

Annua Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Aug-21-1987

Reported in : 1989CriLJ400

Judge : H.L. Agrawal and ;S.C. Mohapatra, JJ.

Appellant : Annua

Respondent : State of Orissa and ors.

Judgement :

H.L. Agrawal, J.

1. The petitioner by this writ of habeas corpus has challenged the order of his detention dt. 8-10-1986 passed by the District Magistrate, Cuttack (O.P. No. 3) (vide Annexure-1) under Section 3 of the National Security Act, 1980 (for short 'the Act') on various grounds. Pursuant to the impugned order, the petitioner was arrested on 10-11-1986 and lodged in the Cuttack Circle Jail. The order of detention was approved by the State Government on 20-10-1986 under Sub-section (4) of Section 3 of the Act. The grounds of the petitioner's detention along with the relative documents were served on the petitioner on 14-11-1986 vide Annexure-4.

2. The petitioner also filed a representation on 28-11-1986, but the State Government confirmed the order of detention under Section 12(1) of the Act vide

Annexure-5 dt. 29-12-1986 and directed that the petitioner would continue in detention for a period of 12 months. His representation was also rejected by order dt. 9-2-1987 (Annexure-6).

3. The petitioner has challenged the order of his detention mainly on the following grounds:

(i) The grounds of detention did not make out any case of disturbance of 'public order'.

(ii) Abnormal delay in disposing of his representation.

(iii) Criminal prosecution as well as his detention under the provisions of the Act attracted the principle of double jeopardy and, therefore, the order of detention was invalid.

(iv) The order for his detention for the full term of 12 months showed non-application of mind and, therefore, the order in Annexure 5 was bad in law.

4. A counter-affidavit has been filed by O.P. No. 3, the District Magistrate, Cuttack, in which it has been stated that the petitioner's representation 'nowhere mentions about his illegal and unjustified detention 'and' there was no specific prayer for his release from custody'. O.P. No. 3 has controverted all the arguments raised by the petitioner in the writ application including the ground of delay in disposal of the representation and supported the impugned orders. By a further affidavit filed on 31-7-1987, the petitioner has filed the bail order passed by the Additional Sessions Judge, Cuttack, to show that the criminal court did not find the allegations levelled against him so serious to refuse his prayer for bail. An additional affidavit has also been filed on behalf of the State giving details of the movements of the petitioner's representation from stage to stage for its disposal.

5. I shall now take up for consideration the points raised by the petitioner indicated earlier one by one.

6. Point No. 1 : - The first point urged by the petitioner is that the allegations made in the grounds of his detention did not attract the question of maintenance of public

order and at best could relate only to law and order. In order to appreciate the point, it is necessary to see the allegations in the grounds.

According to the allegations, at about 9.00 p.m. on 2-9-1986, the petitioner along with two others, namely, Biswanath Misra and Golia alias Ganeswar Rout, suddenly entered the shop of one Ashok Kumar Rout in Raisunguda bazar while he was sitting there with some customers who had come to take the Oriya daily newspaper 'Samaj' and abused him in obscene language, assaulted him, broke the door of the shop and the glass panes of the show-case and removed a packet of newspapers 100 bottles of honey and Rs. 300/- in cash from the almirah. It is further alleged that when Upendra Rout, the father of Ashok Kumar Rout, ran for his life, the petitioner chased him brandishing his sword to kill him and when the shop-keepers of the area tried to intervene, the petitioner terrorised them by his sword and threatened to cut them into pieces. As a result, the people of the area ran away out of fear, the shop-keepers closed down their shops, the nearby inhabitants being panic-stricken also closed their doors, the public thoroughfare was completely paralysed and the public peace was completely disturbed.

7. The distinction between 'law and order' and 'public order' has fallen for consideration times without number before different High Courts as also the Supreme Court and, if I may say so, has been brought out succinctly by the Supreme Court in Lohia's case AIR 1966 SC 749 : 1966 Cri LJ 608. It was observed in Lohia's case that the contravention of law always affects 'order', but before it could be said to affect 'public order', it must affect the community or the public at large. In my considered opinion, the overt acts committed by the petitioner clearly establish that the even tempo of life of 'the community at large' was disturbed. Chasing a shop-keeper on a public thoroughfare by brandishing a sword and then threatening the intervener with dire consequences were sufficient to create such terror that the public at large became panic-stricken. The result of that terror was manifested by the closing of the shops and houses by the inhabitants for safety and creation of panic in the whole locality. This aspect of the matter has been dealt with by me in several other cases. (See OJC Nos. 3063 and 3064 of 1986 dt. on 24-12-1986).

8. The petitioner, however, placed reliance on the case of his accomplice Biswaranjan Misra who had succeeded in this Court in O.J.C. No. 370 of 1987 decided on 18-5-1987 by a Bench of which my learned brother Mohapatra was a member. The case of Biswaranjan Misra is apparently distinguishable as the only overt act attributed to him was that he had abused the shopkeeper. The main allegations are made only against the petitioner as already seen above. I therefore do not find any substance in this 1 point.

9. Point No. 2 : - The petitioner has challenged the order of detention also on the ground of long delay in disposal of his representation by the State Government. One of the protections provided under Article 22(5) of the Constitution against arrest and detention is that the detenu must be afforded the earliest opportunity of making his representation against the detention order. The question is well settled that the Government is obliged to consider the representation 'as soon as it is received by it' since it affects the liberty of the citizen though it may not be possible to lay down any hard and fast rule as to the measure of time taken by the appropriate authority for such consideration. It has been clearly laid down by the Supreme Court in *Satya Deo v. State of Bihar* : 1975 CriLJ419 that the Government is duty-bound to consider the representation against improper or unjustified exercise of power of detention as soon as it is received and enjoins upon the Government to release the detenu forthwith if, upon such consideration, 'it finds that the grounds upon which the order of detention had been made are incorrect or non-existent or irrelevant'. But as already stated in the counter-affidavit filed by opposite party No. 3, the petitioner has not challenged the grounds of detention in a proper manner. The only stand that he has taken in his representation is that he was innocent and that had been falsely implicated in the case in question by his rival Lokanath Sahu. In my view therefore, it amounts to a bare denial of the commission of the offence. The plea of delay in such a case, would therefore be only idle as it did not necessitate any immediate consideration. I find full support for this view from a decision of the Highest Court in *Arun Kumar Roy v. State of W.B.* : [1973]1SCR552 . The case before the Supreme Court was under the provisions of the Maintenance of Internal Security Act (26 of 1971) containing provisions in pari materia with those in the present Act. It was observed by the Supreme Court that the obligation cast upon the State Government was to

place the case before the Advisory Board along with the representation, if any, made by the person affected by the order. It however may be observed that although the State Government has tried to explain the time consumed in disposal of the petitioner's representation at different stages but that does not appear to be satisfactory. For example, there was delay of several days on the part of the Superintendent of Police in submitting his report which was called for from him and the like, in the movement of the representation from 'table to table'. But as the representation itself did not contain any material for consideration save and except a bare denial of his involvement and false implication, it has hardly caused any prejudice to the petitioner on account of delay in its disposal as it hardly called for any consideration by the appropriate Government. The second point also has thus no merit.

10. The third point urged on behalf of the petitioner was that simultaneously two parallel proceedings, namely, (1) a criminal prosecution and (2) an order of detention under the Act, could not proceed on the same facts. This submission was based upon the following observations made by the Supreme Court in *Biram Chand's case* : 1974 CriLJ817 :. The position will be, however, entirely different if the authority concerned makes an order of detention under the Act and also prosecutes him in a criminal case on the self-same facts. The detaining authority cannot take recourse to two parallel and simultaneous proceedings nor can take recourse to a ground which is the subject-matter of a criminal trial.

This decision, apart from being contrary to the earlier views of the Supreme Court, has been expressly overruled by a larger Bench in *Saha's case* : 1974 CriLJ1479 . It was, therefore, not fair on the part of Shri Mohapatra to have referred to this case and I record my displeasure on this account.

11. It is well settled that the power of preventive detention is a discretionary power which may or may not relate to an offence. An order of preventive detention may be made before or even during the pendency of a criminal prosecution, or even after discharge or an acquittal. Similarly, on the same footing, the order of preventive detention does not debar the initiation of a criminal prosecution. The purposes and the nature of the proceedings are entirely different. This submission

of Shri Mohapatra, therefore, also has got no merit.

12. Point No. 4 : - The last submission which was pressed with equal vehemence on behalf of the petitioner was that the direction for a full term detention of 12 months indicated non-application of the mind of the appropriate authority for which reliance was placed upon the solitary decision of the Imphal Bench of the Gauhati High Court in *Laishram Naobi Singh v. District Magistrate, Imphal* (1987) 2 Crimes 202, which lends support to the contention of the learned Advocate.

13. Section 12 empowers the appropriate Government to confirm the detention order and continue the detention of the person concerned for such period as it thinks fit in cases where the report of the Advisory Board supports the cause for his detention. Section 13 provides for the maximum period of detention for which any person may be detained in pursuance of a detention order which has been confirmed under Section 12 and that is twelve months from the date of detention. On reading the scheme of Sections 12 and 13, it is obvious that a discretion has been given to the appropriate Government to confirm the detention order for such period as it may think fit. This; however, cannot exceed the maximum period, which is the only safeguard, for a detenu. No obligation is cast by the legislature upon the appropriate Government to state reasons for fixing the period of detention for any individual detenu. The Gauhati High Court although has referred to some decisions of the Supreme Court in its judgment, they are all beside the point and do not deal with this question. So much so that the observation made in *A. K. Roy v. Union of India* : 1982 CriLJ340 which has been referred to in the sixth para of the report goes counter to the above authority. The observation reads as follows:

We should have thought it would have been wrong to fix a minimum period of detention, regardless of the nature and seriousness of the grounds of detention. The fact that a person can be detained for the maximum period of 12 months does not place upon the detaining authority the obligation to direct that he shall be detained for the maximum period. The detaining authority can always exercise its discretion regarding the length of the period of detention.

With due deference to the learned Judges of the Gauhati High Court, I find myself unable to subscribe to their views.

14. The observations made by the Supreme Court in *Ashok Kumar v. Delhi Administration* : 1982 CriLJ1191 to the effect that:

Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case, i.e., the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extend to the maximum period of 12 months as laid down in Section 13 of the Act.

Will have no application inasmuch as those observations were made in entirely a different context. That was in answer to a submission that no effective representation could be made unless the period of detention was specified in the order of detention passed under Section 3 of the Act and that Section 13 of the Act was violative of the fundamental right guaranteed under Article 21 read with Article 14 of the Constitution as it results in arbitrariness in Governmental action in the matter of life and liberty of citizen...that it provides for a uniform period of twelve months in all cases, regardless of the nature and seriousness of the grounds on the basis of which the order of detention is passed. The contention was rejected for the simple reason that the period of detention may vary according to the exigencies of each case and that the period of detention must not in all circumstances extend to the maximum period of 12 months as laid down in Section 13 of the Act.

15. COFEPOSA Act in this regard contains some what different provisions where Section 10 stipulates different periods for which a person may be preventively detained. In case of certain kinds of activities of smuggling into, out of or through any area highly vulnerable to smuggling, the period may extend up to 2 years. It has been held by the Supreme Court in *Satar Habib Hamdani v. K.S. Dilip Singhji* : 1986 CriLJ378 that in such situation the Advisory Board is to state its opinion not merely whether the detention is necessary but whether continued detention is required. It, therefore, mainly lies within the purely discretionary jurisdiction of the appropriate Government to order regarding the length of the period of detention.

16. Another thread of submission connected with this point was that on account of the criminal proceeding, the petitioner could not make an effective representation, as disclosure of his defence might prejudice him in his trial. This part of the submission is based upon a decision of the Calcutta High Court in Methai Lal Core v. District Magistrate 24-Parganas 1975 Cri LJ 295. This decision was given relying upon the decision of the Supreme Court in Biram Chand's case : 1974 CriLJ817 . The submission has also got no substance as the proceedings under the Act being confidential, there is no apparent reason as to how the challenge of the validity of the grounds of detention would expose the petitioner to any prejudice touching his defence in the trial of the criminal case.

17. All the points urged on behalf of the petitioner having failed, I find no merit in the writ application which is accordingly dismissed. There shall be no order as to costs.

S.C. Mohapatra, J.

18. I agree.