

Golo Vs. Union of India

Golo Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/683213

Court : Delhi

Decided On : Jun-26-1967

Reported in : 3(1967)DLT506

Judge : I.D. Dua and; Hardyal Hardy, JJ.

Acts : [Lunacy Act, 1912](#) - Sections 13

Appeal No. : Criminal Miscellaneous Appeal No. 51 of 1967

Appellant : Golo

Respondent : Union of India

Advocate for Pet/Ap. : Chabildas and; K.C. Pandit, Advs

Judgement :

Dua, J.

(1) These four cases (Criminal Miscellaneous Petitions Nos. 48 and 49 and 51 and 52 of 1967) are the remnants of a bunch of five cases which were registered in this Court in consequence of my visit to Solan Sub-Jail on 14th June, 1967. While inspecting that Sub-Jail, it appeared to me that these five persons, to whom those five criminal miscellaneous petitions relate were being detained without authority of law. On my return here, I directed show cause notices to go to the authorities concerned to produce the record and the persons detained in this Court and to

Justify their detention under the law. On 20th June, 1967, Shri K. C. Pandit appeared in opposition to the show cause notices and asked for time for putting in appropriate returns. He, however, conceded that Nek Ram was entitled to be set at liberty because the Government had already decided to release him on the ground that he was reported to have been cured of the mental malady from which he was supposed to be suffering. We accordingly made an order releasing him on 20th June 1967. Cr. Misc. No. 50 of 1967 was thus disposed of on that date. We are now concerned with the remaining four petitions, in which Shri K. C. Pandit has appeared in opposition to the show cause notice and Sarvshri H. S. Thakar, M. R. Gupta, Chhabil Das and Sushil Malhorta advocates have, in accordance with the high traditions of the bar in this Republic, been good enough to agree to assist this Court as *amices curiae*. We will now deal with each one of these four petitions separately. Before dealing with them, however, it may appropriately be stated at the outset that on behalf of the State, no objection has been raised to the show cause notices having been issued by this Court suo motu and, in our opinion, rightly so, because there is authority for the view that if this Court is apprised of the material which prima facie suggest illegality of the detention or custody, then this Court can, for the ends of Justice proceed to issue a show cause notice for determining the legality of the detention in question. In all the four cases, we passed short-final orders on 22nd June 1967 reserving reasons to be given later. We now proceed to give our reasons. Dealing first with Criminal Miscellaneous No. 51 of 1967. *Golo v. State*, we find that on 4th February, 1967, the Station House Officer, Dhalli Police Station, recorded a notice to the effect that Golo or Ghawal, as described by the Station House Officer in the said notice, who originally belonged to Tibet, came to India with his brother Doga at the time of China Tibet conflict. For some time he stayed at Rampur and thereafter he came to Kinnaur where he worked as mule teer. There he is, reported to have developed insanity and as a result of treatment at Ripon Hospital, Simla, was cured of the malady. Thereafter he again started doing his regular work and for two years proceeding, he had been doing work at Sainj. For five or six days, this man again became insane and started talking irrelevant things and also started throwing stones on the people. His brother Doga took him to Kasumpti for treatment on 2nd February, 1967, but his condition appeared to deteriorate day by day. -On 4th

February, 1967, Golo caught hold of a pup and killed it, later he caught hold of another dog and wanted to kill that too. Golo, according to this report, had thus become a dangerous lunatic, who tried to throw stones on the public. The Station House Officer arrested Golo in these circumstances, treating him to be a dangerous lunatic. This report is Annexure 'B' to the return. On 4th February, 1967, the General Assistant to the District Magistrate made an order purporting to act for the District Magistrate directing Ghawal to be kept in (r)adicial lock up at Kasumpti till further orders, adding that the said Ghawal be gto medically examined. The Superintendent, Snowdon Hospital, was accordingly asked to send his report after examining Ghawal lunatic before 7th February, 1967. This order is Annexure 'C' to the return. Annexure 'D' which purports to be the opinion of the Medical Specialist, Snowdon Hospital, dated 6th February, 1967 is in the following words :-

'PATIENT gives his name as 'Golo' and nto Dhawan Mentioned in the letter. He is talking rationally,, although because of language difficulty, it is difficult to follow him properly. It will be advisable to keep him under obsarvation in hospital under police escort for some days. It will also be necessary to interview some relative or also associate living with him before giving an opinion about his mental condition.'

As per annexure 'E' to the return dated 7th February 1987, the District Magistrate, Mahsu. sent Golo to the Hospital as desired by the Medical Seperintendent Showdon, with a request that the. said Medical Superintendent bs pleased to examine Golo medically about his mental condition and furnish a report to the District Magistrate as early as possible. Annexure 'F' to the return is the medical opinion of Dr. S. P. Gulati, Medical Specialist, H. P. State Hospital, Simla dated 6th March 1967 after the examination of Gob, the alleged lunatic, and is in the following terms: -

'THEabove named patient was admitted in this hospital on 21st February 1967 for observation with regard to his alleged insane behavior and is discharged on 6th March .1937. He sometimes becomes agitated. Sometimes talks in rough tone. Occassionally gazes at people. Sometimes begins to breath in high noise. He reads his book well written in his own language. Sometime tries to run away from

his bad. It is considered that he is suffering from insanity probably Schizophrenia and requires admission in a mental hospital.'

It is noteworthy that although the District Magistrate had forwarded Golo to the Medical Superintendent Saowdon Hospital on 7th February 1967, pursuant to the suggestion of the Superintendent dated 6th February 1967, he was not admitted to the hospital for observation before 21st February 1967, during which period, it is not denied before us, Golo was kept in the Judicial lock up at Kasumpti. And then again it took the District Magistrate about 19 days to write to the Director of Health Services H. P. Simla on 25th March 1967 stating that from the report of Shri S. P. Gulati, Medical Superintendent, H. P. State Hospital, Simla, it appeared that Golo was suffering from insanity probably schizophrenia required admission in a mental hospital and that Shri Doga, brother of Golo, had ensured that he would bear the maintenance charges of the mental hospital of the patient as also his traveling expenses. A request, was accordingly made that a seat for Golo be got reserved in some mental hospital at an early date. This communication is Annexure 'G' to the return. It was five days less than two months thereafter, on 30th May 1967, that the Director of Health Services, H.P., wrote back to the District Magistrate, Mahasu District, Kasumpti, stating that Golo lunatic could be admitted in the Mental Hospital, Ranchi, against the quota reserved for H.P after ascertaining about the availability of a bed from the Medical Superintendent of the hospital. It was added that necessary documents required at the time of admission be given to the escort of the lunatic and that the maintenance and traveling charges would have to be met by Shri Doga, the brother of the lunatic. This letter concluded with the observation that before sending the patient for admission to the mental hospital, his brother may be required to enter into a bond for making all payments direct to the hospital authorities. Then we have a copy of a telegram purporting to have been sent on 6th June 1967 by the Deputy Commissioner, Mahasu to the Mental Hospital, Kanke, Ranchi, seeking confirmation telegraphically if the seat reserved for Golo lunatic was available, also requiring the necessary admission forms. Annexure 'A' is a letter dated 9th June 1967 from the Medical Superintendent, Hospital for Mental diseases, P. O. Kanke, Ranchi to the District Magistrate, Mahasu District, Kasumpti, in which reference is made to the letter dated 30th May 1967 from the Director of Health Services. H. P. addressed to the

District Magistrate with a copy endorsed to the Mental Hospital, and it is stated in Annexure 'A' that there was no bed vacant in the H. P. State quotoa, but Shri Golo's name was entered in the waiting list. It is added that a bed would be available to him as soon as his turn comes. This letter concludes with a request that the patient should nto be sent for admission till there is a communication from the Mental Hospital. It is somewhat surprising that in this letter, no reference has been made to the telegram alleged to have been sent on 6th June, 1967. Although in the return, no reference has been made to any order whereby Golo was directed to be detained or lodged in the sub Jail at Solan, our attention has been drawn by Shri K. C. Pandit, learned counsel for the State, to an order in Hindi dated 8th March. 1967, on the record passed by some officer acting on behalf of the District Magistrate Mahasu, in which it is directed that Golo be lodged in the judicial Sub-Jail Solan, pending the enquiry from his brtoher as to whether or nto he would be willing to defray the maintenance and traveling expenses in connection with his admission to the mental hospital.

(2) The question on these facts arises whether Golo's present detention in Sub-Jail at Solan is lawful Before dealing with the legal question, we must point out that the returns in all these cases do nto conform to the rules framed on the subject because they arc nto in the form of affidavits duly sworn by some one having knowledge of the facts asreted therein. These returns are more in the form of comments by the District Magistrate which are nto even verified in the manner in which the pleadings have to be verified. In future, this Court would insist on a proper return being made and if the return is nto in accordance with the rules framed by this Court, then such a return would nto be taken into consideration. The indulgence shown by this Court on the present occasion is nto to be cited as a binding precedent in any comparable circumstances in future.

(3) It is concededthat proceedings against Golo were started under section 13 of the Indian [Lunacy Act, 1912](#). This section provides as under:-

'13.Powers an duties of police in respect of wandering of or dangerous lunatics and lunatics cruelly treated or nto under proper care and control. (1) Every officer in charge of a police-station may arrest or cause to be arrested all persons found

wandering at large within the limits of his station whom he has reason to believe to be lunatics and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate. (2) Every officer in charge of a police station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him immediately report the fact to the Magistrate. A person arrested under this section has to be produced before a Magistrate forthwith and under section 14 the Magistrate is enjoined to examine the person arrested and, if he thinks that there are grounds for proceeding further, he has to cause him to be examined by a medical officer. The Magistrate is also authorised to make such further enquires as he thinks fit. In case the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person, gives a medical certificate with regard to him, make a reception order for the admission of such lunatic into an asylum. The proviso to section 14 deals with the case of a friend or a relative of such lunatic desiring the latter to be sent to a licensed asylum, but we are not concerned with the said proviso in the present case. 'reception order', as defined in section 3 (10) of this Act means an order under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition. The word 'asylum', as defined in section 3(1) means an asylum or mental hospital for lunatics established or licensed by the Central Government or any State Government. The form for a reception order has been prescribed by the Act which is Form 5 in Schedule I of the Act. It is desirable to reproduce the material portion of this form so far as relevant at this stage :- 'I.C.D. Magistrate.....having caused A. B. to be examined by E. F., a Medical Officer under the Indian [Lunacy Act, 1912](#), and being satisfied that A. B. (describing him) is a lunatic who was wandering at large.....and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B., into your asylum. (sd.) C. D. Dated the To the Officer in charge of the asylum at **'.

It is not denied before us that no such reception order has so far been made in connection with Golo : The medical certificate referred to in section 14 has been

dealt with by section 18, which may also be reproduced at this stage :-

'18. Medical Certificates.

(1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others ; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the Judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.' The form of such a medical certificate is also prescribed in Form 3, Schedule

1. Paragraph 3 of this form requires the Medical Officer concerned to state the facts indicating insanity observed by him and other facts indicating insanity communicated to him by others and then to give grounds which are the basis of his conclusion. The sanctity of the reception order would be clear from section 20 which provides that a reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order made upon petition, for the person authorised so to do by the person making the order to take the lunatic and convey him, to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signatures or of the jurisdiction of the person making the order. The proviso to section 20 lays down, inter-alia, that no reception order can have effect after the expiry of 30 days from its date, unless the lunatic has been admitted to the place mentioned therein within that period. These provisions reflect the high interest the people in a

democratic set-up like ours have in the preservation of liberty of person. The Lunacy legislation, of course, dates back to the British rule in India, but legislation in that period was also inspired to a considerable extent by the traditional respect for personal liberty which the British Parliament is reputed always to have championed. The British Parliament, which was answerable to the British public, apparently maintained, largely speaking, a fairly close scrutiny over the British Indian legislation, with the result that the legislation in British India and the Lunacy Act in question largely contained adequate safeguards against arbitrary deprivation of personal liberty, though of course the authorities even in this country were not effectively answerable to the Indian public. They were certainly answerable ultimately to the British Parliament which was in the end answerable to the British public. The basic principle on which the legislative scheme of the Lunacy Act is based, seems to us to be rooted in the democratic spirit of the British Constitution which has always been anxious to protect and preserve liberty of person against all arbitrary onslaughts. Section 23, on which main reliance has been placed on behalf of the State, provides for detention of lunatics pending their removal to asylum. It reads as under :- '23. Detention of lunatics pending removal to asylum. When any reception order has been made under section 7, 10, 14 or 15, the Magistrate may, for reason to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.' Plain reading of this section shows that it is of no assistance to the State, because it operates only after a proper reception order has been made under the appropriate sections, including section

14. No such reception order having been made in this case, this section is quite clearly inapplicable. It is faintly argued that the provisions dealing with the reception order and the medical certificate should be considered to have been substantially complied with in the present case and that Forms 3 and 5 in Schedule I of the Act should not be construed to demand a strict and meticulous compliance without any change or variation. We quite agree that the forms contained in the Schedule have to be used with such variation as the circumstances of each case may require, and indeed this has been specifically so provided by section 96 of the Act. We are, however, unable to find any substantial compliance with the provisions of sections 14 and 8 in this case and our attention

has not been drawn to any order which can reasonably be considered to be reception order in substantial compliance with section

14. Nor do we find any Medical certificate which can on any reasonable and rational ground be considered to conform to the provisions of law contained in the Lunacy Act. We have come to this conclusion after devoting our most serious attention to both Annexures 'D' and 'F'. It may be recalled that by virtue of section 20, the authority for reception on the basis of a reception order lapses after the expiry of 30 days. This limitation of period, in our opinion, provides a complete answer to the respondent's argument in sustaining the legality of Golo's present detention. When confronted with section 20 and with the scheme of the Act, the learned counsel for the respondent had virtually to concede that there was no effective and operative reception order as contemplated by the statute in the present case and he had finally to drop the suggestion that sections 14 and 18 had been substantially complied with.

(4) The foregoing discussion leaves no doubt in our mind that there is no lawful order under which Shri Golo is being detained in the Sub Jail, Solan, and we have no option but to order his immediate release. The manner in which the question of Shri Golo's mental state and his detention in a Sub-Jail appears to have been dealt with by the authorities concerned has not created a happy impression on this Court, but on this aspect, we will have to make some general observations so as to clarify the approach required both on the part of the doctors and the administrative officers when dealing with such cases, however humble of status, poor in financial resources and servile in behavior the person dealt with may be. We may only observe, at this stage, that, if Golo had once before been successfully treated at Ripon Hospital, Simla, as is clear from Annexure 'B', it is not understood why on the present occasion also he was not sent to the Ripon Hospital or to some other hospital at Simla for proper treatment and why was he lodged in a Sub-Jail, where indisputably, there is no proper arrangement for his medical treatment. This, to say the least, betrays a somewhat callous unresponsive betraying absence of human element and unworthy of a welfare State.

(5) Turning now to Cr. Misc. 49 of 1967 (Bidu v. State) in the return, which, as noticed earlier is in the form of comments by the District Magistrate, Mahasu, it is stated that the said District Magistrate had on 16.6.1967 informed the Superintendent, Sub-Jail, Solan, that the Himachal Pradesh Government has reserved a seat for Shri Bidu Ram lunatic in the Mental Hospital at Ranchi and that the Medical Superintendent, Hospital for Mental Diseases, Ranchi, had desired two medical certificates from the physicians (one should be a gazetted officer), and a certificate of fitness to travel, to be sent to him along with the lunatic. In view of this latest development, it is prayed in the return that the rule be discharged because Bidu Ram's detention in Solan Sub-Jail is lawful and valid. Our first impression, on being informed of this latest development, was that Bidu Ram's detention was perhaps in accordance with the statutory provisions and he should be allowed to be sent to Ranchi. We were persuaded to take this view on the basis of the following sentence contained in the comments of the learned District Magistrate :-

'THE final order for travel from sub-Jail Solan to Ranchi will be passed on 22. June 1967 when the traveling expenses are deposited and the formal travel papers are ready. The present confinement is warranted by the provisions of section 23 of the Indian Lunacy Act which specifically provides for such a custody'.

when, however, we suggested to the learned counsel for the State then we were inclined to postpone this case for a couple of days so as to be sure that Bidu Ram is actually sent to Ranchi, we were informed that the requisite medical certificate, as required by section 18 of the Lunacy Act, has (yet to be obtained and similarly the necessary reception order, the force of which is only to last for 30 days, has (also yet to be passed, it being added that the medical certificates would be available only after the doctors concerned has) properly examined Bidu Ram. This contention naturally provoked us to go into the record to see if Bidu Ram's present detention is really authorised by the provisions of the Lunacy Act and unfortunately, our conclusion is the same as that in the case of Shri Golo. We may now briefly turn to the facts of this case.

(6) On 27.2.67, Nanda Ram, father of Bidu Ram made an application to the Station House Officer, Police Station, Dhalli, stating that his son Bidu Ram had been suffering from mental derangement for some time past and in spite of treatment, his condition has not improved, which had indeed become precarious. Nanda Ram desired his son to be arrested because his family members apprehended danger from him. Another application practically to the same effect was made on 1.3.1967 by Nanda Ram to the same Station House Officer. On the date of the second application, A.S.I. Police Station Dhalli, seems to have recorded statements of Shri Nanda Ram, Shri Het Ram and Sh. Hari Ram. Their statements are completely identical, giving the prima facie impression of having been inspired by Nanda Ram. On 4.3.1967, the Station House officer reported to the District Magistrate, stating that pursuant to Nanda Ram's application dated 27.2.1967, necessary enquiries were conducted which revealed that Bidu Ram was suffering from mental derangement and in spite of treatment, Bidu Ram's condition did not improve. It was added that Bidu Ram has been arrested under section 13 of the Lunacy Act because of his dangerous tendencies and that it was necessary to send him to some mental asylum for medical examination. We find from the record that on the same day, he had also made another report recommending that Bidu Ram should be sent for medical examination and that it was necessary to send him to a lunatic asylum. On that very day, underneath the report of the Station House Officer, on the same page, there is an order in Hindi signed by some body for, and on behalf of the District Magistrate, Mahasu to the following effect :-

'SHRIBidu Ram lunatic under custody of Sarvshri Mehar Singh, Constable No. 576, and Naukhu Ram, Constable No. 401, is present. It is necessary to get the lunatic medically examined, hence the Medical Superintendent Snowdon Hospital may be requested to get him examined and send his report before 7.3.67. Shri Bidu Ram lunatic will remain in Judicial lock-up at Kasumpti till further orders.'

This is Annexure 'J' to the return. On the same day, a letter is written by the District Magistrate, Mahasu, to the Superintendent, H. P. State Hospital Snowdon, Simla, (Annexure 'K' to the return, requesting him to examine Bidu Ram and to furnish the medical report immediately. On 7th March, 1967, the Medical Specialist,

Snowdon Hospital. recorded the following report -

'SHRIBidu Ram has been examined by me. He talks rationally at times but at toher times, he is irrational and appears excited. He is alluding again and again to Gods being angry with him. I think it will be preferable to keep him under observations in the hospital for some days under police custody but without handcuffs to come to definite conclusion about his mental condition.' On 8th March, 1967, an order was passed for Bidu Ram to be admitted in the Hospital for necessary observation. This is Annexure 'M' to the return, but it is nto shown as to who had made this order. On the same day. Bidi Ram was sent to Snowdon Hospital as per Annexure 'N' to the return. On 14th March 1967. the Medical Specialist, Snowdon Hospital, recorded the following report : - 'RETURNEDto the Medical Superintendent with the remarks that Shri Bidhi Ram has been observed in the ward from 9th March 1967, and is being discharged today. Shri Bidhi Ram talks irrelevantly at times and incoherently. At times starting whistling with his mouth to frighten away ladies and also becomes abusive and violent oddly of dress tightening pieces of cltoh ground the neck and wrists. At times he becomes violent and starts destroying articles and things present. He sometimes starts asking food at midnight In view of above findings in my opinion Shri Bidhi Ram, is of unsound mental suffering from Schinzophrenia and requires treatment in a mental hospital.'

A copy of this report was forwarded to the District Magistrate, Mahasu, on 21st March 1967. It is nto explained why it took seven days for this report to be transmitted to the District Magistrate. Annexure 'Q' to the return is a. discharge slip and tharein we find a prescription prescirbing some medicines. Though along with the return, we do nto find any communication dated 25th March 1967, but from the record it appears that the District Magistrate Mahasu, wrtoe on that date to the Medical Superintendent, H. P. Snowdon Hospital, inter alia, to the following effect :-

'SHRIBidu Ram alleged lunatic has been discharged from your hospital on 14th March 1967, but medical certificate as regards his illness has nto been received so far from you. It is, thereforee, requested that the same may please be sent to this office immediately so that further action in the matter could be taken.' On 5th April

1967, the District Magistrate, Mahasu, wrote to the Director of Health Services, stating that from the report of Dr. S. P. Gulatti, Medical Specialist, it appeared that Bidu Ram was of unsound mind suffering from Schizophrenia and required treatment in a mental Hospital. Bidu Ram's father had. it was added in this letter, requested that the maintenance charges of the patient be borne by the Government because he is a very poor man. From the enquiry made by the Tehsildar, Kasumpti, regarding the financial position of the patient and those of his relatives, who were legally bound to maintain him, the District Magistrate had been satisfied that the lunatic and his relatives were not able to bear the maintenance charges, It was accordingly recommended that the same may be borne by the Government. In the end, it was requested that a seat for Bidu Ram lunatic be got reserved in some mental hospital at an early date under intimation to the District Magistrate. To this letter, to our utter surprise, a reply was sent on 22nd May 1967, more than a month and a half later, according sanction for Bidu Ram's admission, in the following words : - 'SHRIBidu Ram lunatic may be admitted in the Mental Hospital, Ranchi, against the quota reserved for this Pradesh after ascertaining about the availability of a bed from the Medical Superintendent, Mental Hospital Ranchi. Necessary documents required at the time of admission of the patient may be given to his escort.' It was added that the traveling expenses of the patient would have to be borne by the father of the lunatic. A copy of this letter was forwarded to the Mental Hospital, P. O. Kanke, Ranchi on 26th May 1967. On 30th May 1967, we find from the record that a telegram was sent by the Deputy Commissioner, Mahasu, to the Mental Hospital, Kanke, enquiring if a seat had been reserved for Bidu Ram lunatic. Necessary admission forms were also sought. To this, a reply was received from Ranchi, intimating that one bed was available. After the receipt of this telegram, Bidu Ram's father was called for 7th June 1967. On the record, we also find a letter dated 29th May 1967, from Ranchi addressed to the District Magistrate, Mahasu, intimating that a bed in the Himachal Pradesh State quota had been allotted for the admission of Bidu Ram and it was desired that along with the patient, the necessary reception order of Magistrate, application for reception order, two medical certificates and a certificate of fitness to travel be also sent. In addition, a personal history and treatment, consent forms, of which copies were enclosed, duly completed by the guardian of the patient,

were also required to be furnished at the time of his admission. We consider it appropriate here to point out that in the letter No. 6018 dated 31st May 1967, confirming the telegram sent from Ranchi, it was pointed out that there were three beds vacant in the H. P. State quotoa at that time, but the same had already been offered to three patients, including Bidu Ram. The name of one Smt. Uma Dassi was, therefore, kept in the waiting list, regarding which it was suggested that enquiries be made about the availability of beds after about a month or so. It is in these circumstances that in the return, it has been suggested that the final travel order from Sub-Jail, Solan, to Ranchi would be passed on 22nd June, 1967.

(7) The foregoing discussion quite clearly shows that there is no lawful effective operative order under section 14 of the Lunacy Act and the present custody must, therefore, be held contrary to law. This discussion also betrays the casual manner in which cases under the Lunacy Act are being dealt with by the learned District Magistrate. Indeed, we find that in all probability it is the Reader or some toher member of the staff of the District Magistrate who has dealt with the matter and the learned District Magistrate or his General Assistant has just signed the orders, which seem to have been prepared and written by the Reader, without the learned Magistrate applying his own independent mind.

(8) In the final result, Bidu Ram's detention is held illegal and he is entitled to be released forthwith. Indeed, we have already released him by means of a short order.

(9) We come now to the case of Smt. Manvi or Manki (Cr. Misc. 52 of 1967). In her case also, it is conceded that the proceedings were, strictly speaking, initiated under section 13 of the Lunacy Act, though her husband is stated to have addressed an application dated 1st April 1967 to the Deputy Commissioner, Mahasu, which was forwarded to the said officer, as per covering letter dated 7th April 1967, by the Permanent Secretary, Himachal Pradesh Congress Committee, Simla, under directions from the President of said Pradesh Congress Committee, who is described in the covering letter as the 'Pradesh Congress Chief.' A copy of this letter along with the original application was forwarded from the office of the District Magistrate Mahasu, to the S. H. O. Kumarsain for immediate enquiry with a

direction to apprehend the lunatic under the Lunacy Act, if necessary, and to report. The learned counsel for the respondent has not been able to point out to us any provision of law under which the President or the Secretary of the Pradesh Congress Committee, which is merely one of the several political parties functioning in this Republic, acted in forwarding Rankoo's application. Indeed, the learned counsel has very fairly refrained from attempting to justify the action of the President or the Secretary of the Congress Committee which was calculated to influence in a subtle manner the District Magistrate in discharging his functions under the Lunacy Act. Without commenting on the question whether the action of the officers of the Congress Committee was well-intentioned, in our opinion, it was certainly ill-advised, because a recommendation from the President of a ruling political party is likely to influence the officer, to whom it is addressed, in dealing with the matter in question, which is strictly controlled by the provisions of the Lunacy Act. As matter of fact, the manner in which the learned District Magistrate, the S. H. O. and other officers concerned have dealt with this matter, has confirmed our impression that the covering letter did weigh with them to the prejudice of Smt. Manvi. In all probability this seems to be due to want of realisation on their part that ours is a legal equalitarian State which is governed by law and not by men, and we feel that the sooner this basic conception of our State is realised by all concerned, the better for the future of our administrative set-up.

(10) The officer in charge of the Police Post Thanedhar, seems to have recorded the statement of Dila Ram) Jai Lal, Ram Singh, Shiv Lal and Khub Ram on 8th May, 1967. Annexure 'H' to the return, purporting to be a translation of Rankoo's statement recorded by the officer in charge of the Police Post, Thanedhar, does not bear any date. It, however, states, that Rankoo's wife Smt. Manki is suffering from mental derangement for the last 8 years and is found lying here and there and at times runs away from the house. Two years earlier, she had set fire to the domestic clothes and was overpowered with great difficulty and that though during the last two years, she had not done anything, yet there was apprehension of her setting fire to grass houses etc. On 20th May, 1967, the Officer in charge of the Police Post Thanedhar, submitted his report (Annexure 'J' to the return) which is to the following effect:-

'INcompliance with order No. 1114 dated 13th April 1967, it is submitted that from the enquiries, Smt. Manki wife of Rankoo Harijan resident of Bargaon Sub Tahsil Kumarsain has been found insane. The condition of the said lady is also like that of an insane person. There is apprehension in the minds of residents of village Bargaon that she might set fire (to their property etc). In these circumstances, it is imperative to send her to mental hospital.' On 22nd May, 1967, the General Assistant to the District Magistrate seems to have made the following order :- 'SMT.Manki lunatic under surveillance of Shri Roop Singh, A.S.I. Police post Thanedhar is present. Shri Bankoo, the husband of Smt. Manki is also present. It is necessary to get Smt. Manki lunatic medically examined and, therefore, a letter to the Medical Superintendent, Snowdon be sent per Shri Roop Singh. A S. I. Smt. Manki be kept in the Judicial Lock-up- The case be put up on receipt of the medical report for taking further proceedings'.

On the same day, a letter seems to have been written by the District Magistrate, Mahasu, to the Superintendent, H. P. State Hospital, Snowdon forwarding Smt. Manvi for medical examination and report, and also stating that Smt. Manvi, wife of Shri Rankoo had been reported to be suffering from mental disease and was being referred to the Superintendent for medical examination under supervision of Shri Roop Singh, A. S. I. On the same day. Dr. S. P. Gulati made the following report:-

'I have talked to the patient Manki and her husband Rankoo and examined her. She is suffering from Epileptic fits turn six years duration and since 3 years she is showing symptoms of progressive dementia with apathy to her household duties, children and husband. She also became haked and runs away from home, at times she has destructive tendencies and according to her husband tried to set fire to house. She is therefore advised admission to a Mental Hospital for treatment '

It is crystal clear that this report is based on mere report from the husband and the doctor himself does not seem to have properly observed and examined the patient. This report can, therefore, be of little assistance for the purposes required to be established under the Lunacy Act. Then follows the order dated 24th May 1957, (Annexure 'A' to the return) which reads as Under :-

'THE case was put up today. The medical report in respect of Smt. Manki has been received from Snowdon Hospital. A perusal thereof shows that Smt. Manki is mentally deranged and requires admission in the mental hospital. The Naib Tehsildar, Kumarsain, may be asked to enquire into the financial position of the relatives of Smt. Manki and report whether they are able to defray the maintenance expenses of the patient in the hospital as also her traveling expenses. The case to be put up on the receipt of the report from the Naib-Tehsildar, Kumarsain. Smt. Manki lunatic be kept in Judicial Lock-up Solan, instead of Judicial Lock-up at Kasumpti, till further orders.'

No comment is needed for showing that this order is wholly unauthorised by any provision of law. The fact that no time limit has been fixed even in the report to be submitted, betrays a deplorable state of unawareness, on the part of the officer concerned, of the fact that he was dealing with the liberty of a person, who, according to him, required immediate medical attention. The small room in which this lady was lodged for twenty four hours in the sub-jail Solan would have to some extent disturbed the mental balance of any inmate.

(11) The foregoing discussion leaves us no option but to hold that the detention of Smt. Manki is wholly unauthorised by law and she must be set at liberty forthwith. In her case also, we have already released her by means of a short order.

(12) This brings us to the case of Attar Singh (Cr. Misc. No. 48 of 1967) who was being tried for an alleged offence under section 325, Indian Penal Code, along with his brother and some others in the Court of a Magistrate 1st Class, Kasumpti. During the course of the trial on 4th October, 1966, Shri Nihal Singh, Magistrate 1st Class Kapumpti, made an order in which it was stated that Attar Singh had in the Court of the Magistrate 1st Class, Theog, exhibited some unusual behavior which latter, became the cause of transfer of the case to the Court at Kasumpti. The transferee Court also did not consider the conduct of the accused to be satisfactory. Shri Nihal Singh examined Attar Singh to satisfy himself whether the accused had been supplied copies of documents referred to in section 173, Criminal Procedure Code, and required the accused to sign his statement which he declined. After great persuasion, however, the accused was prevailed upon to

sign the statement. The Magistrate considered this behavior to be abnormal. In regard to the documents under section 173, Criminal Procedure Code, Attar Singh had stated that the documents supplied to him were not attested, but the same were not shown to the Court. The case was adjourned to 27th September, 1966. On that date, Attar Singh did not appear. Instead, he sent a letter that the case against him was false and that he would not attend the Court unless his letter containing his pleas was considered. The contents of this letter were considered vague and baseless by the learned Magistrate constituting another abnormal step on his part. The case adjourned to 4th October, 1966 and in order to ensure Attar Singh's presence, a bailable warrant was issued. The accused, however, did not agree to any one becoming his surety, with the result that he was produced in Court under arrest on 3rd October, 1966. On production in Court, Attar Singh declined to be released on bail. He also refused to be released on furnishing a personal bond and preferred instead to be sent to judicial lock-up. On 4th October, 1966, Attar Singh was asked to show to the Court the documents given to him under section 173, Criminal Procedure Code, but the accused stated that he had not brought them with him. The accused is also stated to have questioned the Procedure adopted by the Court in trying him under section 325, Indian Penal Code. It is further mentioned in the order, that the accused had sent a number of communications to the District Magistrate in regard to this case. The contents of those letters, according to the learned Magistrate, showed that the mind of the accused was unbalanced. The District Magistrate, had also according to the order formed the same impression. From this material, the learned Magistrate believed that the accused was of unsound mind and incapable of making his defense. He accordingly directed Attar Singh's examination by a Civil Surgeon of Snowdon Hospital. The case was in the circumstances adjourned to 18th October, 1966. On 6th October, 1968, the Psychiatrist, H. P. State Hospital Snowdon, reported as follows :- 'Returned in original with the report that Shri Attar Singh son of Thakur Lachi Ram of Village Kufri. P. O. Ktokhai, district Mahasu was examined by me today. His talk is excited and excessive. He thinks that many people in the village specially his wife's relatives are against him and they are probably planning plots to harm him. He is also suspicious about many other people in the Govt, and thinks that they are also inclined to disrupt his fame and respect In my opinion he

is suffering from mental illness.' The learned Magistrate on 18th October, 1966 examined Dr. Damyanti Kapoor, Psychiatrist, Snowdon Hospital, who had examined Attar Singh on 6th October, 1966. The doctor repeated the three findings recorded by her in the report and proceeded to state as follows :-

'HEcan manage himself and his affairs but there is every likelihood of his being dangerous to himself and tohers. His mental disorder is partial. The accused is of unsound mind and, therefore, I do nto consider him capable of making his defense. During his examination, it did nto appear that he had any previous attack of insanity. I cannto say what was the reason of his insanity. Insanity appeared to be gradual and nto sudden. I cannto say whether he committed the offence in the lucid period. During his period of his unsoundness of mind, it would be bitter if he is confined to some lunatic asylum. The Accused is also subject to insane delusions of most of the people being his enemies. His state of bodily health was found fair. There in no histtory of epilepsiy.'

It is quite obvious that this statement is highly unsatisfactory. It is somewhat unfortunate that the learned Magisrrate did nto properly question this witness in order to have some of the inconsistencies in her statement explained. The witness had started with the assertion that Attar Singh could manage himself and his affairs, but that there is only a likelihood of his being dangerous to himself and tohers. The Magistrate was, strictly speaking, only concerned with knowing whether the accused was capable of defending himself. On 27th October, 1966, the learned Magistrate, relying on the abnormal behavior of Attar Singh ntoiced by him in his order dated 4th October, 1966 and on the report and statement of the Psychiatrist, felt satisfied that Attar Singh was of unsound mind and required treatment. After recording this findings, he ordered that further proceedings in the case against Attar Singh should remain in abeyance and the case against the toher accused persons should proceed in accordance with law. A copy of this order was forwarded to the District Magistrate, Mahasu, suggesting that arrangements should be made to send Attar Singh to some mental hospital. On the same day, the learned District Magistrate, Mahasu, Shri R. C. Gupta, made the following order : -

'I called Shri Attar Singh from judicial lock-up today. He appears to be suffering from persecution Mania. It has been explained to him that if he does not behave and persists in refusing food, we will not be left with any course except to force feed him and to arrange for a seat for him in some mental hospital. He has been given time till tomorrow. If he continues refusing food till tomorrow, he may be transferred to Sub-Jail, Solan Reference may be made to Director of Health Services to arrange for a seat in some mental hospital either at Ranchi or Amritsar. The reference may be made straight away and his transfer to Solan will depend upon his behavior in Kasumpti Lock-up.'

It is unnecessary to comment on this order which also betrays a complete unawareness of the fact that the learned District Magistrate was dealing with a person who was supposed to be a lunatic. To record that the learned Magistrate had explained to Attar Singh that if he does not behave and persist in refusing food, he would have to be forcibly fed and sent to a mental hospital and that Attar Singh was given time till the following day to think over it, has not been appreciated by us at all. If a man is really mentally unsound and is not capable of defending himself, it is not understood how the learned District Magistrate thought that the accused had understood what was explained to him. On 4th November, 1966, the District Magistrate appears to have written to the Director of Health Services requesting that necessary arrangements be made for Attar Singh's admission in a mental hospital either at Ranchi or at Amritsar at a very early date. It was expressly mentioned that since the lunation was an under trial, his maintenance charges in the mental hospital would have to be borne by the Government. On 1st December, 1966, a reminder was sent by the Deputy Commissioner, Mahasu, to the Director of Health Services requesting for the favor of an early reply to the letter dated 4th November, 1966. On 3rd December, 1966, the Superintendent, Sub-Jail, Solan, wrote to the District Magistrate as follows :-

'LUNATIC Attar Singh was admitted in this Jail on 29th October, 1966 vide your order under reference above. He is not taking his meal as a result of which his health has been much deteriorated. If immediate arrangement is not made for his admission into some Mental Hospital, his worst health may end his life at any time. He was produced before the Medical Officer in charge, Civil Hospital, Solan

on the 30th October, 1966 for forcible feeding and a copy of his report in the matter is as under :- 'Attar Singh was brought to me on 30th October, 1966. Milk was given to him through nasal tube. Being a mental case, this was extremely difficult procedure. It would be better if he is sent to a mental hospital rather than in a Jail. This Jail is really nto a proper place to keep such type of lunatics and the undersigned is fully agreed with the opinion of the Medical Officer in charge, Civil Hospital, Solan. It is, thereforee, requested that immediate arrangement may kindly be made to seat Shri Attar Singh lunatic in some Mental Hospital.' A. copy of this letter was also forwarded to the Inspector-General of Prisons, H. P. for information. On 8th December, 1966, the District Magistrate, Mahasu, sent antoher reminder to the Director of Health Services, impressing upon the said officer the desirability of making necessary arrangemnets for Attar Singh's admission to some mental hospital at a very early date. On 16th December, 1966, the Superintendent, Sub-Jail, Solan, again requested the District Magistrate to expedite the matter of Attar Singh's admission in some mental hospital. To this, a reply was sent by the District Magistrate, Mahasa, on 24th December, 1966 stating that the matter had since been referred to the Director of Health Services. It was on 3rd January, 1967 that the office of the Director of Health Services could find time to advert to this case, when we find a letter addressed to the District Magistrate stating that the maintenance charges in respect of Attar Singh could nto be borne by the Government unless a certificate was issued by the District Magistrate stating the financial position of the parents or relatives of the lunatic. The matter again seems to have remained in a cold storage till 30th March, 1967 when we find a letter from the District Magistrate to the Director of Health Services repeating that Attar Singh being an under trial, his maintenance was the responsibility of the Government and that the expenses in connection with his treatment including his traveling expenses, have to be borne by the Government. It was expressly pointed out that the expenditure to be incurred on Attar Singh's maintenance etc., may be sanctioned out of the Government funds under head 22-Jails. Two months again passed without anything happening in the office of the Director of Health Services and on 31st May, 1967, the District Magistrate sent antoher reminder to the Director pressing for necessary arrangements for the reservation of a seat. for Attar Singh in a mental hospital We, however, find from

the record that a letter dated 29th May, 1967 was sent by the Director of Health Services to the District Magistrate, in which it was repeated that the maintenance charges in respect of Attar Singh could not be borne by the Health department unless certified by the District Magistrate that Attar Singh's parents or relatives were unable to bear the hospital expenses. At the back of this letter, we find a note to the effect that Attar Singh being an under trial prisoner and being transferred to mental hospital under orders of the Court, his traveling expenses had to be met by the Court, ordering his transfer, under the rules contained in Chapter XXVII Vol. III of High Court Rules & Orders. Thereafter on 16th June, 1967, the District Magistrate wrote to the Director of Health Services, in reply to the latter's communication dated 29th May, 1967, intimating that the maintenance charges and traveling expenses of Attar Singh were being arranged by the office of the District Magistrate and it was requested that a seat be got reserved for the lunatic in a mental hospital at an early date. The casual manner in which the Director of Health Services and the District Magistrate have dealt with this case is indeed difficult for us to appreciate and in our view it reflects absence of the requisite sense of responsibility and anxiety expected from responsible officers when dealing with citizens supposed to be insane and requiring immediate medical treatment. We examined Attar Singh in Court and we found that perhaps he was obsessed with the idea that he was innocent and had been falsely implicated in this case. Such feelings do not necessarily show that the person concerned is a lunatic. But be that as it may, we are only concerned with the question whether Attar Singh's detention in Judicial lock-up is contrary to law. We find that being an under trial prisoner and having refused to be enlarged on bail, his custody in a judicial lock-up cannot be considered to be illegal so as to justify his unconditional release. We, therefore, asked Attar Singh to furnish a personal bond to appear in Court when so required, Shri H. S. Thakur, Advocate, who had been good enough to agree to help us as *amices curiae* in this case, also tried to prevail upon Attar Singh to furnish the necessary bond, but it appears that Attar Singh is too much obsessed with the idea that having been implicated in a false case, he would not be justified in binding himself to appear in Court to stand his trial. Faced with this situation and also with the fact that the trial of his other coaccused is almost in the last stages, we have not considered it proper to direct his trial along with them. 25th of

July, 1907 is stated to be the date fixed for defense evidence in that case. We have, therefore, considered it desirable in exercise of our powers under section 561-A, Code of Criminal Procedure, and Article 227 of the Constitution to direct that the case against Attar Singh be tried by the Magistrate at Theog and that Attar Singh be also transferred to the Judicial lock-up there. The case against him will start after the conclusion of the case against his co-accused pending in the Court of the Magistrate at Kasumpti, in which 5th July, 1967 has been fixed as the date for defense evidence. It is hoped that the learned Magistrate trying that case would take effective steps to dispose it of with due promptitude. This case appears to us to have already been unduly delayed. If those accused are acquitted, then we have no doubt that the Public Prosecutor would consider the desirability of not proceeding against Attar Singh, and indeed Shri K. C. Pandit has agreed with our view. If, however, they are convicted, then it is only fair that Attar Singh is tried by some other Magistrate, and Theog being nearest to his village, we hereby direct that his trial be held in the Court of the learned Magistrate there. In this connection, it may be pointed out that Courts in this country exist for the litigants and for doing justice to them according to law ; they should accordingly avoid doing anything which may give an impression that the litigants exist for the Courts. The cause of justice according to law, therefore, should not be sacrificed and made to suffer because of the administrative convenience either of the Courts or of the Administrative officers, when discharging their statutory functions affecting personal liberties of the people.

(13) We must also make it clear that whenever Attar Singh chooses to be released on personal bond, the learned Magistrate at Theog would make the necessary order, so releasing him, unless some other supervening factor intervenes, which has not been brought to our notice. If during the trial, or at an earlier stage, the learned Magistrate does really feel that Attar Singh at that time is not able to look after his interest and to defend himself, he would take appropriate steps to have Attar Singh examined by a competent doctor in accordance with law and we hope that in that eventuality, the authorities concerned would take suitable steps with the requisite promptitude to have Attar Singh admitted in a proper mental hospital. We have by means of a short order already directed the transfer of Attar Singh to a judicial lock-up at Theog. The office of this Court is directed to intimate both to

the Courts at Kasumpti and Theog about the transfer of the case against Attar Singh to the Court of the Magistrate at Theog, as directed by us. Attar Singh should be produced in the Court of the Magistrate at Theog for securing a proper remand order in accordance with law.

(14) The learned counsel for the State has in justification of the action taken by his clients submitted that there is no asylum in the Union territory of Himachal Pradesh and that there being a very limited quota of seats available for the this territory in the mental hospitals which are situated in other places of our Republic, it always takes considerable time before a lunatic can actually be admitted to a mental hospital. This may be true. But this factor by itself affords no Justification for the bureaucratic inertia displayed by the office of the Director of Health Services and by the District Magistrate in dealing with a serious matter of securing proper medical treatment for poor citizens, who were considered by them to be lunatics. Such indifferent attitude on their part tends to suggest to the people, for whom the State exists, that our professions of being a welfare liberal equalitarian democracy based on rule of law are a sham and a mockery in the estimation of the common man and the great principles enshrined in our Constitution are mere words. If the quota allotted to this territory in the various asylums is not large enough, then a proper representation could have been made to the appropriate quarters for its enlargement to the Union Government, whose ultimate responsibility apparently is to see to the welfare of the people of this territory, could have been approached to render the necessary assistance in this matter. Again, if the requirements of this territory in this connection are so great that a separate asylum is necessary then it is the bounden duty of this administration to make suitable arrangements to run a separate asylum for the requisite treatment of its people, who are mentally unsound because there is no higher obligation of a society than to take effective steps to see that its members are mentally fit and sound. In case the financial resources of this administration are too inadequate or not sufficient to enable it to satisfactorily tackle this matter of vital importance and higher priority, steps could have been taken to seek aid from the Union Government and also to cut down its own avoidable expenses on matters of lesser public importance which can wait for some time. As a last resort, some arrangement in some of the hospitals in this territory itself could without much difficulty, have been made for

the treatment of the five persons with whom this Court is concerned in these cases, for, quite obviously, they are not very much advanced cases of dangerous state of lunacy. Facts disclosed on the record confirm our opinion in this connection. The unhappy impression created in this Court after perusal of the records in these cases is that the officials concerned have approached the question of treatment and personal liberty of these five persons with indifference which is almost callous, and is certainly unbecoming of responsible public officers of a civilised welfare State which exists only for the benefit of the people from whom it draws its powers through the process of free poll. Democracy in India has, to a great extent, inherited the traditions of a bureaucratic foreign regime and in territories like those of Himachal Pradesh, where there were small principalities or chieftainships, its inheritance has a blending of traditions of absolute monarchies. In order, therefore properly to develop] and sustain, in any meaningful sense the democratic way of life, in which the maximum development of each individual is achieved, the administrative officers and the statesmen both must imbibe the spirit which truly informs such a way of life. The more intelligent and in ire progressive sections of society must also do their best to promote such a way of life both in private and in public. A democratic society, it may be remembered guarantees rights and privileges to all its citizens, irrespective of distinctions of financial status. It is true that no legal system can entirely avoid compromises between strict justice and the necessity of making the law work, but in modern complex societies, there is & constant danger of the voice of justice being drowned in the clamour of real or supposed expediency, but this can be remedied to a considerable extent by informed and alert public opinion.

(15) We consider it proper also to suggest that the judicial lockups should be frequently inspected by the Magistrates having jurisdiction.

(16) Before parting with the case, we must thank those members of the Bar who have, in accordance with the traditions of democratic way of life, agreed to assist this Court in these cases. It is the peculiar privilege and patriotic duty of a democratic lawyer in our infant democracy to act like sleepless sentinels at the rampart of human freedom, ready to come to the defense of liberty of person when called upon to do so, remembering that liberty is almost always under the guns. It

is a matter of pleasure and satisfaction for us to find that the young men of this Bar are conscious of their duty and privilege and we are grateful for the assistance rendered to us by them in these cases.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com