
(1955) 01 CAL CK 0023

In the Calcutta High Court

Case No : Criminal Miscellaneous Case No. 209 of 1954

Shanichari Debi

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 03-01-1955

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 21, 22
Criminal Procedure Code, 1898 (CrPC) — Section 107, 491
Preventive Detention Act, 1950 — Section 3, 3(1)

Citation : (1955) 1 CALLT 115 : 59 CWN 545 : (1956) 2 ILR (Cal) 610

Hon'ble Judges : Sen, J; Guha Ray, J

Bench : Division Bench

Advocate : Ajit Kumar Dutt, Profulla Kumar Roy, Jr. and Jaimangal Prosad Srivastava, for the Appellant; A.K. Sen and Soudhindra Mohan Basu, for the Respondent

Judgement

Sen, J.—This is an application in the nature of Habeas Corpus u/s 491 of the Code of Criminal Procedure for an order for the release of a detenu Raghunath Prosad who has been ordered to be detained u/s 3(a)(ii) of the Preventive Detention Act, 1950. Raghunath was arrested on October 22, 1954, and an order of the District Magistrate, 24-Parganas, dated September 14, was served on him specifying the grounds of his detention. There were three grounds mentioned in the order of the District Magistrate. The first was that at a meeting of the workers of the Titagarh Paper Mill held on September 11, 1954, at Matkal Maidan, Raghunath had in the course of a speech delivered by him at the meeting abused the Management in filthy and threatening language, and had threatened that whoever would resume work without the consent of the Union leaders would be beaten severely and killed; and that at the termination of the meeting a procession of about 500 persons was led by Raghunath along with others shouting objectionable slogans. The second ground was that in the evening of September 13, 1954, Raghunath along with others threatened Babban Singh, an employee of the Titagarh Paper Mill, saying that the workers who

would betray the cause of the strikers by resuming work and assisting the Management would meet with dire consequences. The third ground was that in the morning of September 14, 1954, Raghunath along with others threatened Jamadar Singh, an employee of the Titagarh Paper Mill, with assault and serious consequences. Raghunath Prosad showed cause in due course before the Advisory Board; and after obtaining opinion of the Advisory Board, Government made an order for detention of Raghunath for the period of one year. Accordingly, this application in the nature of Habeas Corpus has been filed by the Petitioner who is the wife of Raghunath Prosad.

2. The first ground urged by Mr. Ajit K. Dutt in support of the petition is that the ground No. 1 mentioned in the order of the District Magistrate, dated September 14, 1954, is vague, indefinite and sweeping in nature and, therefore, it could not be a valid ground on which the District Magistrate could be satisfied that Raghunath was likely to act in a manner prejudicial to the maintenance of public order and that it was necessary, therefore, to keep him in "preventive detention. Mr. Dutt concedes that the first portion of the first ground, namely, that at a meeting held on September 11, 1954, between 17-30 hours and 18-30 hours at Matkal Maidan, Eaghunath in the course of his speech abused the Management in filthy language and threatened anybody who would resume work without the consent of the Union leaders, was precise enough; but he contended that the second part of the first ground was vague and that it was not clear whether Raghunath himself had shouted objectionable slogans, e.g., "Whoever would go to work in the mill would be killed," let us go to the mill and kill the Sahibs (European Officers)" and so on. Mr. Dutt had urged that the words used in these orders mean that the processionists shouted the slogans and Eaghunath was merely in the procession and that being so, that would be no ground for being satisfied that Raghunath was acting in a manner prejudicial to the maintenance of public order. But having read the paragraph in question we are not satisfied that there is any vagueness in the sentence. The sentence actually reads as follows:

At the termination of the meeting a procession of about 500 persons was lop by you along with others shouting slogans.....

3. It is clear that the clause "shouting slogans such as, etc.," qualifies "you along with others" and it is, therefore, clear that the District Magistrate was definitely satisfied that the Petitioner's husband was also shouting objectionable slogans and was one of the persons leading the processionists, and there being no vagueness in the ground, the first point urged must fail.

4. The second point urged by Mr. Dutt is that the second and third grounds specified in the order of the District Magistrate, dated September 14, 1954, relate to intimidation of private individuals and do not relate to any action which might be prejudicial to the maintenance of public order and that, therefore, they could not be considered as ground which might satisfy the District Magistrate that Raghunath Prosad, the Petitioner's husband, was likely to act in a manner

prejudicial to the maintenance of public order. The grounds mentioned, however, do not merely show that two individuals Babban Singh and Jamadar Singh were privately intimidated. On the other hand, the language alleged to Raghunath Prosad would show that Raghunath was threatening the people in general and that Babban Singh and Jamadar Singh happened to be individuals to whom such general threats were also uttered. Raghunath is alleged to have said that the workers who would betray the cause of the strikers by resuming work and assisting the Management to run the factory with the workers recruited from outside, would meet with dire consequences, and Raghunath also threatened to set fire to the houses of such betrayers and kill them and their family members, and to create such a situation that the rest of the workers would be afraid of going against the Union in future. If such threats are uttered to a few individual loyal workers of the mill, it is clear that all the loyal workers would be terrorised and that there would be likelihood of disturbance of the public order. Accordingly, these two cases cannot be regarded as cases of intimidation of private individuals only with no flavour of disturbing the public order in them. We are satisfied that in the circumstances in which the threats were uttered to Babban Singh and Jamadar Singh there was sufficient reason to think that Raghunath was likely to act in a manner prejudicial to the maintenance of public order.

5. The third point urged by Mr. Dutt is that the words "maintenance of public order" in Section 3(a)(ii) of the Preventive Detention Act of 1950 must be understood to mean prevention of such public disorder as would threaten security of the State or would undermine the security of the State. In this connection Mr. Dutt has referred to the ruling in the case of *Romesh Thapper v. The State of Madras* (1). That case was concerned with an order of the Government of Madras passed u/s 9(1-A) of the Madras Maintenance of Public Order Act, 1949, imposing a ban upon the entry and circulation in Madras of a certain weekly journal. The Supreme Court held that nothing less than serious and aggravated forms of public disorder endangering the foundations of the State or threatening its overthrow would justify curtailment of the rights to freedom of speech and expression conferred by Article 19(1)(a) of the Constitution, and that Clause (2) of Article 19 having allowed imposition of restrictions on the freedom of speech and expression only in cases where danger to public security was involved, the impugned Act, which cannot be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the State could not be held to be constitutional. We must point out that since this decision in *Romesh Thappar's* case, Clause (2) of Article 19 of the Constitution has been amended and the freedom of speech and expression conferred by Article 19(1)(a) of the Constitution may now be restricted even for the maintenance of public order. Moreover, the case before the Supreme Court (*Romesh Thappar Vs. The State of Madras*, , was quite different. The Supreme Court in that case had to consider whether an order of the Madras Government contravened the rights granted by Article 19 of the Constitution. As regards an order under the Preventive Detention Act, no question can be raised whether it

contravenes the fundamental rights granted by Article 19 of the Constitution. This has been definitely laid down in the case of A.K. Gopalan Vs. The State of Madras, , where it was held that Article 19 of the Constitution had no application to a legislation dealing with preventive detention. Articles 21 and 22 form a complete Code in this respect.

6. Apart from the Supreme Court ruling Mr. Dutt has also tried to support his argument on this point by invoking the principle of ejus-dem-generis. He has urged that the purpose of the Preventive Detention Act is to prevent action which might endanger the safety of the newly formed Republic of India and that all the terms used in Section 3 of the Act must be understood in that context. He has referred to certain observations made by Patanjali Sastri, J. as he then was in Gopalan's case, which are as follows:

The outstanding fact to be borne in mind in this connection is that preventive detention has been given a constitutional status. This sinister-looking feature, so strangely out of place in a democratic constitution which invests personal liberty with the sacrosanctity of a fundamental right and so incompatible with the promises of its preamble is doubtless designed to prevent an abuse of freedom by anti-social and subversive elements which might imperil the national welfare of the Infant Republic. It is in this spirit that Clauses (3) to (7) of Article 22 should, in my opinion, be construed and harmonised as far as possible with Article 21 so as not to diminish unnecessarily the protection afforded for the legitimate exercise of personal liberty.

7. It may be conceded that the Preventive Detention Act was enacted mainly for the reasons referred to by Patanjali Sastri, J. in the above quotation. Clauses of the Act, however, have to be interpreted as they stand, and we fail to see how there is any scope of the application of ejus-dem-generis principle in the interpretation of the words "maintenance of public order" in Section 3(1)(ii) of the Preventive Detention Act. The principle of ejus-dem-generis would apply if some particular acts were mentioned and the enumeration of the particular acts was followed by some such clause as "and other subversive acts". In Section 3 of the Preventive Detention Act there is no such enumeration of specific acts followed by such a general clause which might justify an application of the ejus-dem-generis principle. The prejudicial acts for which an order for preventive detention might be made are all specifically enumerated in Section 3. No doubt actions prejudicial to the security of India or to the security of the State find prominent mention in Section 3, but there is no reason to read those words into other kinds of acts specified therein, like acts prejudicial to the maintenance of public order. If "acts prejudicial to the maintenance of public order" were to mean "acts tending to create such public disorder as "would threaten the security of the State" the acts would come under the enumeration "acts likely to "prejudice the security of the State" and there would be no need to mention acts likely to prejudice the maintenance of public order. We must, therefore, hold that the "acts prejudicial to the maintenance of public order" cannot be read to mean

acts tending to create such disorder as would be prejudicial to the security of the State. Accordingly, we must reject this contention urged by Mr. Dutt.

8. The final point urged by Mr. Dutt is that there is pending against Raghunath a proceeding u/s 107 of the Code of Criminal Procedure which was started against him on April 15, 1954, and that in the circumstances the detention order under the Preventive Detention Act must be considered to be void and unlawful. He also urged that it must be considered mala fide, although this ground was not specifically taken in the petition. In the course of his arguments he also referred to another proceeding against Raghunath under the West Bengal Public Security Act in respect of certain incidents which are alleged to have occurred between February and July, 1954. The proceeding u/s 107 of the Code of Criminal Procedure was obviously for incidents which were alleged to have occurred before April 15, 1954. Mr. Dutt has urged that in view of the fact that there were two other proceedings under the ordinary law against Raghunath, the proceeding under the Preventive Detention Act must be considered to be mala fide and unlawful. There is, however, nothing to prevent the authorities from proceeding under the Preventive Detention Act even when there are specific proceedings under the ordinary criminal law against a particular person. In this case, moreover, the specific proceedings under the ordinary law and under the West Bengal Security Act were for incidents which were different from the incidents for which the proceeding under the Preventive Detention Act was started against Raghunath Prosad. As already mentioned, no allegation of mala fide was made in the petition. Mr. Dutt has urged that an inference of mala fide may be made as a matter of law from the fact that there are several proceedings pending against Raghunath. But merely because there are other proceedings under the ordinary criminal law pending against Raghunath, it cannot be said that the proceeding under the Preventive Detention Act is mala fide. In fact one of the decisions on which Mr. Dutt relied for showing that an inference of mala fide can be made in such circumstances, supports the opposite view. This is the case of Ratanlal Gupta and Another Vs. The District Magistrate of Ganjam and Others, . In that case, proceedings u/s 3 of the Preventive Detention Act were in respect of the same incidents for which proceedings under the ordinary criminal law had been started. Even in that case, however, a Division Bench of the Orissa High Court refused to interfere, and Jagamadhadas, J. as he then was, made the following remarks:

I would therefore hesitate to accept as correct the broad proposition sought to be laid down in those cases that the power of detention cannot be exercised as against a person who is being prosecuted on the same facts which constitute the grounds of the detention and that an order of detention in such cases without making a choice between the two courses is ipso facto and without more, an abuse of the power of detention.

9. In the present case, as we have already pointed out, the order of detention has been passed on facts which are different from the facts which are the subject-

matter of the proceedings u/s 107 of the Code of Criminal Procedure and under the West Bengal Security Act. Moreover, no additional facts has been alleged from which mala fide may be inferred. In the circumstances we see no reason whatever for inferring that the order under the Preventing Detention Act against the Petitioner's husband was mala fide or unlawful.

10. We see no reason to interfere with the order passed against Raghunath Prosad u/s 3 of the Preventive Detention Act. This application therefore fails and the Rule is discharged.

Guha Ray, J.

11. I agree.