

Parmanand Gour Vs. Rex

Parmanand Gour Vs. Rex

SooperKanoon Citation : sooperkanoon.com/454139

Court : Allahabad

Decided On : Aug-04-1948

Reported in : 1949CriLJ138

Judge : Bind Basni Prasad, J.

Appellant : Parmanand Gour

Respondent : Rex

Judgement :

Bind Basni Prasad, J.

1. This is an application under Section 491, Criminal P. C, by one Permanand Gour for release. He is at present under detention in the Naini Central Jail under the provisions of the U. P. Maintenance of Public Order (Temporary) Act, 1917 (hereinafter referred to as 'the Act'). The facts are as follows: On 11th June 1948, the District Magistrate of Allahabad, acting under Sub-section (2) of Section 3 of the Act, passed an order of detention against the petitioner in following terms:

Whereas I.R.P. Bhargava, I. C. S., District Magistrate of Allahabad am, on the basis of reports received, satisfied that the person known as Shri Parmanand b/o Shree Parmanand Gaur B/o 445, Badsbahi Mandi P. Si Kotwati, Allahabad has acted in a manner prejudicial to the public safety and maintenance of public order and whereas it is necessary in the interest of maintenance of public order to

prevent the said Shri Parmanand from acting in such a manner by detaining him, I, in exercise of the powers conferred by Sub-Section (2) of Section 3, United Provinces Maintenance of Public Order (Temporary) Act, 1947 (Act IV of 1947) hereby direct that the said Shri Parmanand shall be detained in the custody of the Superintendent Central Jail, Allahabad, for a period of 15 days from the date of this order.

The same day, viz., on 13th June 1948, the District Magistrate issued a notice to the detenu through the Superintendent Central Jail, Naini, communicating to him 'under Section 5' the grounds of detention in the following terms:

Under Section 5, United Provinces Maintenance of Public Order (Act IV of 1947), I give below a short note giving the grounds on which the order of detention for a period of 15 days has been passed against you.

That you made preparation to organize a demonstration with a view to commit breach of peace. That you made preparation to cut telegraph, telephone and electric wires between 10th and 15th June, 1948, with a view to stop all communications. That your remaining at large is dangerous to public peace and safety.

2. I further inform you that you have got a right to represent your case to me.

This notice was served on him on 13th June 1948.

2. Eight days later, viz., on 19th June 1948, the Provincial Government, acting under Section 3 (1) (a) of the Act, passed an order of detention against the petitioner in the following terms:

Whereas the Governor of the United Provinces is satisfied with respect to the person known as Parmanand Gour, resident of Badsbahi Mandi, Allahabad that with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of public order it is necessary so to order;

Now, therefore, in exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 3, United Provinces Maintenance of Public Order (Temporary) Act,

1947 (U. P. Act No. IV of 1947) as amended, the Governor of the United Provinces is hereby pleased to direct that the said Parmanand Gour shall be detained in the custody of the Superintendent of any Central Prison in the District in the United Provinces for a period of six months from the date of the issue of this order.

The same day, viz., on 19th June 1948, the Provincial Government issued a notice under Section 5 of the Act communicating the - grounds of detention to the petitioner, It runs as follows:

Government of the United provinces,

Confidential Department

No. E-1030 (iii) XXV/CX.

Dated Lucknow, 19th June 1948

Notice under Section 5, United Provinces Maintenance of Public Order (Temporary) Act, 1947 (U, P, Act, No. IV of 1947).

In pursuance of the provisions of Section 5, United Provinces Maintenance of Public Order (Temporary) Act, 1947, you Parmanand Gour E/o Badshahi Mandi, Allahabad are hereby informed that the grounds of your detention are that you have been instigating the workers of the Electric Supply Co., to go on illegal strike. You were also organizing to cut the telegraph, telephone and electric wires in different parts of the city between June 10 and 15 to stop all communications. You have persisted in such activities and your actions are prejudicial to the public safety and maintenance of public order.

You are further informed that you have a right to make a representation in writing against the order under which you are detained. If you wish to make such a representation you should address it to Government through the Superintendent of your jail as soon as possible.

This notice was served on him on 22nd June 1948. The order and notice both issued by the Provincial Government are signed by Shri Govind Narain, Home Secretary to Government, United Provinces. Learned Deputy Government

Advocate has placed before me the duplicate copies of the aforesaid two orders and the two notices.

3. Nine points have been urged on behalf of the petitioner to question the validity of his detention and I deal with them seriatim.

4. Firstly, it is contended that there were really no grounds either for the District Magistrate or for the Provincial Government to make an order under Section 8 of the Act. The Courts can go into the question of the existence or sufficiency of the grounds of satisfaction of the appropriate authority for the issue of an order under B. 3 only when the authority has acted maliciously, capriciously or 'wantonly.' Malice may be in fact or in law. If the appropriate authority has not acted maliciously, capriciously or wantonly, it is not open to the Court, having regard to the language of Section 3, to go into the question of the existence or adequacy of the grounds which were regarded by it as adequate. Now, in the present case there is no allegation that there was only malice in fact on the part of the District Magistrate or the Provincial Government. Inter alia the ground, upon which the petitioner has been detained, is that he was organizing to cut the telegraph, telephone and electric wires. The petitioner in his affidavit denies this. We are not sitting as a Court of appeal to determine whether or not there was sufficient evidence for the District Magistrate or the Provincial Government to come to the above conclusion. On the fact, as stated in the notice under Section 5, dated 19th, June 1948, issued by the Provincial Government, it cannot be said that the Provincial Government acted maliciously, capriciously or wantonly.

5. The second ground taken is that after the Provincial Government delegated its powers to the District Magistrate under Section 11 of the Act it was not competent for the Provincial Government to make any order under clause (a) of Sub-section (I) of Section 3 of the Act. Section 11 under as follows:

The Provincial Government may, by order, direct that any power or duty, which is conferred or imposed on the Provincial Government under this Act shall in such circumstances and under such conditions, if any, as may be specified in the order, be exercised or discharged by any officer or authority, not being an officer or authority subordinate to the Central Government.

The notification, which the Provincial Government issued on August 1, 1947, under Section 11, is in the following terms:

In exercise of the powers conferred by Section 11, United Provinces Maintenance of Public Order (Temporary) Act, 1947 (IV of 1947) the Governor is hereby pleased to direct that the powers exercisable by him under Clause (a) of Sub-section (1) of Section 3 of the said Act shall also- be exercisable by all District Magistrates within their respective districts. An order made under the said clause of the said sub-section by the District Magistrate shall, unless revoked earlier, remain in force for a period not exceeding six months from the date of such order, as prescribed in Section 4 of the said Act.

The word 'also' in the above notification is important. It shows that the Provincial Government did not divest itself of the authority to make an order under Section 3 (I) (a) when delegating its powers to the District Magistrates. I hold that even after the notification of 1st August 1947, the Provincial Government can make an order under Section 3 (I) (a). The powers of the Provincial Government and the District Magistrates to make an order under Section 3 (I) (a) have become concurrent after this notification.

6. The third ground taken in that when the District Magistrate had passed an order under Sub-section (2) of Section 3 it was not competent for the Provincial Government to make an order under Section 3 (I) (a) for the further detention of the petitioner. It is argued that the Act does not contemplate the order of detention against the person who is already under detention. It is pointed out that the Provincial Government passed the order of detention at a time when the petitioner was already under detention under the order of the District Magistrate. According to Section 3, the Provincial Government may pass an order of detention against 'any person.' The word 'any' is important and it connotes the idea that the order of detention may . be passed against a person wherever he may be, whether in jail or outside, subject of course only to one condition, namely, that he should be within the territorial jurisdiction of the authority making the order. The scheme of the Act is to confer powers upon the District Magistrate to act in times of emergencies and to leave the question of the final orders of detention upon the Provincial

Government or its delegate under Section 11 of the Act. It is for this-reason that District Magistrates have by sub-3. (2) of B. 3 been given power to detain a person only for a period not exceeding fifteen days, whereas an order made by the Provincial Government can remain in force for a period of six months. The Provincial Government acts on receipt of information from the district authorities. There is bound to be an interval of time-between the apprehended act of the detenu and the communication to the detenu of the action taken by the Provincial Government. To avoid complications arising out of this inevitable delay, the Act has authorised the District Magistrates to detain a person for a period not exceeding fifteen days and to leave the question of has further detention upon the Provincial Government or its delegate. I am of opinion that there was no illegality in the Provincial Government passing an order of detention under Section 3 (l) (a) against the petitioner when he was already under detention by virtue of the order passed by the District Magistrate under Section 3 (2), on 11th June 1918.

7. Fourthly, it is argued that the order passed by the Provincial Government in the present case is really one extending the period of detention as ordered by the District Magistrate. In this connection reliance is placed upon *Zamir Qasim v. Bex* : AIR1948 All285 . It was held in that case that inasmuch as the Act makes no specific provision for extension, a fresh order detaining a person further without releasing him which amounts in reality to an extension of the period of detention is not contemplated by the Act and is, therefore, illegal. In the first place, since that ruling was given there has been an amendment of Section 4 of the Act. Proviso 2 added to Section 4 runs as follows:

Provided further that like period specified may be extended from time to time be as not to exceed six months.

As the law now stands, it is permissible to extend the period of detention subject only to one condition that the total period of detention shall not exceed six months.

8. Fifthly, it is contended that the petitioner was already under detention for eight days under the orders of the District Magistrate when the Provincial Government passed the order of detention for six months on 19th June 1948. The total period for which the petitioner will be under detention under the orders of the District

Magistrate and the Provincial Government will thus be six months eight days; whereas, according to s. of the Act, his period of detention cannot be more than six months. On this ground the validity of the order passed by the Provincial Government is challenged. The substantive portion of Section 4 runs as follows:

As order made under Section 3 by the Provincial Government shall unless revoked earlier remain in force for a period not exceeding six months as may be specified in the order or, if no period is specified, for six months from the date thereof.

Under Section 8 (l) (a), the Provincial Government acts, but under Section 3 (2), the District Magistrate acts, The period of six months prescribed by s. i is applicable only to the orders passed by the Provincial Government. It is clear from it that the Provincial Government can order the detention of any person for a period not exceeding six months ' from the date of such order.' The underlined words (here italicised) are important and clearly indicate that the period of six months begins to run from the date of the order by the Provincial Government and not from the date of detention of the person under the orders' of the District Magistrate acting under Sub-section (2) of Section 8. In this connection it has also been argued that as the District Magistrate has been conferred the powers of the Provincial Government under Section 11, his order passed on 11th June is tantamount to that of the Provincial Government. I do not agree with this. The District Magistrate acts under the Act in two capacities. He acts in his own right under subs. (2) of Section 3. He acts as a delegate from the Provincial Government under Section 3 (l) (a). It is open to him to act under one or the other aforesaid provisions or under both. His capacities are different under the two provisions. In the present case he acted under Sub-section (2) of Section 3, The period of detention ordered by the District Magistrate cannot be added to that ordered by the Provincial Government for determining the period of six months. If he had acted under Section 3 (l) (a), then of course it would have been added.

9. Sixthly, it is urged that the order passed by the Provincial Government was a fresh order; hence there should be fresh grounds and not the same grounds upon which the District Magistrate passed the order. In the first place, a perusal of the

grounds given by the District Magistrate and the Provincial Government will show that they are not identical. Only in one particular the grounds are common, namely, preparation to cut telegraph, telephone and electric wires. The Provincial Government, however, gave an additional ground, namely, the instigation of the workers of the Electric Supply Company to go on illegal strikes. This does not appear in the grounds given by the District Magistrate. Thus, it cannot be said that the grounds upon which the Provincial Government directed the petitioner's detention, were identical with those which were given by the District Magistrate. In these circumstances of the present case, it is unnecessary for me to go into the question whether or not the Provincial Government can act under Section 3 (1) (a) upon the same grounds upon which the District Magistrate acted under Section 3 (2) of the Act. It may be noted, however, that if the order passed by a District Magistrate under Section 3 (2) be taken of a temporary and emergent nature and if the Provincial Government is the authority to take final decision in the matter, it follows that the Provincial Government can act upon the same material on the basis of which the District Magistrate passed the temporary order under Sub-section (2) of Section 3 of the Act.

10. Seventhly, it is urged that as the notice under Section 5 is vague and indefinite, there has been no compliance with the provisions of the law. So far as the notice, dated 11th June 1948, issued by the District Magistrate is concerned, its first and third grounds suffer from vagueness and indefiniteness. When he accused the petitioner of having made preparation to organise a demonstration with a view to commit breach of peace, he should have indicated in what manner the breach of peace was intended. Similarly, the accusation that 'your remaining at large is dangerous to public peace and safety' is vague. Definite acts or preparation for acts tending to disturb public peace should be indicated, so that the detenu may be in a position to make the representation as contemplated by s. 5 of the act. The second ground, however, in the District Magistrate's notice, namely, the preparation to cut telegraph, telephone, and electric wires is quite definite. It may be mentioned here that according to Section 5 it is not necessary for the District Magistrate acting under Sub-section (2) of Section 8, to communicate the grounds of detention to the detenu. It is only when an order under Section 3(i) (a) is passed that such grounds have to be communicated. The notice under Section

5 issued by the District Magistrate is redundant. The notice under Section 5 issued by the Provincial Government, however, does not suffer from such a vagueness or indefiniteness as to deprive the detenu of the opportunity to make a representation. The provincial Government has definitely informed the petitioner of the grounds upon which he has been detained, namely, (1) instigation of workers to go on illegal strikes, (2) organizing to cut telegraph, telephone and electric wires and (3) persistence in such activities.

11. learned Counsel for the petitioner has urged in this connection that to instigate workers to go on strike is not an act subversive of law and order. A perusal of the Industrial Disputes Act, 1947 (XIV [14] of 1947) and of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVII [28] of 1947) will show that strikes are of two kinds : 1) legal and (2) illegal. If a person instigates the workers to go on strike according to law, it is not an act subversive of law and order. But if he instigates the workers to go on illegal strikes, then it is an act subversive of law and order. The petitioner in this case has been charged for instigating the workers of the Electric Supply Company to go on 'illegal strikes.' It is easy to see that an action of this nature is bound to lead to serious danger to the health and safety of the people of the town. The water works would stop, the light would disappear and many industries fed by electricity would cease. The act of sabotage activities, namely, organizing to cut telegraph, telephone and electric wires is, however, one which under no circumstances is justifiable. I hold that the grounds given in the notice under Section 5 by the Provincial Government are not vague or indefinite. In this connection it has also been argued that as according to the notice under Section 5 given by the Provincial Government the petitioner was alleged to be organizing to cut telegraph, telephone and electric wires between June 10 and 15, there was no justification for the Government to issue an order of detention after June 15 on June 19. The dates June 10 to 15 were mentioned only to give the particulars of the grounds. The mention of those dates does not mean that there was no apprehension of such subversive activities from the petitioner after June 15.

12. Eighthly, it is argued that as the notice, dated 19th June 1948, under Section 5 purporting to be from the Provincial Government is not in proper form as required

by law, so there has been no compliance of Section 5 of the Act. It is contended that, having regard to the provisions of Section 59 Government of India Act, 1935, the notice should have been expressed to have been issued in the name of the Governor in the same manner as the order, dated 19th June 1948, under Section 3 (l) (a) was expressed. The notice has been reproduced above in extenso. It issues from the Government of the United Provinces and is signed by the Home Secretary. The last sentence in it informs the detenu of his right to make a represents. take to the Provincial Government. The Home Secretary does not say in it that the representative is to be made to him. The very officer, who had issued the order under Section 3 (l) (a) in the name of the Governor, has signed it. The Home Secretary is one of the officers, who by rules made under Section 69, Government of India Act, is authorised to authenticate order B and instruments made and executed in the name of the Governor. This notice under Section 5 must be read in conjunction with the order under Section 3(l)(a),, dated 19th June 1948. Reading the two together, there can be no doubt that it was on behalf of the Governor and in continuation of the order under section 3(1)(a) that the Home Secretary in compliance with Section 5 communicated the grounds of detention to the petitioner. The notice under Section 5 is expressed in passive voice. It would have been certainly better if the notice under section 5 issued by the Provincial Government had been expressed to have been issued in the name of the Governor. This omission, however, does not invalidate the notice. The broad fact remains that the object of Section 5 is to communicate grounds of detention to the detenu so as to enable him to make the-representation. The detenu has not been prejudiced from the fact that the notice under Section 5 was not expressed in the name of the Governor.

13. Ninethly, it is contended that the petitioner has received no reply from the Provincial Government to his representation. A perusal of Section 5 will show that it is not mandatory for the Provincial Government to send a reply to the detenu. It provides that if the Government is satisfied on considering the representative made that it is no longer necessary to maintain the order, the order made under Section 3 shall be cancelled. Hence non-receipt of reply by the petitioners does not invalidate his detention.

14. The result is that the petition fails and it is hereby rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com