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Subhash Bhandari Vs. District Magistrate, Lucknow and ors.

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Court : Supreme Court of India

Decided On : Nov-03-1987

Reported in : AIR1988SC74; 1988CriLJ190; 1987(3)Crimes686(SC); JT1987(4)SC277; 1987(2)SCALE937; (1987)4SCC685; [1988]1SCR773

Judge : A.P. Sen and; B.C. Ray, JJ.

Acts : National Security Act, 1980 - Sections 3(2); Indian Penal Code (IPC) - Sections 147, 148, 149 and 307; Constitution of India - Article 226

Appeal No. : Criminal Appeal Nos. 558 and 559 of 1985

Appellant : Subhash Bhandari;kamlesh Pratap Singh

Respondent : District Magistrate, Lucknow and ors.;district Magistrate, Lucknow and ors.

Judgement :

B.C. Ray, J.

1. These two appeals by special leave are against the order passed on Feb. 14, 1985 by the High Court of Allahabad dismissing the Writ Petition No. 5806 of 1984 and Writ Petition No. 5805 of 1984 as well as Writ Petition No. 309 of 1985 whereby the order of detention passed against the appellants on Oct. 1, and Oct. 20, 1984 respectively under Section 3(2) of the National Security Act, 1980, was

upheld as legal and valid.

2. The copy of the order of detention as well as the grounds of detention and the first information report on the basis of which the detention order was made were served on the appellants at the time of their detention. The grounds of detention are as follows:

On 25-9-1984, Shri Surya Kumar, son of Shri Vishwa Pal, resident of 33, Babuganj, P. S. Hasanganj, District Lucknow, lodged a report at P. S. Hazratganj, Lucknow that on 15-9-1984 there was a tender for the supply of ballast in P.W.D. in which tenders had been submitted by him in K. P. Singh's name. You keep share with K. P. Singh. On account of your and K. P. Singh's terror no other person submits any tender against you people for which reason you people obtain tenders at rates of your choice. If any other person submits his tender you and K. P. Singh terrorise him. On account of the rates of his tender being lower on 15-9-1984, the tender of the complainant was accepted in one group and in the remaining groups the tenders of K. P. Singh etc. were accepted. For this reason you and K. P. Singh bore a grudge against the complainant.

On 25-9-1984 at about 3.45 p.m. when Surya Kumar was going, in connection with his tender, in his Ambassador Car No. USS-7418, accompanied by his brother-in-law, opposite to the National Highway Khand, he saw some contractOrs. On reaching near them the complainant had just started talking to them, when suddenly in two cars, you with a pistol, Phool Chand with a revolver, Jaleel with a revolver, Ashok with Desi Katta, Ashok Sonkar and Sarrif with hand grenade and Shankar Dey with a gun along with three other persons came and with intent to kill the complainant fired at the complainant, threw hand grenades which fell on the car of the complainant. Consequently, there was a commotion. Traffic was obstructed and public tranquillity was disturbed. The complainant immediately saving his life took flight in his car. On the above information by the complainant a case FIR No. 1034 was registered at police station, Hazratganj against you and your other, companions under Sections 147, 148, 149, 307, I.P.C. and Section 6 of Explosives Act and after investigation a charge-sheet No. 279 has been put up against you for the said offence.

I have also been put up against you for the said offence.

I have also come to know that on your behalf an application for grant of bail has been moved in a competent court, therefore, in case you come out on bail from the jail you will again start activities causing breach of public order.

On the above said grounds, I have been satisfied that there is possibility of your acting in a manner prejudicial to the maintenance of public order and in order to prevent you from so acting, it is necessary to detain you.

3. The said order of detention was duly approved by the State Government under Section 3(4) of the National Security Act. The appellants made representation against the grounds of detention. The representations were rejected by the Government and the same were communicated to the appellants by the Joint Secretary, Vigilance and Home Department, Government of U.P. On Nov. 26, 1984, the Secretary, Vigilance and Home Department, Government of U.P. informed the appellants that the Government after considering the report of the Advisory Board had confirmed the order of detention and directed that the appellants be detained for a period of 12 months with effect from Oct. 1, 1984 and Oct. 20, 1984 respectively.

4. Aggrieved by this order of detention the appellants moved applications under Article 226 of the Constitution of India for quashing of the order of detention made by the respondent No. 1 and for setting them free. These were registered as Writ Petition No. 5806 of 1984 and Writ Petition No. 5805 of 1984. Another detenu who was detained on identical grounds also filed Writ Petition No. 309 of 1985 before the High Court.

5. The main contention advanced on behalf of the appellants before the High Court was that on the basis of facts alleged, at the most it could be said that the matter related to the maintenance of law and order. It was not a matter relating to the disturbance of public order. The assault on Surya Kumar can only be on account of an ill-will arising out of business rivalry. It had been submitted that it affects only an individual and the society or community were not affected by the alleged act of omission on the part of the appellants. It therefore raised no problem

of public order. It had been further contended that a solitary act cannot be considered to be an act prejudicial to the maintenance of public order.

6. The High Court of Allahabad after hearing the parties and on a consideration of the decisions cited before it found that whether an act creates a mere law and order problem or affects the even tempo of the life of the community, it is to be seen what is the extent of the impact of the act in question upon the society as a whole; whether the effect is restricted to an individual or a few individuals alone or it creates a sense of insecurity, danger and apprehension in the minds of the people in general apart from those who are the victims of the incident; whether the act or acts disturb the even tempo of life of the society or a section of society; whether the act leads to disturbance of public order or only law and order. The High Court further found that in the context the act committed tends to teach a lesson to the complainant and to act as a warning to prospective tenderers in future who may not dare to avail of the opportunity to submit their tenders against that of the appellants. It was also found that the impact and reach of the act in question goes beyond the individual and affects the community of contractors who take contracts for executing the public works. The Court further held that the order of detention made by the detaining authority is legal and valid and the writ petitions were dismissed.

7. Undoubtedly, on the basis of the FIR lodged by Surya Kumar a case under Sections 147/148/149/307, I.P.C.andunder S. 5 of the Explosives Act has been registered as Crime No. 1034 and the said case is pending for decision before the Criminal Court.

8. The main question which falls for decision is whether the act referred to in the grounds of detention is directed against certain individuals creating a law and order problem or the reach and potentiality of the act is so deep as to disturb the society to the extent of causing a general disturbance of public tranquillity.

9. It has now been well settled by several decisions of this Court (the latest one being Gulab Mehra v. State of U.P. : 1988 CriLJ168 judgment in which case was pronounced by us on Sept. 15, 1987) that public order is the even tempo of the life of the community taking the country as a whole or even a specified locality.

Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or it affects public order. It has been observed by this Court that an act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Therefore it is the impact, reach and potentiality of the act which in certain circumstances affect the even tempo of life of the community and thereby public order is jeopardized. Such an individual act can be taken into consideration by the detaining authority while passing an order of detention against the person alleged to have committed the act.

10. In the instant case the alleged act of assault by fire-arms is confined to the complainant Surya Kumar and not to others. It is an act infringing law and order and the reach and effect of the act is not so extensive as to affect considerable members of the society. In other words, this act does not disturb public tranquillity nor does it create any terror or panic in the minds of the people of the locality nor does it affect in any manner the even tempo of the life of the community. This criminal act emanates from business rivalry between the detenus and the complainant. Therefore such an act cannot be the basis for subjective satisfaction of the detaining authority to pass an order of detention on the ground that the impugned act purports to affect public order i.e. the even tempo of the life of the community which is the sole basis for clamping the order of detention. Moreover, no injury was caused to the person of the complainant, Surya Kumar by the appellants nor any damage was caused to the car though hand grenade was alleged to have been thrown on the car. No mark has been caused to the car also. It is relevant to mention in this connection that the appellants were released on bail by this Court after duly considering the facts and circumstances of the case in July, 1985. The period of one year has also expired. We have already held hereinbefore that a solitary act of omission or commission can be taken into consideration for being subjectively satisfied, by the detaining authority to pass an order of detention if the reach, effect and potentiality of the act are such that disturbs public tranquillity by creating terror and panic in the society or a

considerable number of the people in a specified locality where the act is alleged to have been committed. Thus it is the degree and extent of the reach of the act upon the society which is vital for considering the question whether a man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to public order.

11. It is pertinent to note in this connection that the Criminal Appeals Nos. 826 and 827 of 1985 arising out of the same incident and identical grounds of detention, filed by Ashok Arora and Ashok Kumar Sonkar have been allowed by this Hon'ble Court by its order dated November 29, 1985 and the appellants were directed to be set at liberty forthwith.

12. For the reasons aforesaid, we allow the appeals without any order as to costs.

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