

Rahmat Ali Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-13-2001

Reported in : 2001CriLJ2873

Judge : Markandey Katju and ;Onkareshwar Bhatt, JJ.

Acts : National Sectionrity Act

Appeal No. : Habeas Corpor Writ Petition No. 54175 of 2000

Appellant : Rahmat Ali

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : P.N. Tripathi, Adv.

Disposition : Petiton dismissed

Judgement :

Markandey Katju and Onkareshwar Bhatt, JJ.

1. Heard Shri P.N. Tripathi, learned counsel for the petitioner and the learned Government Counsel.

2. The petitioner is challenging the impugned detention order dated 16-8-2000. Annexure No. 1 to the writ petition passed under The National Sectionrity Act.

3. We have carefully perused the impugned detention order as well as the grounds of detention of the petitioner and the police report. It appears that the petitioner is a resident of a village in district Basti having majority of Muslims and only a few houses of Harijans. The allegation is that on 24-7-2000 at about 8 P.M. Kumari Kiran, who is a Harijan of that village, had taken a goat and went inside a room to tie the said goat. At that time the petitioner entered the room and bolted it from inside and after threatening Kumari Kiran raped her. It is alleged that Kumari Kiran was about 14 years of age. Some people tried to intervene when Kumari Kiran started screaming and these persons caught hold of the petitioner but then his relations came and freed him forcibly and threatened that if those Harijans do any thing they will be murdered.

4. As a result of the said incident communal tension was created and public order broke down and consequently one and a half Section of P.A.C. has to be posted in the village.

5. The learned counsel of the petitioner submits that this is a case of law and order and not public order. We do not agree with this submission. It is the duty of every person of the majority community in a locality to see to it that members of the minority community are not in any way harassed. In the present case the majority community in the said village is of Muslims and only a few families consisting of Harijans reside there. It was therefore the duty of the persons like the petitioner belonging to Muslim community to see to it that Harijans did not feel insecure and are not harassed in any way. Similarly if the majority community happened to be Hindus, it would be the duty of Hindus to see that members of the minority community are not harassed.

6. In this case, public order has certainly been disturbed as communal tension was created as a result of which P.A.C. had to be posted in the said village. Sectionlarism is a basic feature of the Constitution and if it is breached the act certainly affects public order.

7. The learned counsel for the petitioner has submitted that certain documents were not supplied to the petitioner. These documents which are said to have not been supplied only demonstrate that Kumari Kiran was not of 14 years but 17 years of age. In our opinion, this makes no difference. Surely, it cannot be said that a girl of 14 years cannot be raped but a girl of 17 years can be raped. This is a specious argument and cannot be a serious argument for consideration.

8. The learned counsel of the petitioner relied upon a decision of Supreme Court in *Mehrunissa v. State of Maharashtra* reported in AIR 1981 Supreme Court 1861 (1981 Cri. LJ 1233 (1)) in which it has been held that non-supply of material documents will vitiate the detention order. Since in our opinion the said documents were not material, hence, in this case it will make no difference at all. Hence, the above Supreme Court decision is distinguishable.

9. The learned Government counsel has relied upon Division Bench decision of this Court rendered in Habeas Corpus Writ Petition No. 15791 of 2000. *Guddu alias Shamesher v. State of U.P. Ors.*, decided on 19-12-2000. (2001 All LJ 453) We are in respectful agreement with the views taken in that decision.

10. In *Arun Ghosh v. State of West Bengal* A.I.R. 1970 Supreme Court 1228 (1970 Cri LJ 1136) it was held that if a girl is molested in a lonely place it will create panic and terror and would be a case of public order.

11. In *Bimla Rani v. Union of India* 1989 (3) JT 737, *Attorney General of India v. A.L. Prajeevan Das* 1994 SCC (Cr.) 1325 (AIR 1994 SCC 2179). *Ali Jan Miyari v. D.M.* AIR 1983 SC 1130 etc. (1983 Cri LJ 1649) It was held that an order of detention can be sustained even on the basis of a solitary act depending on the nature and gravity of the act if it prejudicially affects the even tempo of the life of the community. The same view has been taken by this Court in *Vijay Pal v. Union of India* 1996 A.C.C. 741.

12. In view of the above there is no merit in this petition and it is dismissed.