SaberuddIn Shaikh Vs. State of West Bengal and ors.

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SooperKanoon Citation : sooperkanoon.com/856415

Court : Kolkata

Decided On : May-08-1963

Reported in : AIR1964Cal231,1964CriLJ515

Judge : Debabrata Mookerjee and ;D.N. Das Gupta, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Section 491; ;Preventive Detention Act, 1950 - Sections 3, 3(1) and 7

Appeal No. : Misc. Case No. 40 of 1963

Appellant : SaberuddIn Shaikh

Respondent : State of West Bengal and ors.

Advocate for Def. : S.N. Banerjee, D.L.R. and ;Anil Kumar Sen, Adv.

Advocate for Pet/Ap. : Arun Prokash Chatterjee, Adv.

Judgement :

Debabrata Mookerjee, J.

1. This is an application under Section 491 of the Code of Criminal Procedure by one Saberuddin Shaikh alias Saberali Shaikh, a person now detained in Berhampore Jail under the provisions of the Preventive Detention Act.

2. By an order dated October 20, 1962 the District Magistrate of Murshidabad directed the petitioner's detention under Section 3(2) of the Act with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. The detenu was served in due course with the grounds of detention which stated that the petitioner's anti-social activities made it impossible for the administration to maintain peace and public order in the locality with the consequence that the authority concerned upon being personally satisfied as to the truth of the allegations made against him directed the detention. The grounds recited the instances upon which the order of detention had been made. The detenu was informed of his right to make a representation against the order to the Advisory Board. The petitioner made a representation to that Board and having expressed a wish to be heard, he was given a personal hearing. Upon a consideration of the relevant materials the Advisory Board reported that there was sufficient cause for detention. Thereafter, the State Government made an order confirming the order of the District Magistrate complained of.

3. The particulars or instances upon which the order was passed having been drawn up in Bengali were communicated to the detenu in the same language. At the hearing of this Rule some doubts having been expressed as to the true import of certain words appearing in particular 'Kha', we directed the particulars to be translated by the official translator. The translations were made available to Counsel for the petitioner as well as to Counsel for the State. .

4. Before we deal with the objection raised on behalf of the detenue we have to remind ourselves of the limited powers of intervention which this Court possesses in dealing with an application of this kind. It is settled law that this Court does not possess the power of investigating the truth or falsity of the particulars upon which an order of detention is based; it can only confine its consideration to the question whether the detenu has been enabled to exercise his constitutional right of making an effective representation against the order made. If any of the grounds suffers from any kind of vagueness or impression which might reasonably be held to have misled the detenu in exercising his right the Court has the power to set aside the order and direct his release. It is of course true, that if there is an allegation of bad faith on the part of the detaining authority and if that allegation is established, then

alone can this Court enter into facts and decide whether the order complained of is vitiated by bad faith. It is well known that such allegation can easily be made but it is extremely difficult to establish it. In this case, there has been a feeble attempt suggesting that the order was vitiated by bad faith; but nothing has been said or shown from which we could reasonably hold that there was mala fide on the part of the detaining authority. We have, therefore, to confine our consideration mainly to the question as to whether the particulars or instances supplied to the detenu suffer from any kind of vagueness or imprecision so as to have frustrated the petitioner's right to make a representation which is his constitutional right.

5. Before we consider the question of vagueness or imprecision on which, it must be said, was not put in the fore-front of the argument addressed to us on the detenu's behalf, we must notice that the main criticism of the order based upon an analysis of the particulars supplied, related to the ground of detention which was stated to be that the detaining authority took action in the interest of public order. It has been argued that two of the four particulars have nothing to do with public order and consequently the petitioner's detention must be held to be bad. The instances in question are 'Kha' and 'Ga'. They read as follows:

'Kha) At about 8 A. M. on 19-7-61, when Sri-mati Anima Dalui @ Das daughter of Sri Tri-bhanga Dalui @ Das, of village Mahalandi within P. S. Kandi, Dt. Murshidabad went to fetch water from the tube-well in the courtyard of the primary school of the aforesaid village, you offered Rs. 10/-Rupees ten only to the said Srimati Anima Dalui @ Das in order to fulfil your evil intention. As Srimati Anima Dalui refused to take that money you advanced towards her to behave with her indecently. Being frightened at this behaviour of your Srimati Anima screamed and ran away.

Ga) At about 10 p.m. on 26-11-61 as Hesna Hena daughter of Anesar Rahman of village Mahalandi within P. S. Kandi, Dt. Murshidabad went out of her ghar to make water, you along with your associates forcibly took her away from that place. As there had been a dispute between you and Srijukta Anesar Rahman over landed property, you took Srimati Hesna Hena away forcibly in the aforesaid manner, out of grudge and with evil motive'.

6. The contention is that taking the facts as stated in these two particulars for granted, it can never be said that they or either of them can have anything to do with breach of public order. If the petitioner had offered a sum of money to Sm. Anima Dalui in order to gratify his unlawful passion and even if after having received a rebuff from her, the petitioner advanced towards her to behave indecently, it can never be said that that might be an occasion which had any potentiality for inducing a breach of public peace. Similarly if the petitioner had just taken away Hesna Hena even against her will, being prompted by an evil motive, that could have nothing to do with an apprehended breach of public order. These, it is said, are sporadic, casual acts, one of which was committed at a lonely place, namely, the School compound at an hour when no one was nearby, and the other an act which could produce no immediate repercussion on public order. In these circumstances, it has been said, these two particulars, at any rate, are wholly unrelated to the pretended ground of detention, namely, public order. Reliance has been placed upon a decision of the Patna High Court in Lalu Gope v. The King, AIR 1949 Pat 299. This was a case under the Bihar Maintenance of Public Order Act (V) of 1947 in which it was held that a person cannot be detained under that Act on the ground that he is a habitual criminal convicted or suspected of committing thefts in running trains and that if allowed to remain at large he would again indulge in thefts on railways. These observations of Shearer, J. have been called in aid to strengthen the criticism that even though a particular act may amount to an offence which may have a remote connection with public disturbance, it cannot be made the basis of an order of detention unless it has a direct relation to 'public order'. In communal, and other disturbances it is notorious that goondas become extremely active and their activities create panic and alarm and add to the prevailing disorder. In such a situation the making of an order of detention against a goonda may well be justified, but it will be justified not on the ground that he is a habitual criminal, but on the ground that his detention is necessary in a crisis for the prevention of public disorder. The passage which is unexceptionable in the context in which it appears is in the facts of the present case misleading to a degree. There is also the danger of construing the provisions of the Preventive Detention Act on the basis of analogy provided by another State Act, the Bihar Maintenance of Public Order Act. Even if it could be held that the

view expressed in the case is the correct view governing all orders of detention in all circumstances, we are not prepared to say that in the totality of the facts alleged which constitute the particulars forming the basis of the order, the present order can be held bad.

7. A decision of the Federal Court in Rex v. Basudeva, AIR 1950 FC 67 was also relied upon in aid of the contention that the order in this case is wholly unrelated to prevention of public disorder. In the reported decision the court's consideration was directed to examining amongst other things the legality of the U. P. Prevention of Black Marketing Act. Section 3(1) of that Act contained a reference to the maintenance of public order and its provisions were concerned solely with the persons who habitually indulged in black marketing. The order made in the case was tested by the Federal Court with reference to the circumstances alleged and it was held that although black marketing in essential commodities might at times lead to a disturbance of public order, activities such as those of that case were so remote in the chain of relation to maintenance of public order, that preventive detention on account of them cannot fall within the purview of entry No. 1 of list No. 11 Schedule VII of the Government of India Act, 1935. It is quite plain that this question arose in connection with the validity of the Act itself and it would not be right, in our view, to rely upon a passage, torn from the context, and take it as an authority for the proposition that although an act might have potential mischief for inducing a breach of public order, it cannot be made the basis of an order of detention under the Preventive Detention Act,

8. The observations of the Supreme Court in the case of Sodhi Shamsher Singh v. State of Pepsu, : AIR 1954 SC276 have also been called in aid on the petitioner's behalf to establish that the order in the present case is unsustainable. The facts of the case before the Supreme Court were to the effect that the detenu was alleged to have published and distributed pamphlets which were couched in most filthy and abusive language amounting to a vituperative attack upon the character and integrity of the Chief Justice of the Pepsu High Court who had been accused inter alia of gross partiality and communal bias in the matter of recruiting officers for judicial posts and also in deciding cases between litigants. It was held in that case that the order of detention could not be upheld since publication or distribution of

the pamphlets could not be said to have any rational connection with the maintenance of law and order in the State or prevention of acts leading to disorder or disturbances of public tranquillity. The opinion was expressed that at the worst the allegations contained in the pamphlet might be calculated to undermine the confidence of the people in the proper administration of justice in the State. But it was too remote a thing to say that the security of the State or the maintenance of law and order in it would be in danger thereby.

9. In our considered opinion the facts beforethe Supreme Court were wholly different from thefacts contained in the particulars upon which theorder of detention has been made in the presentlease. While it is true that we have always tokeep in view the object of detention in order to assess its relation or relevance to the particulars upon which the order is based, we cannot be unmindful of the fact that acts apparently sporadic and casual committed by a person in a particular locality time and again, are acts which are bound to have repercussions on public order. It would be an extreme proposition to hold that in no case can a person be preventively detained when acts of lawlessness are alleged against the particular person which acts take place within months of each other and which have a certain family likeness demonstrating a tendency on the part of the person concerned to behave in a particular manner which is calculated to affect the peace of the locality. There has been allegation of more than one act or offence against women and such repetition is bound to produce a consequence which has direct relation to public order. We are not prepared to say that since the two acts which arc the subject-matter of the two particulars 'Kha' and 'Ga' were separated by a distance of three or four months' time, had lost their potentiality for producing mischief directly bearing upon public peace. We do not think, therefore, that there is such element of casualness in the acts described in these two particulars as would make them wholly unrelated to the prevention of public disorder, which is the ground of detention in the present case.

10. We do not feel called upon to deal with at length with the cognate criticism arising out of particular 'Kha' that by the very nature of things, the act alleged in that particular was incapable of producing any kind of public disorder. The argument may just be briefly noticed for all that it is worth. It was said that when

the overtures to Sm. Anima Dalui failed, the petitioner merely advanced towards her in a manner which was described to be indecent; but all that having been done at a lonely place with no one nearby, it can never be said that such act could lead to public disorder. Similarly, it was sought to be argued that the facts construing the particular 'Ga' could have no relation to public disorder. It would be useless to pursue further examination of this contention since we think that the detention order was made on the totality of the facts contained in the particulars attached to the ground and it would not be right to take a particular and study it in isolation from the rest. It would be only necessary to take the particulars together and in order to see whether they could have reasonably produced the personal satisfaction of the authority making the order and whether all of them were such as to have enabled the detenu to make an effective representation against the order. Judged in this light we think the particulars contained in 'Kha' and 'Ga' were quite precise, and were in their total effect directly related to the question of public order. Indeed .in Madan Shaw v. State, : AIR1962 Cal119 it was held that where the grounds taken collectively are relevant to the question, this Court is not entitled to pursue the matter further and is only concerned to see whether the grounds are relevant to the object of detention. So read, the two particulars 'Kha' and 'Ga' in conjunction with the instances 'Ka' and 'Gha' make it plain that they were directly related to the question of public order. Instances 'Ka' and 'Gha' read as follows:

'(Ka) Majjan Ali son of late Makbul Sheikh, of village Mahaldi within P. S. Kandi, Dist. Murshida-bad having deposed before the police against you in connection with the Kandi P. S. case No. 3 dated 12-9-60, under Sections 366, 298, 448, I. P. C. and under Section 11 of the Preventive Detention Act of 1950, you threatened Suaj Mondal and Majjan Ali at about 8 A.M. on 12-6-61 on the road from Mahalandi to Nabagram, saying that you would burn his house by setting fire to it and would assault them.

(Gha) At about 8-30 p.m. on 7-7-62 you were found in a drunken state in front of the tea stall of Sri Nripen Barui of village Mahalandi within P. S. Kandi, Dt. Murshidabad and that having caused vexation to the local people, Manmatha Nath Karmakar of that village asked you to leave the place. At this you got extremely excited and drawing out a dagger from your waist, threatened the said Manmatha

Nath Karmakar with murder.'

11. There can be no question that the two particulars just cited have direct relevance on the question of public order. We cannot therefore agree to study instances 'Kha' and 'Ga' in isolation, completely divorced from 'Ka' and 'Gha'. They have to be read together in order to examine the legality of the impugned order.

12. Turning to the particulars or the instances we have no manner of doubt that each one of them is precise and gives the necessary details which enabled the detenu to make a representation to the authority concerned. It does not appear that the detenue even felt embarrassed by reason of want of necessary details. No request seems to have been ever made at any earlier stage for further particulars. He had the right to ask for necessary particulars since that right follows from his other right to make an effective representation before the authority concerned.

13. It has, however, been argued that thedetenu did not have a fair chance before theAdvisory Board on the ground that he might havebeen misled by the words used in Bengali in particular 'kha' set out above. At the hearing somedoubts having been expressed as to the true importof some words used in this particular, we directeda translation to be made by the official translator.Taking the translation as well as the original wordsin Bengali, we have no manner of doubt that thedetenu could not have been under any misapprehension. Indeed, the language in which the particulars were given is the language to which thedetenu was born. The representation which hemade to the Advisory Board was on the basis ofthe particulars supplied to him in Bengali, and noone could in such circumstance have been misledby anything contained in it. The controversy before us related to the words vir~ ms'; pkjrkFk and the words vlr~ vkpju dfjckj fufek The official translation is that the petitioner hadacted in the manner alleged to 'fulfil his evil intention' and 'advanced towards her to behave withher indecently'. There can be no confusion ormisapprehension in a case of this kind. We haveno hesitation to reject the belated plea made atthe hearing that the petitioner was misled and consequently the representation he had made to theAdvisory Board was inadequate or incomplete.Without going into the merits of the matter, we have no hesitation to say that this particular read as a whole either in the original Bengali or in its

English rendering cannot leave anyone in any doubt as to its true import, and nothing has been said before us which would make us think that the petitioner was misled in the least.

14. With regard to particular 'Kha' it has been farther argued that this is a non-existent ground since the said Sm. Anima Dalui has sworn an affidavit to say that the detenu had never offered her any sum of money nor behaved with her indecently at any time. The affidavit-in-opposition sworn by the Officer-in-Charge of the relevant police station was that on July 21, 1961 her father lodged an information complaining of an attempted outrage on the modesty of the girl. The deponent had personally enquired into the complaint and found the allegation true. A resident of the village, Janaki Nath Bose by name, has affirmed another affidavit stating that the girl's father Tribhanga Dalui had complained to the deponent as well as to other villagers about the attempted outrage on the modesty of Anima Dalui and it was upon the deponent's advice and the advice of the villagers that the information was lodged with the police.

15. Similarly, with regard to particular 'Ga' the petitioner's case is that the girl Hesna Hena appeared before a Magistrate and made in the course of investigation of a criminal case, a statement which was recorded under Section 164 of the Code o Criminal Procedure. In that statement she denied having been forcibly taken away by the petitioner. The aforesaid police officer in his affidavit-in-opposition states that there was a case started but for want of sufficient evidence it could not be proceeded with against the petitioner. There is material to indicate that there were two other persons involved in the crime and they were tried and eventually acquitted. The petitioner's present complaint is that if there was any substance in the truth of the allegation contained in the instance 'Ga', it is only likely that the authorities concerned would have also made an order preventively detaining the acquitted persons also. The contention is that these are illustrations of bad faith which would vitiate the present order of detention. We are not concerned with the question whether it was necessary or desirable to detain the two acquitted persons. The authorities may have their own reasons for not having made an order against them. We are only concerned with the question whether these facts could be relied on on the detenu's behalf to establish bad faith which at

one stage of the argument was urged. It will be necessary to notice the affidavit-in-opposition affirmed by the District Magistrate who was the detaining authority in the present case. He has averred that he was personally satisfied on a consideration of the relevant facts and circumstances that the order of detention was necessary for the maintenance of public order in the locality. In this affidavit he has referred to the facts which form the basis of particulars 'Kha' and 'Ga' and he has stated that Hesna Hena has, in a subsequent statement before a Magistrate also under Section 164 of the Code of Criminal Procedure, made it plain that she had been prevailed upon by the petitioner's people to make the previous statement upon which reliance was placed on the petitioner's behalf.

16. It will thus be seen that there are allegations and counter-allegations into which this Court is forbidden to enter. If we have referred to them at some length, we have done so only to consider whether the order of detention was vitiated by bad faith. We are by no means satisfied that mala fides have been established in the present case. Not are we satisfied that these instances referred to non-existing particulars. Whatever be the rival versions, this Court is only concerned to see whether any material exists which would warrant the plea that the order was vitiated by bad faith. There being no such material, we are bound to hold that we cannot investigate the facts further in order to ascertain their truth or falsity.

17. The other two particulars 'Ka' and 'Gha' are undeniably related to the question of public order. As respects 'Ka' it has been only feebly said that a mere threat is insufficient to form the basis of an order of detention. We are wholly unable to agree. As respects 'Gha' an affidavit purported to have been affirmed by one Nripendra Chandra Dey has been used at the hearing. The Deponent has stated that on July 7, 1962 or on any other day the petitioner was never found in front of the deponent's shop in a drunken condition. As against this, there is the averment on oath of the person directly concerned, namely, Manmatha Nath Karmakar who was threatened with dagger to the effect that the petitioner was in a drunken state on the date and hour in question and that the petitioner's people had attempted to induce the deponent to affirm an affidavit disowning the allegation contained in the information to the police lodged on July 8, 1962. There is besides the averment of the District Magistrate himself to the effect that attempt was being made on the

petitioner's behalf to procure statements on affidavits which would help the detenu. As we have said before, we are not concerned with the allegations and counter allegations and we decline to be drawn into, further discussion of the merits of the rival versions. Suffice it to say that in our opinion the instances or particulars supplied are related to the maintenance of public order in the interest of which the petitioner was detained. None of the instances suffers from any kind of vagueness or indefiniteness so as to induce us to think that the petitioner was prevented from making an effective representation against his detention. We are completely satisfied that the order is not vitiated by bad faith.

18. The Rule is, therefore, discharged.

D.N. Das Gupta, J.

19. I agree.