
(1974) 08 PAT CK 0010
In the Patna High Court

Shri Karpuri Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-08-1974

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3

Citation : (1975) CriLJ 570

Hon'ble Judges : Muneshwari Sahay, J;A.N. Mukharji, J

Bench : Division Bench

Judgement

1. After hearing the arguments advanced on behalf of both the parties on 14-8-74, we were satisfied that this writ petition should be allowed. We recorded an order in the order sheet immediately on 14-6-74, set aside the order of detention passed against the petitioner and directed the petitioner to be released forthwith. The reasoned Judgment is now given by this Court.

2. This petition for a suit in the nature of Habeas Corpus has been filed by the petitioner against his order of detention dated 15-7-74. passed by the District Magistrate of Santhal Parganas in exercise of the powers conferred upon him u/s 3 of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as "the Act") with a view to prevent the petitioner from acting in any manner prejudicial to the security of the State and maintenance of public order. The petitioner was arrest- ed on 15-7-74 and was detained at Bhagalpur Central Jail, The grounds of detention were served on the petitioner on 18-7-74. On 26-7-74 the Governor of Bihar approved the detention order dated 15-7-74 passed on the petitioner. Thereafter, it appears that the District Magistrate by his order dated 28-7-74 corrected the ground of detention by deleting the expression "maintenance of supply and services essential to the community" which was incorporated in the original ground of detention through inadvertence and corrected copy of the ground was served on the petitioner through the Superintendent, Central Jail, Bhagalpur on the 30th July, 1974, but the petitioner refused to accept the same.

3. Mr. Shyama Prasad Mukherjee, learned counsel appearing on behalf of the petitioner has urged that the District Magistrate has no jurisdiction to correct the ground of detention after the order of detention had been approved by the Governor of Bihar. There seems to be sufficient force in this contention of the learned counsel. Once having passed an order of detention, basing the order on some grounds, the District Magistrate is not authorised to correct the ground of detention after approval of the order of detention by the Governor of Bihar, The Act under which the District Magistrate orders detention of a person does not confer any such power on him to make necessary changes in the grounds of detention after the same has been approved by the Governor of Bihar. In the eye of law, therefore, it should be deemed that the expression "maintenance of supply and services essential to the community" remained included in the grounds of detention served on the petitioner, it appears from the ground of detention which was served on the petitioner that he was detained as he would have indulged in activities prejudicial to the (i) maintenance of public order and security of the State and (ii) maintenance of supplies and services essential to the community, if he was allowed to remain at large. It is urged on behalf of the petitioner that the order of detention passed against the petitioner shows an element of casualness and absence of due application of mind and that it was passed in a mechanical way. There seems to be substance in this contention urged on behalf of the petitioner, because the District Magistrate himself admits in paragraph 17 of the counter-affidavit that the expression "maintenance of supply and services- essential to the community" was inserted in the grounds of detention inadvertently. The grounds of detention served on the petitioner do not indicate that any of these grounds was germane to the maintenance of supply and services essential to the community. It thus follows that the petitioner is also being detained for preventing him from acting in any manner pre-judicial to the maintenance of supply and services essential to the community, although in the order of detention no such ground is mentioned for detention of the petitioner. It is, therefore, clear that an extraneous ground has been included in the grounds of detention and the inclusion of such ground will have the effect of vitiating the order of detention.

4. Another point which has been strenuously urged on behalf of the petitioner is that the grounds of detention served on the petitioner are not relevant to the maintenance of public order or the security of the State, which are some of the objects for which a person can be detained under the Act, In the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, , their Lordships of the Supreme Court have indicated the difference in the meaning of the expression "public order" and "law and order". Their Lordships, have observed?

The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.

5. The aforesaid observations of their Lordships apply with same force in the case of a person who is being detained under the Maintenance of Internal Security Act.

6. In these backgrounds, we have to see whether the grounds of detention served on the petitioner have any nexus with the maintenance of public order or whether they are relevant to the maintenance of law and order only. Learned counsel appearing on behalf of the petitioner contends that the conclusion which the (District Magistrate has drawn from the grounds of detention served on the petitioner is that the inflammatory speeches of the petitioner have created a very explosive situation in the district from the law and order point of view. The District Magistrate has further observed in the grounds of detention that the petitioner has done anti-social activities with full knowledge of the likely consequences on , the law and order position of the district. So it can be said that the detention of the petitioner was thought necessary by the District Magistrate in order to prevent the petitioner from acting in any way prejudicial to the maintenance of law and order and not public order. In view of the decision in Ram Manohar Lohia's case reported above, it has also to be held in the instant case that the provisions of the Act have not been strictly followed and that the order of detention cannot be supported in this case because the District Magistrate has no power u/s 3 of the Act to detain a person in order to prevent him from acting in any manner prejudicial to the maintenance of law and order. The order of detention passed in this case is, therefore, not in terms of the provisions of the Act and so it cannot be sustained.

7. In view of what has been observed above, it is, in our opinion, not necessary to discuss other points raised by learned counsel appearing on behalf of the petitioner, because the petitioner succeeds on the two points discussed above.

8. In the result, the application is allowed and we have already directed that the order of detention would be set aside and the petitioner would be released forthwith unless required in any other case.