

Gian Prakash Gupta Vs. State

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Court : Punjab and Haryana

Decided On : Apr-27-1961

Reported in : AIR1965P& H152; 1965CriLJ472

Judge : I.D. Dua, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324

Appeal No. : Criminal Misc. No. 187-D of 1964

Appellant : Gian Prakash Gupta

Respondent : State

Judgement :

ORDER

1. This order may be read in continuation of my order 9-4-1964. The petitioner is confined in Central Jail, Tehar, under the Defence of India Rules since October, 1963. He had been sent to that jail on 22-8-1963 to serve out a sentence of four month's imprisonment imposed by the learned Sessions Judge, Delhi, under section 324, Indian Penal Code. While he was still undergoing imprisonment for the said offence, he was served by the District Magistrate in October, 1963, with an order under the Defence of India Rules and on the expiry of his sentence under section 324, Indian Penal Code, on 4-12-1963, he was kept in custody in the said jail under the Defence of Indian Rules.

(2) The learned District Magistrate, Shri S. G. Bose Mullick, has in the return stated that the order under Rule 30 of the Defence of India Rules was passed by him on 18-10-1963 and this order was also reviewed by the Administrator. Union Territory, Delhi. Service of this order was effected on the petitioner in jail on 26-11-1963. It has been admitted by the District Magistrate that the petitioner was undergoing imprisonment under S. 324 Indian penal Code from 22-8-1963 and sentence to expire on 22-12-1963.

(3) The question, therefore, is whether the detention order in these circumstances is valid. Shri Yogeshwar Dayal has drawn my attention to a decision of the Supreme Court by a Bench of five judges in Makhan Singh Tarsikka v. State of Punjab, Criminal Appeal No. 80 of 1963: (AIR 1964 SC 381) in which reference was made to an earlier decision of that Court in Rameshwar Shaw v. District Magistrate, Burdwan, since reported as AIR 1964 SC 334. In Rameshwar Shaw's case, AIR 1964 SC 334 the Supreme Court construed section 3(1) of the Preventive Detention Act to necessarily postulate that a person sought to be detained would be free to act in a prejudicial manner if not detained. The freedom of action of the person sought to be detained at the relevant time must, according to that decision, be shown before an order of detention can be validly served on him under the said provision of law and if a person is already in jail custody, it can hardly be postulated rationally that if he is not detained he would act in a prejudicial manner. The ratio of the case was contoured by the Court in Tarsikka's case, Criminal Appeal No. 80 of 1963:(AIR 1964 SC 381) to mean that an order of detention cannot be validly served on a person who is rationally not possible to predicate that if the said order is not served on him, he would be able to indulge in any prejudicial activity. The Court further proceeded to observe as follows:

'In the case of Rameshwar Shaw, AIR 1964 SC 334 this Court also construed the question as to whether an order of detention can be made against a person who is in jail custody and it was held that as an abstract proposition of law, there may not be any doubt that section 3(1)(a) of the Act does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail. But this Court also added that the relevant facts in connection with the making of

the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail. Dealing with this aspect of the matter, this Court emphasised the relevance of the consideration of proximity of time and concluded that whether an order of detention can be passed against person who is in detention or in jail, will always have to be determined in the circumstances of each case. It would thus be seen that in the case of Rameshwar Shaw, AIR 1964 SC 334 his application was allowed and he was ordered to be set at liberty on the ground that the service of order detaining him was effected when he was in jail.'

The respondent's learned counsel has placed reliance on the emphasis of the Supreme Court that an order could be passed against a person in jail custody if consideration of proximity of time justified it but as pointed out by the petitioner's learned counsel, service of an order on a person in jail custody was without doubt held to be bad by the Supreme Court. A little lower down in Tarsikka's case, Criminal Appeal No. 8 of 1963: (AIR 1964 SC 381) the Supreme Court said:

'The service of a detention order on a person who is already in jail custody virtually seeks to effectuate what may be called 'a double detention and such double detention is not intended either by section 3 (1) or by Rule 30 (1); it is plainly unnecessary and outside the purview of Both the provisions.'

Again, further down the position is more clearly expressed in these words:

'Besides, when a person is in jail custody and criminal proceedings are pending against him, the appropriate authority may, in a given case take the view that the criminal proceedings may end very soon and may terminate in his acquittal. In such a case, it would be open to the appropriate authority to make an order of detention, if the requisite conditions of the Rule or the section are satisfied, and serve it on the person concerned if and after he is acquitted in the said criminal proceedings.'

The ratio of this decision clearly suggests that the service of detention order on a person while in jail custody vitiates the effect of the service of the detention order. The respondent has also tried to seek some assistance for the validity of the

detention from the following observation in Rameshwar Shaw's case, AIR 1964 SC 334.

'On the other hand, if a person who is under going imprisonment, for a very short period, say for a month or two or so, and it is known that he would soon be released from jail, it may be possible for the authority to consider the antecedent history of the said person and decide whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released. The antecedent history and the past conduct on which the order of detention would be based would, in such a case, be proximate in point of time and would have a rational connection with the conclusion drawn by the authority that the detention of the person after his release is necessary.'

It is stressed that an order of detention can be made even against a person who is undergoing imprisonment, but, as already observed, the later decision of the Supreme Court clearly draws a distinction between service of the order on the person to be detained and the passing of the order. The reason appears to be that in the case of a person already in prison, it may not be logical to say that the authority concerned was satisfied that it was necessary to detain the person already imprisoned, for such satisfaction may be said to be postulated only of a person who is free and not already in prison. It is argued that this approach may not be appropriate in the case of person who is likely to be released within a short period. The observations of the Supreme Court in the decisions cited above, however, seem to suggest that in such a case the service of the order of detention on the person concerned should be effected after and not before he is granted his freedom, so as to avoid double detention.

(4) Question regarding the liberty of the subject is of paramount importance in our Republic; is a matter on which our law is anxiously careful and which the Indian Republican Judges are keen to uphold. The Republican law is very jealous of infringement of personal liberty and this care is to be less vigilantly exercised because the subject whose liberty is in question may not be particularly

meritorious. It is indeed one test--albeit an important and instructive one--of belief in principles, if you apply them to cases with which you may have little or no sympathy at all. This symbolises our conception of justice which is given an honoured place on our Constitution. The subject is liable only to be deprived of his liberty in accordance with law. It may also be mentioned here that liberty and good government do not exclude each other and there may perhaps be very good reason why they should go together.

(5) In view of what has been stated above, this petition must be allowed and the order of detention quashed. The petitioner should be set at liberty if he is not required in some other connection.

(6) Petition allowed.

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