

In Re: Shaik Kalesha

In Re: Shaik Kalesha

SooperKanoon Citation : sooperkanoon.com/426025

Court : Andhra Pradesh

Decided On : Mar-09-1956

Reported in : 1957CriLJ826

Judge : Krishna Rao, J.

Appellant : In Re: Shaik Kalesha

Judgement :

ORDER

Krishna Rao, J.

1. This is a petition to revise the judgment of the Sessions Judge, Nellore, modifying on appeal an order made by the District Magistrate. Nellore, under Sections 118 and 123, Cr. P. C. and directing that the petitioner should furnish security for good behaviour for a period of six months and should undergo rigorous imprisonment for failure to give the security.

2. The District Magistrate took security proceedings against the petitioner on information laid before him by the Station House Officer, Kodavalur. that the petitioner was a desperate and dangerous person coming within the purview of Section 110(f), Cr. P, G. The information set out 9 incidents of allegedly desperate and dangerous acts committed by the petitioner during the period from 12-3-1955 to 19-4-1955. The learned District Magistrate accepted the evidence relating to all the 9 incidents and held that it was necessary to bind over the petitioner for good

behaviour. He passed an order requiring the petitioner to execute a bond for Rs. 200 with two sureties each for a like Bum to be of good behaviour for a term of one year and to undergo rigorous imprisonment in default. On appeal, the learned Sessions Judge, after considering the entire evidence, found that incidents Nos. 2, 3, 5, 6 and 9 were not proved beyond reasonable doubt, but that incidents Nos. 1, 3, 7 and 8 were so proved. He held that these four incidents were sufficient to bring the petitioner within the ambit of Section 110(f), Cr. P. C. but that the period for which security was demanded by the District Magistrate from the petitioner was unduly long and ought to be reduced to six months. He accordingly reduced the period to six months and confirmed the order of the District Magistrate in other respects.

3. Sri O. Chinnapa Reddi, the learned Counsel for the petitioner, has assailed the judgment of the learned Sessions Judge both with regard to his conclusions on the evidence and by raising a question of law. On the merits, he contends that the evidence against the petitioner has been falsely got up by the Reddi landowners of the village as the petitioner was supporting the cause of the labourers against them, and that even if the evidence is accepted as proving incidents Nos. 1, 4, 7 and K, it is insufficient to establish that he is so desperate or dangerous as to necessitate demanding security for his good behaviour. The point of law taken by him is that Sections 110 and 112 in combination with Section 123, Cr. P. C. constitute a law providing for preventive detention and are void under Article 13(1) as they are inconsistent with Article 22(4) of the Constitution.

4. The attack on the credibility of the evidence is based on the fact that the complaints relating to the incidents were belated having been statedly made to P. W. 18 the Sub-Inspector, only between 23-4-1955 and 20-4-1955, and were even then not entered by P. W. 13 in the book prescribed by Sections 154 and 155, Cr. P. C. P. W. 18's evidence is that all the incidents were reported to him after he visited Yellayapalem, the village of the witnesses on 20-4-1955, for the investigation of a certain case of arson and while he was subsequently stationed in the village to prevent breach of the peace. Confining ourselves to the four incidents found by the learned Sessions Judge to have been proved, P. Ws. 1 and 2 gave evidence regarding incident No. 1. They said that on 14-3-1955, the

petitioner came into P W. 1's garden accompanied by 7 or 8 other persons threatened to break P. W. 1's neck for having worked for the Congress Party at the recent elections, and committed mischief by forcibly uprooting the chilly plants in about 15 cents of the garden. P. W. 1 gave the report, Exhibit P-1 complaining about the incident, only on 23-4-1955 to P. W. 18, the Sub-Inspector. Similarly incident No. 4 spoken to by P. Ws. 6 and 7 occurred on 25-3-1955, but P. W. 8 gave the report Exhibit P-4 complaining about the incident only on 26-4-1955 to P. W. 18. The evidence of P. Ws. 6 and 7 is that the petitioner accompanied by 7 other persons went to P. W. 6's field and committed mischief by scattering a heap of straw which lay there, as a reprisal for P. W. 6 having canvassed for the Congress Party at the elections. Incident No. 7 spoken to by P. Ws. 12 and 13 consisted of the petitioner having threatened to attack P. W. 12 with a pen-knife at his field on 15-4-1955 for having canvassed for the Congress Party. P. W. 12 gave the report Exhibit E-7 complaining about it, only on 25-4-1955, to P. W. 18. Incident No. 8 spoken to by P Ws. 14 and 15 was the petitioner's having abused P. W. 14 on 17-4-1955 and thrown a stone at him for having done Congress propaganda. P. W. 14 complained about it only by his report Exhibit P-8 on 25-4-1955 to P. W. 18. In regard to all these incidents, the witness explained that they did not take the initiative and complain earlier, as they were afraid of the petitioner. Both the Courts below have accepted the explanation as being natural and probable. Sri O. Chinnapa Reddi points out that P.W. 18 did not enter in the station diary the information given to him either under Section 154, Cr. P. O. or under Section 155, Cr. P. C. and that there is nothing to lend assurance to P. W. 18's story that the reports Exhibits P-1, P-4, P-7 and P-8 were given between 23-4-1955 and 26-4-1955. He argues that P. W. 18 might have collected these reports and entered the different dates in them, after he was induced by the Reddi landowners to launch security proceedings against the petitioner. The explanation offered on behalf of the prosecution is that P. W. 18 did not make the entries prescribed by Sections 154 and 155, Cr. P. C. because he proposed to use the information as material only for security proceedings and not for filing charge-sheets. No doubt, the explanation is unsatisfactory, and the course adopted by P, W. 18 was irregular. Section 154, Cr. P. C. governs a Station House Officer's procedure in respect of

every information relating to the commission of a cognizable offence' and Section 155, Cr. P. O. governs the procedure 'when information is given to him of the commission of a non-cognizable offence.

5. In the case of cognizable offences which he considers futile to investigate, as for instance on account of the delay in giving the information, he could refuse investigation under Section 157(b), Cr. P. C. But the Code does not authorise him to refrain from entering the information in the station diary, on the ground that he intends to launch only security proceedings. P. W. 18's omission to enter the information in the station diary gives rise to an adverse inference that he did not really receive Exhibits P-1, P-4, P-7 and P-8 on the dates which he has entered in them. But it is clear that he must have received information of the incidents prior to 1-5-1955, the date on which he laid the information before the Magistrate. It was on this basis that the learned Sessions Judge appraised the oral evidence of P. Ws, 1, 2, 6, 7 and 12 to 15 and accepted it. The theory that P. W. 18 was induced by the Reddi landowners to collect false evidence for the purpose of the security proceedings is based only on suggestions made in cross-examination, which were repudiated by P. W. 18. In these circumstances there are no valid grounds to hold that that Courts below have erred in their appreciation Of the evidence.

6. The learned Counsel has relied on Rathinam Pillai. In re AIR 1938 Mad 35(A) and Emperor v. Vijaidatta Jha AIR 1948 Nag 28(B), for his argument that even if incidents Nos. 1, 4, 7 and 8 are found to be proved, they would not justify demanding security from the petitioner as a person coming within the ambit of Section 110(f). Cr. P. C. But both the cases cited are distinguishable on the facts. In AIR 1938 Mad 35(A), Newsam, J., found that:

The allegations against the counter-petitioners amount to this : that they are tyrannical and highhanded, self-appointed village dictators; that they fine poor people who disobey them, force people in a better position to put themselves in their power by executing pronotes in their favour, punish labouring men for alleged disrespect to them (such as not dismounting from a bicycle when passing their house) and even gratuitously interfere in marriages between third parties, As no complaints were ever made, by any of the people thus bullied, it is safe to

conclude either that they were not themselves wholly blameless and had to acknowledge that rough justice had been done to them or that they admire bullies and like being bullied.

7. It was in this context of want of proof of the commission of any crime, that the learned Judge observed that Section 110(f), Cr. P. C was obviously not intended for use against merely indisciplined people such as local bosses and faction leaders. Similarly, in AIR 1948 Nag 28(B), the finding was that there was no incriminating evidence against Vijaidatta, against whom security proceedings were taken. Niyogi, C. J., said:

On the evidence there is no case of extortion and there is overwhelming evidence of persons including responsible officers of Government to disprove the allegation that Vijayadutta is a man of dangerous and desperate character.

8. The learned Judge's observations that Section 110(f), Cr. P. C, is not intended to provide an indirect means Of securing conviction and that a man who is by temperament quarrelsome and who occasionally gives threats is not necessarily a desperate or dangerous character have to be understood in the context of the evidence in that case. In the present case, however, the position is different. The petitioner is proved to have high-handedly committed acts of mischief or assault on no less than four occasions between 14-3-1955 and 17-4-1955 and terrorised his victims, for no other reason except that they actively belonged to an opposite political party. The normal fear of prosecution and punishment for offences committed has no deterrent effect on the petitioner because he is able to instil such apprehension in his victims as to prevent them from making complaints. The Courts below are therefore justified in finding that he is so desperate or dangerous as to render his being at large without security hazardous to the community and in demanding security from him. On the merits, I see no grounds for interference in revision.

9. There remains to be considered the question of law raised by the learned Counsel that Section 123. Cr. P. C. provides for preventive detention in a manner inconsistent with Article 22(4) of the Constitution, It may be mentioned that Sections 106 - 118, Cr. P. C. only prescribes the procedure and also provide for

demanding security from the person against whom the proceedings are taken. None of these sections are concerned with detention, except Section 117(3), Cr. P. C, which authorises detention as an immediate measure pending inquiry and with which We are not here concerned. It is only Section 123, Cr. P. O. which provides for detention in prison for non-compliance with an order demanding security. Therefore, the objection that the provision for detention is contrary to Article 22(4) can arise in the present case only in respect of Section 123, Cr. P, C.

10. Clauses (1) and (2) of Article 22 confer four fundamental rights in connection with the arrest and detention of any person. They are (1) that the person arrested shall not be detained in custody without being informed, as soon as may be, of the grounds for such arrest; (2) that he shall not be denied the right to consult, and to be defended by a legal practitioner of his choice; (3) that he shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate; and (4) that he shall not be detained in custody beyond the said period of 24 hours without the authority of a Magistrate. Clause (3) lays down that Clauses (1) and (2) shall not apply to an enemy alien or to any person arrested or detained under any law providing for preventive detention. Clauses (4) to (7) prescribe the basic requirements in respect of any law providing for preventive detention. Under Clause (4)(a) such a law cannot authorise the detention of a person for a longer period than three months, unless an Advisory Board has reported that there is, in its opinion sufficient cause for such detention. The effect of Clause (4)(b) is that the maximum period of three months referred to in Clause (4)(a) may be exceeded by the provisions of any law made by Parliament under Clause (7). Clause (5) lays down that when a person is preventively detained, the grounds for such detention shall be communicated to him. and he shall be afforded the earliest opportunity for making a representation against the detention. Under Clause (6), facts which the detaining authority consider to be against the public interest to disclose need not be communicated to the person detained.

11. The learned Counsel's contention is that the detention authorised by Section 123, Cr, P. C. is preventive detention and that as such detention may extend upto a term of three years and as no Advisory Board mentioned in Clause (4)(a) of

Article 22 is provided for, the provisions of Section 123, Cr. P. C. are inconsistent with clause 4(a) of Article 22. On the question whether the detention authorised by Section 123, Cr. P. C. is preventive detention, the learned Public Prosecutor has argued that it is not so, because the detention is ordered to enforce the Court's earlier order demanding security and upon non-compliance with that order. I see no force in this argument. The basis for the earlier order demanding security and for the order under Section 123, Cr. P. O. awarding imprisonment for non-compliance with the same is that the person proceeded against is likely to commit offences or a breach of the peace unless he furnishes security. It is a precautionary and not a punitive measure. In *Gopal an v. State of Madras* : 1950 CriLJ1383 Mukherjee, J., said in connection with the term 'preventive detention' in the Constitution:

The word 'preventive' is used in contra-distinction to the word 'punitive'. To quote the words of Lord Finlay in *Rex v. Halliday* 1917 AC 260 at p. 269(D), it is not a punitive but a precautionary measure.

12. The fact that an order demanding security precedes the order of detention under Section 123, Cr. P. C. would make no difference to the character Of the detention being precautionary. It is clear, therefore, that the detention ordered, under Section 123, Cr. P. C. has to be classed as preventive detention.

13. The further question which arises for consideration is whether the preventive detention is that contemplated in Clause (4) of Article 22. The meaning of the words 'arrest and detention' as used in Clauses (1) and (2) was considered by the Supreme Court in *State of Punjab v. Ajaib Singh* : 1953 CriLJ180 and it was held that the intention of these clauses was to give protection against arrest by executive or other non-judicial authority. Das, J., (as he then was) who delivered the judgment of the Supreme Court said:

The language of Article 22(1) and (2) indicates that, the fundamental right conferred by it gives protection against such arrests as are affected otherwise than under a warrant issued by a Court on the allegation or accusation that the arrested person has. or is, suspected to have, committed, or is about or likely to commit an act of a criminal or quasi-criminal nature or some activity prejudicial to the public or

the State interest. In other words, there is indication in the language of Article 22(1) and (2) that it was designed to give protection against the act of the executive or other non-judicial authority.

14. It is reasonable to interpret the word 'detention' in connection with the phrase 'preventive detention' used in Clauses (3) and (4) also in the same sense, viz., that the intention is to give protection against detention of a preventive character by an act of the executive and not by an act of Court. Under Clause (6) the grounds of detention need not be disclosed to the detenu if it is considered against the public interest to do so. This also clearly indicates that the detention contemplated is by an act of the executive, because when the detention is ordered by a Court, the grounds thereof have invariably to be disclosed earlier to the person proceeded against by the law of procedure prescribed for Courts. The proper rule of construction in such cases has been explained by Das, J. (as he then was) in : 1953 CriLJ180 in the following terms:

If the language of an Article of the Constitution is plain and unambiguous and admits of only one meaning then the duty of the Court is to adopt that meaning irrespective of the inconvenience that such a construction may produce. If, however, two constructions are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory.

15. Applying these principles, there can be no 'doubt that the detention contemplated by Clause (4) of Article 22 is detention ordered by the executive authority and not that ordered by a Judicial tribunal after the full trial. It follows that the preventive detention ordered by a Court under Section 123 Cr. P. C. does not come within the ambit of Article 22(4). This view is supported by the authority of a Division Bench of the Allahabad High Court in *Jit Bahadur Singh v. State* : AIR1953 All753 .

16. The learned Counsel has argued against the above construction of Article 22(4) on the ground that it deprives the person ordered to be detained under Section 123, Cr. P. C. of the benefit of the opinion of an Advisory Board mentioned

in Article 22(4). I see no substance in this contention. The Advisory Board Prescribed by Article 22(4) is to consist of persons who are or have been, or are qualified to be appointed as Judges of a High Court. When a detention is ordered by a Court under Section 123, Cr. P. C. an appeal to the High Court or the Court of Session is provided for by Section 406, Cr. P., C. and in the latter alternative, a revision would lie to the High Court. In other words, the legality and propriety of the order can be taken before sitting Judges of the High Court for adjudication, This is obviously a more substantial benefit than the opinion of an Advisory Board under Article 22(4), because that Board may consist only of persons qualified to be appointed as Judges of a High Court and the opinion may be formed by a mere consideration of the record without hearing the detenu. It cannot therefore be reasonably said that by construing preventive detention in Article 22(4) as being limited to such detention by the executive, a benefit accruing under Article 22(4) is denied to persons awarded preventive detention by Courts.

17. For these reasons, I am of opinion that the detention ordered under Section 123, Cr. P, C. does not come within the ambit of preventive detention mentioned in Article 22 of the Constitution.

18. This Criminal Revision Case is accordingly dismissed.