

Harnam Singh Vs. the Crown

Harnam Singh Vs. the Crown

SooperKanoon Citation : sooperkanoon.com/616930

Court : Punjab and Haryana

Decided On : Jan-24-1950

Reported in : AIR1952P& H359

Judge : Khosla and; Soni, JJ.

Acts : East Punjab Public Safety Act, 1949 - Sections 3(5); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 491

Appeal No. : Criminal Misc. Case No. 349 of 1949

Appellant : Harnam Singh

Respondent : The Crown

Advocate for Def. : B.D. Mehra, Adv. for;Adv. General

Advocate for Pet/Ap. : Amar Chand Hoshiarpuri, Adv.

Disposition : Petition allowed

Judgement :

Khosla, J.

1. The facts of this case which was referred to a Division Bench by my brother Soni, J. are briefly these. The petitioner's brother Thakar Onkar Chand was arrested on 16-5-1949 in compliance with an order of the Superintendent of Police,

Kangra, under Section 3, East Punjab Public Safety Act, 1949. The arrest was reported to Govt. under Section 3, Sub-section (2) and the arrested person was committed to jail on 20-5-1949. Thereafter the Provincial Government by an order dated 8-6-1949 passed under Section 3, Sub-section (3) of the Act committed the detenu to jail until further orders. On 6-8-1949 the detenu was handed a communication containing the grounds on which the order for his detention had been made. On 10-10-1949, Thakar Harnam Singh, the brother of the detenu, presented a petition in this Court under Section 491, Criminal P. C. It was alleged in this petition that the detenu was arrested because he had given expression to his dissatisfaction with the conduct of the police in dealing with the property of Muslim evacuees. The police had, therefore, acted mala fide and although the detenu was a loyal and patriotic subject the police had taken him into custody simply because he had criticised their actions. It was further alleged that the 'charge sheet', which presumably means the grounds referred to in Sub-section (5), was supplied after a great deal of delay and that the grounds were false, vague and evasive.

2. Two points have been raised before us by Mr. Amar Chand who appeared in support of this petition. He contended in the first place that the grounds given to the detenu were vague and evasive and that the supply of these grounds did not amount to proper compliance with the provisions of Sub-section (5) of Section 3. In the second place, he contended that the grounds should have been supplied within a reasonable time and inasmuch as they were delayed for a period of nearly three months, Onkar Chand's detention was illegal.

3. With regard to the first point the proviso to Sub-section (5) makes it clear that the vagueness or insufficiency of grounds cannot render the detention illegal. This proviso reads as follows:

'Provided that neither the said order nor the detention of the said person thereunder shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency of the communication made to such person under this section.'

4. Therefore, it is clear that even if the grounds are defective, vague or insufficient the detention does not become unlawful. Sub-section (5) merely requires that the grounds on which the order of detention has been made should be supplied to the detenu, and that the authority need not disclose such facts which may be against the public interest to disclose. In the present case, the grounds supplied were these:

'You were responsible to carry on a virulent propaganda and spreading disaffection in the public against the Government. Your detention has, therefore, been ordered to ensure public safety and the maintenance of public order.'

It must be conceded that the communication handed over to the detenu on 6-8-1949 did contain grounds for his arrest and detention, even though the grounds were somewhat vague, but vagueness does not connote non-compliance with the provisions of Sub-section (5). The learned counsel for the petitioner drew our attention to 'Durga Das v. Rex', AIR 1949 All 148 and 'Murat Patwa v. Province of Bihar', AIR 1948 Pat 135. The U.P. and Bihar Acts, however, do not contain a proviso similar to the one found in the East Punjab Public Safety Act. In the Allahabad and Patna cases it was held that where the grounds are vague or insufficient the detention must be considered to be illegal. The proviso in the East Punjab Public Safety Act quoted above, however, excludes the application of this principle in this province.

5. With regard to the second point it was contended that Sub-section (5) requires that as soon as a person is arrested he should be given the grounds of his detention and that if grounds are not supplied to him within a reasonable time the detention becomes illegal by reason of non-compliance with the provisions of Sub-section (5). Sub-section (5) is in the following terms.

'(5) As soon as may be after a person is detained in pursuance of an order made under Sub-section (1) the authority making the order may communicate to him, so far as such communication can be made without disclosing facts which it considers against the public interest to disclose, the grounds on which the order has been made and such other particulars as are in its opinion sufficient to enable him to make a representation to the Provincial Government against the order, and inform

him of his right to make such representation and afford him the earliest opportunity of doing so. * * * '

6. The learned Advocate-General contended that this provision was not imperative or mandatory but merely directory and recommendatory. He drew our attention to 'J. K. GAS PLANT MANUFACTURING CO. (RAMPUR), LTD. v. EMPEROR', 48 Cri LJ 886 (FC) in which their Lordships of the Federal Court held that the provisions of Section 40 to Sch. IX to Government of India Act, 1935, were not mandatory. There is, however, no analogy between the provisions of Section 40 and those of Sub-section (5) of Section 3, East Punjab Public Safety Act, 1949. In the present case, where the liberty of the subject is concerned the provisions of the statute must be interpreted strictly, and I have no hesitation in holding that the Legislature intended the terms of Sub-section (5) to be mandatory and not merely directory. Generally speaking, procedural enactments are imperative and not merely directory. Again, the object of Sub-section (5) clearly is that the detenu should have an opportunity of representing his case to the Provincial Government at the earliest possible opportunity. He cannot be deprived of his right to do so by the authority omitting or unreasonably delaying to supply him with the grounds of his detention, for a long delay would defeat the objects of Sub-section (5). In 'DURGADAS v. REX', A.I.R. 1949 All. 148 to which a reference has already been made, it was held that non-compliance with the provisions of Section 5, U.P. Maintenance of Public Order (Temporary) Act, 1947, would make the further detention of the detenu illegal from the date of such non-compliance. The terms of Section 5 of the U.P. Act are very similar to the terms of Sub-section (5) of Section 3, East Punjab Public Safety Act. A similar view was taken in 'MURAT PATWA v. PROVINCE OF BIHAR', A.I.R. 1948 Pat. 135. In both these cases, it was held that the provisions of the relevant sections were mandatory and not merely directory. This was also the view expressed by a Division Bench of this Court in 'Virendra Kumar v. The Crown', Criminal Misc. No. 252 of 1949 (Simla) which approved of the decision of Falschaw, J. in 'GYANENDRA KUMAR JAIN v. THE CROWN', 52 Pun. L.R. 17. I am clearly of the opinion that the provisions of Sub-section (5) of Section 3, East Punjab Public Safety Act, 1949, are mandatory and that non-compliance with them renders the detention of the detenu illegal.

7. The next point to consider is whether unreasonable delay in supplying the grounds of detention constitutes a breach of the provisions of Sub-section (5). The words 'As soon as may be' clearly mean that the detenu is to be supplied with the grounds of his detention very soon after his arrest. In the present case the detenu was arrested on 16-5-1949 and the grounds were not supplied to him till 6-8-1949, i.e., nearly three months later. The learned Advocate-General conceded that the delay in this case was unreasonable although he contended that as soon as the grounds were supplied to the detenu the defect was cured and it could not be said that the detention of the detenu continued to be illegal. If Sub-section (5) requires that grounds be communicated to the detenu promptly, and grounds in fact are not communicated promptly then it must be held that there has been a breach of the provisions of Sub-section (5). And since the provisions of Sub-section (5) are mandatory their breach makes the further detention of the detenu illegal. I would distinguish between arrest and detention. A breach of the provisions of Sub-section (5) would not make the original order of arrest invalid or illegal, The original arrest, however, was followed by detention. Detention-continues from day to day, and if the law requires that certain formalities must be observed the non-observance of such formalities will make the further detention illegal. The learned Advocate-General relied on a Madras authority reported as 'Venkataraman v. Commr. of Police', Madras, A.I.R. 1949 Mad. 605. In that case the facts were totally different. An order of detention under Section 2(1) (a), Madras Maintenance of Public Order Act, 1947, was passed on 1-4-1948 and the order was communicated to Government on 9-6-1948. The arrest, however, was not made until 17-8-1948, It was contended that the provisions of Sub-section (2) of Section 2 had not been complied with and, therefore, the detention of the detenu had become illegal. The learned Judges of the Madras High Court took the view that inasmuch as the original order of detention was legal subsequent non-compliance with the mandatory provisions of the statute would not make the previous order invalid. Section 2(2) of the Madras Act required that the order of detention passed by the Commissioner of Police should be communicated to Government. The grounds of detention were served upon the petitioner shortly after his arrest. The learned Advocate-General relied on the following observations in the judgment:--

'The argument of Mr. Pillaj was that assuming the order passed under Section 2(1) was valid at its inception and continued to be so, the further detention after the violation of the provisions of Section 2(2) was illegal. This argument ignores the distinction between the order of detention and the procedure prescribed for enabling the aggrieved party to seek redress. * * ** In any view as the order was communicated to the Government and the grounds for detention were duly served on the petitioner, it would be impossible to hold that the detention of the petitioner at present is invalid.'

Arrest and detention, however, must be distinguished from one another. Even though the original order is valid the subsequent detention may become illegal. Nor can it be said that Sub-section (5) merely provides the procedure for enabling the detenu to seek redress. In the view I have taken of the matter the provisions of Sub-section (5) are mandatory and non-compliance with them makes the detention illegal. Unreasonable delay in supplying the grounds to the detenu involves a breach of the terms of Sub-section (5) and as a consequence of this breach the detention becomes illegal. This was the view expressed in the two Full Bench, Allahabad, 'Durgadas v. Rex' (AIR 1949 All 148) and Patna, 'Murat Patwa v. Province of Bihar' (AIR 1948 Pat. 135), cases cited above. In the 'Allahabad Case' Malik, C.J., observed :--

'In a case, therefore, where the detaining authority has not supplied any grounds or particulars whatsoever, or has not supplied grounds or particulars within a reasonable time and, therefore, Section 5 has not been complied with, the detention becomes illegal or improper.'

In the Patna case also it was held that unreasonable delay in the supply of grounds of detention made the detention illegal, I find myself in entire agreement with the views expressed by the Hon'ble Judges of the Allahabad and Patna High Courts. It is conceded that in the present case the grounds were not supplied within a reasonable time. The detention, therefore, became illegal and the subsequent supply of grounds could not cure the defect. As soon as the detention became illegal the detenu was entitled to be set at liberty.

8. Another point raised by the learned Advocate-General was that the detenu had not moved this Court until more than two months after the grounds had been supplied to him and, therefore, it could not be said that he had been unable to exercise any rights or that he had been deprived of any rights which he wanted to exercise. Delay in presenting the petition, however, does not alter the position. Once it is held that at any given moment the detention of the petitioner's brother became illegal and continued to be so any delay on his part or the supply of grounds at a subsequent date would not validate his detention. To take a contrary view would lead to the absurd conclusion that no matter how long the communication of the grounds were delayed the provisions of Sub-section (5) could never be violated, for at any time the authority could supply the detenu with the grounds and cure the defect. This clearly was not the intention of the Legislature in framing Sub-section (5).

9. Summing up, I am clearly of the view that the provisions of Sub-section (5) are mandatory and that non-compliance with their terms makes the detention illegal. Further, the grounds must be supplied within a reasonable time and if they are not so supplied the delay amounts to a breach of the provisions of Sub-section (5) and renders the detention illegal. In the present case, therefore, the detention of the petitioner's brother must be held to be illegal because he was not supplied with the grounds of his detention within a reasonable time. I would, therefore, allow this petition and direct that the detenu be at once released and set at liberty.

Soni, J.

10. I agree.