

Dhaki Ram Vs. State

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Court : Delhi

Decided On : Jul-03-1969

Reported in : 5(1969)DLT612

Judge : I.D. Dua, C.J. and; Jagjit Singh, J.

Acts : [Constitution of India](#); [Lunacy Act, 1912](#) - Sections 16

Appeal No. : Criminal Appeal No. 4 of 1969

Appellant : Dhaki Ram

Respondent : State

Advocate for Pet/Ap. : T.C. Chitkara, Adv

Judgement :

I.D. Dua, C.J.

(1) On 3rd July, 1969, we recorded a short order releasing Dhani Ram whom we found to be illegally kept in District/Special Jail at Dharamsala pursuant to an order made by the Sub-Divisional Magistrate, Palampur. on 20th June, 1939. We now proceed to record the. detailed order giving reasons for our decision.

(2) This is the second instance in this Court when on inspection of a Sub-Jail in Himachal Pradesh, citizens have been found to be kept in custody along with convicts and other inmates of the prison on the ground that they are considered to

be lunatics. In *Golo v. Union of India*, a Bench of this Court dealt with cases of four citizens who were detained in custody in Solan Sub-Jail as lunatics. As a result of the inspection of the Sub-Jail on 14th June, 1967, it was discovered that the orders directing their detention were not in accordance with law. After going into the legality of their detention in habeas corpus proceedings they were all directed to be released because the orders of their detention were found legally unsustainable. It is a matter for regret that in spite of the legal position having been clarified in that judgment the officers in Himachal Pradesh, exercising magisterial power of arresting and confining in prison persons deemed by them to be lunatics, have not yet adequately realised that in this country people are governed by law and not by men and that personal liberty of a citizen is a most zealously cherished right, of which he is not to be lightly deprived. According to the constitutional guarantee, a person can be deprived of his personal liberty only in accordance with procedure established by law. In the 'case in hand, during the course of inspection of the District/Special Jail at Dharamsala on 24th June, 1969, Dhani Ram son of Digali was found to be detained there on the ground that he was considered by the learned Sub-Divisional Magistrate, Palampur to be a lunatic. The order of the learned Magistrate shown at the time of inspection in justification of the detention did not appear to be covered by the provisions of the Indian Lunacy Act of 1912 (hereafter called the Act). A suo motu notice was thereupon issued for Dhani Ram's production before a Bench of this Court and the Deputy Superintendent of the District/Special Jail at Dharamsala as also the learned Sub-Divisional Magistrate, Palampur, were required to show cause why Dhani Ram be not released, Notices of these proceedings were also issued to the Himachal Pradesh authorities so as to enable them to represent their point of view. It is somewhat unfortunate that the authorities concerned did not choose to file in this Court a proper return or to place on the record of this case the relevant material on the basis of which Dhani Ram's detention had been ordered and continued. Shri T. C. Chitkara, the learned counsel appearing for the State of Himachal Pradesh however, produced for our perusal the original order of the learned Magistrate which was also shown at the time of the inspection of the District/Special Jail at Dharamsala on 24th June, 1969. The original opinion of the doctor who appears to have examined Dhani Ram at Dharamsala on 21st June, 1969 and again on 28th

June, was also produced for our perusal. These original documents were also, for reasons best known to the authorities concerned, not placed on the record. On the basis of these documents, no serious attempt was made by the learned Counsel for the State to justify the legality of Dhani Ram's detention, as indeed it was scarcely possible to sustain his detention on those documents. This case is directly covered by the decision in Golo's case where the legal position was succinctly stated by a Bench of this Court. We, however, proceed once again to deal with the matter in the hope that the authorities administering the Union territory of Himachal Pradesh would in future keep the legal position in view before making orders of detention on the alleged ground of a person being a lunatic.

(3) It cannot be over-emphasised that according to our Constitution, no person can be deprived of his life or personal liberty except according to procedure established by law. The Constitution, which the people of India gave to themselves in 1950, is intended to secure to all citizens of our Sovereign Democratic Republic, Justice, Liberty, Equality and Fraternity. Part III of the Constitution contains the fundamental rights guaranteed thereby and Article 21 in that Part read with Articles 32 and 226, embody the principal bulwark of personal liberty in this Republic. This guarantee has its roots in the English Magna Carta of the year 1215 when the rebellious Barons of England virtually extracted from King John their rights, including the right of personal liberty. In this respect, the Indian Constitution is in a way a legitimate heir (with inevitable improvement) of the Magna Carta.

(4) Dhani Ram is not a criminal lunatic, nor is he a lunatic so found by inquisition, nor is there any application produced before us which might have been presented under sections 5 and 6 of the Act before a Magistrate for his reception order on the ground of his being a lunatic. Again, Dhani Ram has not been considered to be a wandering or a dangerous lunatic as contemplated by sections 1-1 or 14 of the Act. We say so because no material to this effect has been placed on the record of this case by Shri Chitkara or shown to us from the Bar to this effect. Assuming that the learned Sub-Divisional Magistrate was competent to proceed against Dhani Ram under the Act, he could, in our opinion, only proceed under section 14, which may now be read:-

'14.Reception order in case of wandering and dangerous lunatics: Whenever any person is brought before a Magistrate under the provisions of sub-section

(1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other enquiries as bethinks fit; and if 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 such person, make a reception order for the admission of such lunatic into an asylum : Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into title licensed asylum mentioned in the engagement : Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, take him over to the care of such friend or relative.' It is quite clear that this provision was not complied with by the learned Sub-Divisional Magistrate and we say so because no material even suggesting such compliance has been produced in this Court. Let us now turn to the provisions relating to medical certificates. Section 18 of the Act provides as under :- '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.'

Nothing has been produced before us which would show that the doctor who had examined Dhani Ram was conscious of this provision. The form prescribed is form 3 contained in Schedule 1 of the Act. This form postulates the doctor's own conclusion on his personal examination of the alleged lunatic that he is a lunatic and a proper person to be taken charge of and detained under care and treatment. The doctor is also enjoined to give the grounds on which his conclusion is formed and those grounds are required to contain :-

(A) facts indicating insanity observed by the doctor himself; and (b) other facts (if any) indicating insanity communicated to him by others

Pending report by the medical officer, the alleged lunatic is of course liable to be detained and provision for such detention is contained in section 16 of the Act. This section may now be read :-

'16. Detention of alleged lunatic pending report by medical officer. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given, (2) The Magistrate may, from time to time, for the same purpose by order in writing, authorise such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary. Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.'

(5) This provision leaves no doubt that the Magistrate can by order in writing, authorise the detention of an alleged lunatic in suitable custody (or a period not

exceeding 10 days in the first instance. This period can, from time to time, be extended, but in no event can it be extended for more than 10 days at a stretch. The total period of detention is also not to exceed 30 days from the date on which the alleged lunatic was first brought before the Magistrate. The learned Sub-Divisional Magistrate in the case in hand, has quite obviously not complied with the mandatory provisions of this section. The papers which were shown to us seem to suggest, without doubt, that the learned Sub-Divisional Magistrate was either unaware of the limitations placed by the Act on his power to order Dhani Ram's detention or he has somehow overlooked, or, failed to apply his mind to, these limitations.

(6) While this order was being dictated, the office of this Court placed the following communication received by post from the Sub-Divisional Magistrate, Palampur, purporting to be a copy in confirmation of a telegram stated to have been sent to the Assistant Registrar of this Court :-

'EXPRESSTelegram State. Assistant Registrar, Delhi High Court, Himachal Bench, Simla. Reference your Notice twenty sixth June, received noon today second instant regarding Dhani Ram Lunatic lodged special Jail, Dharmsala and ordered production before honourable High Court Simla on third instant stop case file sent to District Magistrate, Dharmsala yesterday stop no report based, on record possible stop based on memory my submission is that brother of lunatic appeared before District Magistrate and then before me with written application that lunatic in fits of violence proving dangerous to family and public that medical advice was to refer lunatic to Mental Hospital, Amritsar that as family of lunatic was poor government may take charge of lunatic and arrange for his treatment in Mental Hospital stop these allegations were supported by written verifications of Sarpanch and other villagers of applicant including Shri Kunjbehari Lal, M. L. A. stop a medical certificate issued by Civil Hospital, Dharmsala indicated lunacy of the lunatic and reference to Mental Hospital Amritsar stop therefore lunatic was immediately taken into custody and referred for further observations and examination to Chief Medical Officer, Dharmsala whose report due for third instant stop meanwhile lunatic being produced at Simla as directed stop my humble opinion is that it would be dangerous to life of lunatic his family members and

public to set junatic free straightaway because he can do any mischief in his fits stop more than prima facie case appears there for continuing his detention pending further and final medical advice. Essdiem Copy DM.'

on enquiry, it has been discovered that the telegram had been delivered to a domestic servant of the Deputy Registrar of this Court at his residence and it is apparently for this reason that this telegram remained unnoticed and could not be shown to the Court earlier. We cannot help observing that this is a highly irregular manner of defending orders of arrest and detention in habeas corpus proceedings in this Court. The usual course for the learned Sub-Divisional Magistrate as also for the State authorities to adopt was to properly and fully instruct their counsel who had been engaged to represent them in this Court in support of the impugned order. Pleadings and submission of parties to the controversies pending in this Court are not expected to be sent by post or by telegram. The pleadings have to be drafted and produced in this Court in accordance with the prescribed rules and submissions are, as a rule, made orally in Court. The State advocates, arrayed as respondents, are, according to law and practice, in no better position than a private party so arrayed in a pending controversy requiring adjudication by this Court. The learned Sub-Divisional Magistrate would, therefore, in our opinion, have been well-advised to contact his counsel and to instruct him in regard to the defense - to be put forth in this Court rather than forward his plea in support of the impugned order to the Assistant Registrar by means of a telegram. We must assume (and there is no suggestion to the contrary) that the Himachal Pradesh Administration has a well-equipped Law Department with the requisite number of suitably qualified lawyers (including a law Officer of the status of a Government Advocate) to appropriately advise the Administration in administering the Act and also to defend on its behalf legal proceedings in Courts, including this Court. In a governmental set up, ruled by law, where fundamental rights and liberties are guaranteed, a well-equipped Law Department to advise the Government, in time of need, and standing Government counsel, are indispensable, and indeed basic fundamental requirements for enabling the Government to function within the law and for properly defending its actions when questioned in Courts. Had the learned Sub-Divisional Magistrate sought the assistance of the Law Department, we entertain little doubt he would have got the necessary assistance.

(7) As we have already made a short order releasing Dhani Ram, no useful purpose can now be served by dealing at length with this telegram. We may, however, point out that the averments contained in this telegram, based as they seem to be on the memory of the learned Sub-Divisional Magistrate, were not supportable from the papers shown to us by Shri Chitkara at the hearing and we were informed by the learned counsel that there were no other records forwarded to him on which the legality of the impugned order could be sustained. Attention of the learned Sub-Divisional Magistrate is, however, drawn to the various provisions of the Act laying down the procedure for dealing with applications for reception orders. The Legislature seems to have taken anxious pains to see that persons are not considered or declared as lunatics without a thorough scrutiny presumably because such an action affects the status of a citizen apart from its encroachment on his personal liberty- This telegram further seems to us to betray the tendency commonly found among the professional administrator, who, in their zeal, consider it legitimate to draw everything into service of the public aims they are called upon to pursue, ignoring the limitations placed on their absolute power by law, which alone is the source of their authority. They are tempted to assume that it is legitimate to employ even means contrary to the principles of freedom and the democratic concept of the Rule of Law in achieving the end set before them. Administrative convenience is instinctively and unconsciously given priority, ignoring the legal limits to their power We consider it proper to emphasize in this connection the paramount necessity of their guarding against the notion that the excellence of the object validates the illegal means adopted in achieving it.

(8) We are not unmindful of the fact that in certain parts of Himachal Pradesh. because of abject poverty, the lower strata of people are generally very much underfed and this, to an extent, adversely affects both their physical and mental development. Mentally underdeveloped persons are likely, at times, to be mistaken for lunatics. The responsibility of the Magistrates and of the doctors functioning under the Act in such cases, is, therefore, all the greater and they have a solemn duty to see that persons are not dubbed and treated as lunatics on inadequate grounds and lodged in prisons without being medically treated in well-equipped mental hospitals. The relatives of alleged lunatics are, at times, likely to be unduly influenced by a sub-conscious desire to get rid of the burden of maintaining their

mentally underdeveloped relations, whose mental infirmity may, turn this reason, be unduly exaggerated. The Magistrates and the doctors have to guard against this possible tendency. But be that as it may, in welfare State like ours, it would seem to us to be the obligation of the Government to make adequate arrangements for medical treatment of such mentally underdeveloped or infirm persons and we would hereby like to draw the attention of the State authorities to this requirement.

(9) As the foregoing discussion shows, the order made by the learned Sub-Divisional Magistrate directing Dhani Ram's detention in the District Special Jail at Dharamsala is unsustainable, but as we have already directed his release, it is unnecessary to repeat the order of release.

(10) Before concluding, we should like to make it clear that this order is not to be deemed to stand in the way of the learned Sub-Divisional Magistrate or of any other authority to deal with Dhani Ram if he is found to be a lunatic in accordance with the provisions of the Act. Administrative convenience should, however, not be allowed to by pass or override the legal provisions and the elaborate procedure laid down by the Legislature under the Act has to be strictly followed to justify the order of detention and reception. It may also be kept in view that the Act is primarily concerned with the treatment of lunatics and it is not enacted to punish them with imprisonment. as is suggested by the manner in which on two occasions, alleged lunatics have been found to be lodged in prisons in Himachal Pradesh along with criminal convicts and almost treated as such. The Himachal Pradesh Administration, we hope, will, with requisite anxiety and promptitude, consider the desirability of having an asylum of their own because without a proper asylum, the problem of treating the lunatics cannot be satisfactorily solved. We may, in this connection, appropriately draw the attention of the Administration to the Directive Principles of State Policy contained in our Constitution and particularly to Article 47, according to which it is one of the primary duties of the State to raise the level of nutrition and the standard of living of the people and the improvement of public health, and to Article 41 which expects the State inter alia, to make effective provisions for securing public assistance in cases of sickness, disablement and underserved want. These principles, though not enforceable in

Courts, are fundamental in the governance of the country and those entrusted with the power to govern, have a constitutional obligation to apply them in actual practice so that the people of Himachal Pradesh have full benefit of what the Constitution has provided for them.

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