

(1972) 05 CAL CK 0029
In the Calcutta High Court
Case No : Criminal Misc. No. 401 of 1972

Roshan Ali Mian

APPELLANT

Vs

District Magistrate, Cooch Behar

RESPONDENT

Date of Decision : 18-05-1972

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3(1), 3(2), 8(1)

Citation : (1973) 1 ILR (Cal) 691

Hon'ble Judges : N.C. Mukherji, J; Anil K. Sen, J

Bench : Division Bench

Advocate : S.N. Samajdar, for the Appellant; S.K. Palit and Uma Misra for State, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—In this Rule the detenu-Petitioner Roshan Ali Miyan is disputing the validity of his present detention under an order dated December 1, 1971, passed by the District Magistrate, Cooch- Behar, in exercise of his powers u/s 3(1) read with Section 3(2) of the Maintenance of Internal Security Act, 1971. The object of detention as recited in the order of detention is in the following terms:

Whereas I am satisfied with respect to the person known as Roshan Ali Miyan, son of late Kazibulla Miyan of Bara Khali-shamari, P.S. Mathabhanga, and of Changrakuthi Khalishamari, P.S. Sitalkuchi, Dist. Cooch Behar, that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary so to do....

2. Though the object recited in this order is maintenance of public order, the ground served on the detenu u/s 8(1) of the said Act on the very same day recited in the preamble as follows ;

You are being detained in pursuance of a detention order made in exercise of the power conferred by Sub-section (1) read with Sub-section (2) of Section 3 of the

Maintenance of Internal Security Act, 1971 (Act 26 of 1971), on the ground that you have been acting in a manner prejudicial to the security of the State as evidenced by the particulars given below....

The particulars so set out constitute a single ground which reads as follows:

(1) You visited Hatibandha, Dist. Rangpur, East Bengal, in the middle of August 1971 and contacted Pakistan Army through one Pak Army agent and communicated defence position of India which was immediately followed by heavy shelling by Pak Army on village Cochhtala, P.S. Sitalkuchi, on 18-8-71 resulting in death of two Indian nationals and injuries to many.

3. Thus it is obvious that there is a patent discrepancy as to the object of detention between the order and the ground served on the detenu-Petitioner on the very same day. A point has been raised by Mr. Samajdar who is appearing on behalf of the Petitioner to the effect that on the patent discrepancy between the order and the ground as to the object of detention which led the detaining authority to exercise his powers under the Act, the detention cannot be held to be in accordance with law. According to Mr. Samajdar, it is not so because of two reasons. In the first place, the ground disclosed in the ground of detention being one relevant to the security of the State is irrelevant to the object specified in the order, namely, maintenance of public order. Secondly, it is suggested by Mr. Samajdar that such discrepancy clearly establishes the fact that the detaining authority was not applying his mind to the facts and circumstances in exercising his powers as exercised in the present case.

4. Mr. Palit, appearing for the State, cannot and is not disputing the existence of the discrepancy as pointed out by Mr. Samajdar. He, however, has put forward an ingenious contention to support the detention. He contends that the ground served on the detenu is obviously relevant to the security of the State and the particulars set out therein are also proximately related thereto. If that is so, he contends that when the concept of security of the State falls within the smallest concentric circle of the three concentric circles of law and order, public order and security of the State; an act to reach the smallest circle must necessarily transgress wider circles. Or, in other words, according to Mr. Palit, an act which infringes security of the State necessarily infringes public order and law and order though the converse may not be true. Relying on this principle Mr. Palit contends that, if the ground served is relevant to security of the State, it would necessarily be relevant to public order too and the recital of the object of detention in the order as maintenance of public order would neither be irrelevant nor illegal.

5. This contention of Mr. Palit deserves serious consideration. We had in this matter the kind assistance of Mr. S.K. Acharya who appeared as amicus curia to help this Court. Mr. Acharya has laid emphasis on the distinctive concepts of security of the State and public order both in the Statute now under consideration as also in the different provisions of the Constitution. Referring to

such distinction Mr. Acharya has contended that when power is exercised with reference to either it is necessary that the authority exercising the power must satisfy the object clearly and unambiguously. Discrepancy of the nature as in the present case, according to him, would not only betray in application of mind but also render the ground irrelevant to the power exercised.

6. Giving anxious consideration to these contentions, we are of the view that Mr. Palit is right in his contention that whatever is relevant to the security of the State would necessarily be relevant to public order. The import of these two terms in preventive laws had been considered and laid down on many occasions by the Supreme Court in a number of cases. It was observed by Hidayatullah J. (as his Lordship then was) in the case of *Ram Manohar v. State of Bihar* AIR 1966 S.C. 140 -

...it will thus appear that just as "public order" in the rulings of this Court was said to comprehend disorders of less gravity than those affecting "security of State", law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

The same distinction was emphasised by the Supreme Court in the case of *Arun Ghosh Vs. State of West Bengal*, and in a different context in the case of *Madhu Limaye v. Sub divisional Magistrate, Monghyr* AIR 1971 S.C. 2480. In all these cases the Supreme Court pointed out, in order to infringe public order, the act must be of consequence graver than one infringing law and order. Similarly, in order to infringe security of the State the act must be of consequence graver than one infringing public order. Emphasising this distinction the Supreme Court held that an act relevant to or having lesser consequence cannot in law afford legal sanction for exercise of powers where such powers can be exercised only with reference to acts of graver consequences. But converse is the case here. Here the act is relevant and has its effect on the security of the State though in exercising the power the object invoked is public order which also comes within the sanction of the Statute equally with the security of the State... I agree with Mr. Palit that to hold that the detaining authority cannot exercise the powers of preventive detention when authorised to do so by the Statute with reference to the public order in respect of a person acting prejudicially to the security of the State would be frustrating the very object of the law. It would be pertinent to hold in such a case that a man infringing the security of the State is also infringing the public order and, as such, can be put to preventive detention in exercise of such powers where the Statute authorises such preventive detention even on the ground of public order. Therefore, we are unable to accept the contention of Mr. Samajdar that the detention must fail on the ground that the order is based on ground irrelevant. We hold that an act prejudicial to the

security of the State would by itself be prejudicial to public order though converse may not be true and such an act would be relevant to the exercise of power on an object as in the present case. Reference may be made to a Bench decision of Hyderabad High Court in the case of S. Ramanadhan v. The State of Hyderabad AIR 1952 Hyd. 186.

7. But, although we are accepting this contention of Mr. Palit that the detention in the present case is not based on irrelevant ground or irrelevant consideration, yet we must hold that there is much substance in the other aspect of Mr. Samajdar's contention as also the submission of Mr. Acharya on this point. Law authorises the detaining authority to exercise powers both with reference to public order and security of the State. However over-lapping there is a distinction between the two concepts, where the detaining authority exercises powers, it would be necessary that he should always apply his mind to the facts and circumstances and come to a definite conclusion that the detenu had been acting in a manner prejudicial either to public order or to the security of the State or to both. Having come to such conclusion he must record appropriate satisfaction and then proceed to pass order for detention. Law does not permit him to act mechanically or without due application of his mind. Where a citizen loses his liberty on simple executive action like this, the executive action should never be taken in a manner as may raise a reasonable doubt that the detaining authority had not been acting with due application of his mind. If such doubt arises, it must always be resolved in a manner favourable to the person detained. This aspect was explained by the Supreme Court in the case of Ram Manohar Lohia (Supra) where it was laid down that where a man can be deprived of his liberty under a rule by the simple process of the making of a certain order, he can only be so deprived if the order is in terms of the rule. Strict compliance with the letter of the rule is the essence of the matter.

8. In the present case, the detaining authority executed two documents on the same date, if not at the same time, one is the order of detention while the other is the ground of detention. The two documents indicate that the object of detention and the ground of action are differently stated though there is no reason why there should be such discrepancy. There exists no reason on the records nor has any reason been attributed by the detaining authority to explain this discrepancy. It is no answer to suggest that though differently stated they overlapped each other. It can reasonably be doubted that such a discrepancy betrays in application of mind by the detaining authority. It can legitimately be contended, as contended by Mr. Samajdar, that such discrepancy is a pointer of the fact that the detaining authority! himself had never applied his mind to the facts and circumstances of the case, because if the mind had been so applied, there would have been no such discrepancy.

We are inclined to accept the contention that such reasonable doubt does really arise out of the discrepancy pointed out by Mr. Samajdar. Resolving this doubt in favour of the detenu we must hold that here is a case where the detaining

authority did not apply his mind when the detenu was put to detention by the order passed by him. On this ground, therefore, the detention must be held to be not in accordance with law.

9. This application, accordingly, succeeds and the Rule is made absolute. We direct that the detenu be set at liberty forthwith.

N.C. Mukherji, J.

10. I agree.