notion but is always to be examined by the test whether the grounds permit the detenu to make an effective representation or not. That is the view which to us appears to be the basis of the decision of a Bench of this Court presided over by the learned Chief Justice in the case of "Safatulla Khan v. Chief Secretary to the Govt. of West Bengal" 55 Cal W N 27. To my mind it necessarily follows that each case will have to be decided on its own merits and with special reference to individual facts. The confusion that is to be avoided on this branch of constitutional law is that while the sufficiency of the grounds in the sense whether the same could give satisfaction to the Government is not a matter for examination by the Courts, the sufficiency of the grounds in the sense of enabling a detenu to make an effective representation can be examined by the Courts. This distinction was clearly brought out by the learned Chief Justice of India delivering the leading judgment in the Supreme Court in Case No. 24 of 1950, "Tarapada De v. State of West Bengal".

9. Coming to the grounds in which the order of detention is passed in the present case it does not appear to me that any of the grounds except ground No. 7 can be described as too vague for an effective representation. The first six grounds do contain in my view sufficient materials stated with precision, exactitude and even particularity. The seventh ground however states that the applicant's local reputation is so bad that he is known as a smuggler and profiteer. That is a sweeping allegation which is not possible for any one to meet. It must, however, be observed that in considering the grounds they must be taken and read as a whole and in the context in which they are stated. While a ground taken in isolation might appear to be too vague for representation may nevertheless in the context of other grounds stated, give sufficient materials for effective representation. I am unable to assent to the proposition that when one out of many grounds is too vague the order of detention itself is bad even though such order is based not only on that ground alone but also on other grounds which do not suffer from vagueness. Article 22(5) of the Constitution states that the

representation is to be against the "order of detention". The order of detention here is made on many grounds. The order of detention is in my view the result of the cumulative effect of the different grounds stated and the vagueness of one ground cannot therefore be said to vitiate the order of detention. Support of this view which I am taking can be found also in the judgment of the learned Chief Justice in "Criminal Misc. Cases Nos. 6 to 8 of 1951" (Annada Sankar Bhattacharjee v. The Chief Secretary to the Government of West Bengal).

10. I therefore hold that the grounds in this case are not bad for vagueness and they are not such that the detenu's constitutional right of representation against the order of detention is in any way prejudiced or defeated.

11. I will next proceed to consider whether the order of detention under the Preventive Detention Act can be made against a person on the very grounds relating to incidents which were the subject of prosecution in the ordinary Courts of law under the laws of the land and where the Courts either have acquitted or discharged that person. The argument is that by such order of detention the ordinary laws of the land are defeated and Courts' orders are circumvented. So far as the circumvention of an order of the Court is concerned this ground is also put forward as mala fide which I propose to examine later.

12. To my mind the basis of the Preventive Detention Act of 1950 as amended by Act IV of 1951 is that the Central Government or the State Government is given the power to make orders of detention against certain persons provided such Government is satisfied on the grounds mentioned in Section 3 of the Act. The satisfaction is of the appropriate Government and not of the Courts. Such satisfaction as laid down in Section 3 of the Preventive Detention Act is not limited to be based on the existing laws of the land. Fundamentally therefore the operation of the existing laws of the land or the determination of the offences by Courts under such laws and the result arising therefrom whether of acquittal or discharge or even of conviction (for instance only a sentence of fine and not of imprisonment) cannot be allowed to operate as a restriction on the powers of the Government to detain u/s 3 of the Preventive Detention Act. To allow it to do so would in my view be to completely eliminate the very justification of the Preventive Detention Act. For if the ordinary laws of the land and their application to any particular person by the Courts were enough to meet the situation which the Preventive Detention Act was intended to meet, then it is difficult to imagine either the purpose or the object of such an Act.

13. In a criminal case under the ordinary criminal or quasi-criminal law of the country an accused may be acquitted or discharged on various grounds not the least important of which are the theory of reasonable doubt, the possibility of alternative conclusions of guilt or innocence, the satisfaction of the jury in a jury trial, the judge's impression or satisfaction about the credibility of a particular witness, the artificial rules of jurisdiction of particular Courts and the technical rules of the Indian Evidence Act. By result of operation of these factors the Court may make an order of discharge or acquittal but nevertheless it is competent and

proper in my opinion for the Government to act u/s 3 of the Preventive Detention Act if it is satisfied that such acquitted or discharged person should be detained in order to prevent him from acting in a prejudicial manner as laid down under that section.

14. What does the Courts' order of acquittal or discharge mean? It means that the jury were not satisfied or that the Judge was not satisfied. In my judgment the satisfaction of the Judge or the jury cannot be a substitute for the satisfaction of the Government as stated u/s 3 of the Preventive Detention Act. The Government may, notwithstanding such satisfaction of the Judge or the jury, be legally satisfied under the statute that it is "necessary" in the particular case decided by the Judge or the jury to detain the particular person with a view to preventing him from acting in any manner prejudicial to the interests or causes mentioned in Section 3 of the Statute, as for instance the interests of national security or maintenance of essential supplies or services in the country.

15. The answer to this branch of the argument will be manifest when it is realised that the central purpose of the Preventive Detention Act is preventive detention justified by national security and maintenance of public order and essential supplies and services and its purpose is not criminal conviction justified by legal evidence and by existing laws relating to crimes and offences. The consideration of the Court and the consideration of the Government are in this context disparate and do not belong to the same realms of scrutiny. In this view of the matter it is necessary to dispel the notions of the principles of *autre fois acquit* and the seductive cliché of arguments based upon double jeopardy under Article 20(2) of the Constitution which consciously or unconsciously influenced the submission made on behalf of the petitioner. The principle of *autre fois acquit* u/s 403, Criminal P. C. has, in my view no application because the satisfaction of the Government under the Preventive Detention Act is not a "trial". The constitutional protection against double jeopardy under Article 20(2) of the Constitution is also inapplicable because satisfaction under the Preventive Detention Act is not a "Prosecution". There is and can be no identity of offence or of prosecution between detention under the Preventive Detention Act and trial conviction by a Court of law.

16. I am therefore of the opinion that the order of detention under the Preventive Detention Act is not illegal merely because it nullifies a previous order of discharge or acquittal by a Court in a criminal or a quasi-criminal case.

17. The next argument is that the order of detention is *mala fide*. I am asked to make an inference of *mala fides* because it is said that the whole purpose of the order of detention is to nullify and circumvent the orders of the Court. It is said that as the State chose to prosecute the petitioner under the ordinary law, it has thereby precluded itself from taking recourse to the Preventive Detention Act. This argument requires careful examination because it raises two separate controversies one of law and the other of fact. On the question of fact were I convinced that the statute has been used for a collateral purpose and not for

consideration laid down in the statute, I would have had no hesitation in holding that the order of detention was illegal and releasing the petitioner. But I am not convinced. On the ground stated, I have no doubt in my mind that they come within both the letter and spirit of the purposes stated in Section 3 of the Preventive Detention Act. On the question of law I am of opinion for the reasons stated under the second branch of the argument that there can be no question of election of remedies by the Government. Analogies are always dangerous and nowhere more so than in constitutional or statutory controversies.

18. "Where is the election of remedy? In the criminal case the State can only prosecute. Conviction in such a case is not in the hand of the State. If conviction is the remedy for the activities of the accused the State by launching prosecution against the accused cannot be said to elect that remedy. By initiating a prosecution against a citizen, the Government does no more than express its view that it thinks the citizen has committed an offence punishable under the Penal Code. It is however for the Courts ultimately to say whether there should or can be a conviction or not. The Government may be right or wrong in its view. If the prosecution fails, the Court acquits the accused. It only means at best that the offence has not been proved according to the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act. If prosecution itself under the ordinary criminal laws of the country is regarded as the remedy although I fail to see how mere prosecution can be taken as the remedy for the activities of the accused, then again it means no more than this that at best the State was wrong in initiating the prosecution. But the Government is no more infallible than any other human agency or institution. I see no reason why such acquittal must necessarily mean that the acquitted person nevertheless cannot be acting in a manner prejudicial to national security or maintenance of essential supplies and services as mentioned in Section 3 of the Preventive Detention Act and why if the Government is satisfied on that account it cannot in such a case come to the conclusion that it is necessary to detain him. A person, can be detained under the Preventive Detention Act even if he has not committed an offence proved under the Indian Penal Code or under any other Act. To my mind it is entirely erroneous to think that the ordinary criminal laws of the country and the Preventive Detention Act are substitutes for each other. If anything they are complementary. The civil doctrines! of *res judicata* and election of remedies have with one exception no place in criminal jurisprudence. That exception is in the principle of *autre fois acquit* u/s 403, Criminal P. C. and in the principle of constitutional protection against double jeopardy under Article 20(2) of the Constitution. As I have already said neither of these principles in my view can be attracted to a case of detention under the Preventive Detention Act.

19. Then the same argument was put in another way. Failure of prosecution under the ordinary criminal law is by itself said to make the subsequent application of the Preventive Detention Act *mala fide*. Detention under the Preventive Detention Act is described as a ruse of the Government when it failed to secure a conviction under the ordinary criminal law. I am unable to assent to

such an argument. It appears to me that this argument when closely examined really goes against the contention of the applicant. If the Government chose to bring the offender to book under the ordinary criminal laws of the country and the Government was told by the Courts that he was outside the reach of such laws, then I see not mala fides but bona fides of the Government when it applies the Preventive Detention Act only as a means of last resort where the ordinary laws of the land had failed. It only shows that the Government acted with good faith and was reluctant to apply its summary powers of preventive detention in the first instance.

20. It needs saying to-day with very great emphasis that there is or can be no inherent conflict between the Courts and the Government of the land because in the final analysis they are both dedicated to the common cause of justice, order and security in society. It is a wrong approach which detects in every governmental action an attitude to defeat the Courts. No less wrong is the attitude which is prone to discern in the decisions and observations of Courts criticising unconstitutional laws and defective administration, the act and conduct, of judicial supererogation. It is equally a wrong outlook to expect the Courts to strike down legislation and executive action on the merest assertion of mala fides against the Government. The rhetoric of mala fides is being converted into an almost legal mannerism and it is fast becoming a lamentable tendency to detect the ghost of mala fides in every governmental action. The responsibility of maintaining national security and the maintenance of essential supplies and services in the country are the primary responsibilities of the Government and the executive and I cannot justify the growing attitude to look to the Courts to discharge that responsibility. That is a fundamental misconception. The Court has no power to initiate measures for dealing with the problems of society and has merely the power of nullifying the measures shaped by others. Because of that the Courts would be circumspect and slow to exercise the powers of judicial exegesis of constitutional Government. As the Courts are the final guardians of people's liberty under the aegis of the law, so the Government has equally the responsibility of being the guardians of national security, public order and maintenance of essential supplies and services of the land. So long as these respective responsibilities are discharged and their respective functions mutually respected there is no scope for conflict between the judiciary and the Government.

21. For the reasons already stated I am of the opinion that a prior unsuccessful application of the ordinary criminal laws of the country to a citizen does not make a subsequent application of the Preventive Detention Act to that citizen ipso facto mala fide.

22. It has been contended on behalf of the State that the application is premature and cannot be maintained before the Advisory Board had considered the applicant's case. This argument is based on the provisions and procedure laid down in the Preventive Detention Act for reference to the Advisory Board. In

this case the time for reference to the Advisory Board and for the Board's report has not yet expired. The actual provision regarding the time of reference is contained in Section 9 of the Act which provides that in every case where a detention has been made the appropriate Government shall within six weeks from the date of the detention order place before an Advisory Board the grounds on which the order has been made and the representation, if any, made by the person affected by the order. Then u/s 10 of the Act the Advisory Board after considering the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from the person concerned and if in any particular case it considers it essential after hearing him. in person submit its report to the appropriate Government within ten weeks from the date of the order of detention. The substance of the argument comes to this that before this total period of ten weeks expires no application to the Court can be made. Sections 8, 9, 10 and 11 of the Act are invoked for that purpose. They are said to indicate that the special statute has laid down a special procedure through which the petitioner who has been detained has first to seek his remedy before he can come to the Court. It is a question of great practical significance and of universal importance.

23. To assent to this argument is to say that I will have to suspend the constitution for ten weeks even though the personal liberty of the citizen has been lost. The application is made u/s 491 of the Criminal P. C. as well as under Article 226 of the Constitution and which we have been directed by the learned Chief Justice to dispose of. Neither Section 491.. Criminal P. C. nor Article 226 of the Constitution puts such a limitation on the right of a citizen to approach this Court with a petition for habeas corpus or in the nature of habeas corpus.. If the Criminal Procedure Code and the Constitution put no restriction, this Court is not going to read and imply such a restriction. On the merits of the question I do not see any reason why an applicant should be prevented from approaching this Court before the matter is placed before the Advisory Board. It may be that the applicant challenges the order of detention on constitutional grounds such as violation of the provisions of Article 22(5) of the Constitution or of the statutory requirements of the Preventive Detention Act itself. Now, that is-a matter which the Court can and should dispose of. I do not see why an applicant in that case should be required to wait for ten weeks and suffer detention for that period when he can come to the Court straight; and ask to be released forthwith on the ground that the order of detention is unconstitutional and in violation, of the safeguards provided in the Constitution or even of the statutory requirements under the Preventive Detention Act.

24. It is then submitted on behalf of the State that the scheme of the Preventive Detention Act is such that any adjudication by this Court before the report of the Advisory Board is made may prejudice the applicant's cause before such Advisory Board. This Court however makes it clear on this point before disposing of this argument that its present decision is expressly made by us without prejudice-to the applicant's cause before the Advisory Board. The matter

however having been raised requires to be disposed of on legal grounds specially because the applicant has insisted on our decision on his present application. The disposal of a petition u/s 491, Criminal P. C. or even Article 226 of the Constitution can-not in my view at all affect the applicant's cause before the Advisory Board. I will state my reasons briefly.

25. Under the Constitution the Court in. dealing with a case of Preventive Detention Act is limited only to the consideration whether the grounds have been promptly supplied and; whether the grounds were sufficient to enable the detenu to make an effective representation. Once the Court is satisfied on these points its function ends and it is bound to dismiss the petition. The dismissal of the petition by the Court has nothing to do with the much broader question of fact and merit with which the Advisory Board has to deal. The opinion that the Advisory Board has to give, u/s 10 of the Preventive Detention Act is "whether or not there is sufficient cause for the detention of the person concerned." Now, the Court is not concerned here with this question at all and does not go into the sufficiency of the "cause for detention." The Court can only go into the question of the sufficiency of the "grounds"" in the sense whether they enable the detenu to make an effective representation but the Court in this application cannot deal with the sufficiency of the "cause for detention of the person concerned." Therefore the Courts finding or order on this application from the very nature of jurisdiction it exercises in this respect can neither compete nor conflict with the order and finding of the Advisory Board. So with the proceedings u/s 491, Criminal P. C. As long as a valid detention order is produced in answer to the petition and as long as that detention order is valid when measured by the sections of the Preventive Detention Act and by Article 22 of the Constitution as interpreted by the Supreme Court the petition must be dismissed. The Courts and the Advisory Boards function in different arenas. The Courts cannot but the Advisory Board can and should, decide whether on the merits of the "cause for detention" the detenu should be continued in detention or released. For example in this case the Court cannot whether under Article 226 or Section 491, Criminal C. decide if the applicant is in fact working in a manner prejudicial to the maintenance of essential supplies by smuggling cloth to Pakistan. But that is precisely the primary subject of enquiry by the Advisory Board. Therefore (he respective jurisdictions, powers and functions of the Courts and the Advisory Board as I conceive them under the Constitution and the Preventive Detention Act are cardinally different and do not overlap or oust each other.

26. For these reasons I am of the opinion that an order for dismissal of the petition either u/s 491, Criminal P. C. or under Article 226 of the Constitution does not at all affect the consideration of the applicant's case before he Advisory Board under the Preventive Detention Act. Notwithstanding such order of dismissal by the Court it remains open to and is the duty of the Advisory Board to report that there is no sufficient cause for the detention of the person concerned that is the conclusion to which it arrives and such opinion of the Advisory Board shall be binding on the Government under the new amendment if

its opinion is for the release of the detenu. There is therefore no competition or conflict between the Advisory Board and the Courts under the scheme of the Constitution as well as under the Preventive Detention Act. The Courts' order of dismissal is not an adverse adjudication on the merits of the "cause for detention" in this context. The merits or demerits of the cause for detention are not within the purview of the Courts but of the Advisory Board.

27. I therefore hold that the petitioner has the legal and constitutional right to approach this Court before he has made any representation or before there is any reference to, the Advisory Board and before the time for such reference or report by the Board has expired.

28. I therefore dismiss the application and discharge the Rule.

Guha, J.

29. I agree.