

Amrita Lal Chatterjee Vs. the State

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Court : Kolkata

Decided On : Jul-07-1950

Reported in : AIR1950Cal543,54CWN823

Judge : Harries, C.J. and ;J.P. Mitter, J.

Acts : West Bengal Security Act, 1950 - Sections 2(9), 21(1) and 21(4)

Appeal No. : Criminal Revn. No. 455 of 1950

Appellant : Amrita Lal Chatterjee

Respondent : The State

Advocate for Pet/Ap. : Sudhansu Sekhar Mukherjee and ;Jagadindra Nath Bhattacharjee, Advs.

Judgement :

Harries, C.J.

1. This is a petition for revision of an order made by a learned Presidency Magistrate convicting the petitioner under Section 21 (4), West Bengal Security Act, 1950 and sentencing him to simple imprisonment for one month and five days.

2. The petitioner was served with an externment order under Section 21 (1) (a), West Bengal Security Act, 1950 forbidding him to remain within the town of

Calcutta. The order was served on him on 5th April 1950 and he was given 24 hours' time to leave the Calcutta area. According to the prosecution the petitioner was found at his residence at 5/1 Kashinath Bose Lane, Calcutta on 7th April 1950 and accordingly it was alleged that he had contravened the order externing him from the city of Calcutta. The order appears to have been signed by the Commissioner of Police and the service of the order was duly proved. The evidence that the petitioner was in Calcutta on 7th April 1950 was accepted and it has not been challenged.

3. The petitioner filed a written statement in which he stated that he was a firm believer in Gandhian ideals and had striven for communal unity throughout his life and that it was unthinkable that he should take part in any subversive activity. He did admit that he had criticised strongly the inefficiency and corruption of the Relief and Rehabilitation Department of the Government. He further stated that the externment order was arbitrary and mala fide and that as a Satyagrahi he owed it to himself not to submit to the order. In short the petitioner admitted that he had refused to comply with the order.

4. The question arises whether or not the petitioner's failure to leave Calcutta within 24 hours of the date of this order constituted an offence. The charge was that he had committed an offence under Section 21 (4), West Bengal Security Act and that Sub-section is in these terms :

'If any person contravenes any order made under this section he shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.'

5. It will be seen that what is made an offence is a contravention of any, order made under the section. If the order contravened is not made under Section 21 then there can be no conviction under Section 21 (4).

6. Section 21 (1), West Bengal Security Act reads as follows :

'The State Government, if satisfied with respect to any particular person that he is doing or is about to do or is likely to do any subversive act, may, with a view to

preventing him from doing such act, make an order--

(a) directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place in West Bengal as may be specified in the order.

7. The order made by the Commissioner of Police is said to have been made under this Sub-section. But in my view the order served upon the petitioner cannot be said to be an order made under Section 21 (1) (a), West Bengal Security Act. The order dated 5th April 1950 reads as follows :

'Whereas having considered the materials against the person known as Sri Amrita Lal Chatterji son of Sri Kunja Behari of village Solok, P. S. Wazirpur, district Barisal and of 5/1 Kasinath Bose Lane, Calcutta, I am satisfied that with a view to preventing the said person from doing any subversive act, it is necessary to make the following order :

* * * *That the said person shall not remain in any place lying in the jurisdiction of the town of Calcutta as defined in Section 3, Calcutta Police Act, 1866 (Bengal Act IV [4] of 1866) and also its suburbs as defined...-..and if he is in any such area at the time of the service of this order, he shall leave the area within 24 hours of the service of the order.

Failure to comply with this order without any lawful excuse would render him liable to prosecution.'

8. Section 21 (1), West Bengal Security Act, 1950 empowers the Government or any person authorised on behalf of Government to make an externment order externing any particular person if the authority making the order is satisfied that such person is doing or is about to do or is likely to do any subversive act. 'Subversive act' is defined earlier in the Act in Section 2 (9). Before an order can be made, therefore there must be satisfaction that the person is actually doing or is about to do or is likely to do an act falling within Section 2 (9) of the Act. Unless there is satisfaction on this matter no Order can be made. All that the order of 5th

April 1950 states is that the authority making the order was satisfied that with a view to preventing the petitioner from doing any subversive act it was necessary to extern him. The order does not state that the authority was satisfied that the petitioner was doing a subversive act or was about to do a subversive act. Further it does not even say that it was likely that the petitioner would do a subversive act. As I have said, unless there was satisfaction on these matters no order could have been made, and it is not enough to say that the authority was satisfied that an order was necessary with a view to preventing a person from doing a subversive act. There must first be a satisfaction upon the point that the person is doing or is about to do or is likely to do a subversive act. Unless there is satisfaction on that matter an order made with a view to preventing a person from doing a subversive act is not within the section. Unless that was so externment orders could have been served on the most innocent people by merely stating that there was satisfaction that with a view to preventing that person from doing a subversive act it was necessary to extern him. Before an externment order can be made not only must the authority be satisfied that a person should be prevented from doing a subversive act, but the authority must be satisfied that such person was doing or was about to do or likely to do such an act. If a person is not doing or about or likely to do an act then there is no need to extern him with a view to preventing him from doing an act. It is only persons who are doing or are about to do or are likely to do an act that need be prevented from doing such an act. It appears to me that before an order can come within Section 21 (1) (a), the authority's satisfaction that the person against whom the order is made is doing or is about to do or is likely to do an act must be stated. Without a recital of that satisfaction the order is not in my view in accordance with the Act.

9. As the order is not an order made under Section. 21 (1) (a) the petitioner could not be convicted for not obeying that order under Sub-section (4) of that section. As I have already pointed out before there can be a conviction it must be shown that the order is one made under the Act.

10. A point was raised before the learned Presidency Magistrate on Section 36 (1) of the Act which provides that no order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

11. It is unnecessary to consider the exact purport and effect of this sub-section because I have held that the order made in this case was not made in exercise of any power conferred by or under the Act and, therefore, Section 36 (1) can have no application whatever be the true meaning of that section. As the point does not arise I prefer at this stage to express no opinion upon the validity or the meaning of this sub-section. Further I prefer to express no-opinion at present on the validity or otherwise of the other sections of this Act.

12. For the reasons which I have given I am satisfied that the petitioner was not guilty of any offence and, therefore, his conviction must be set aside. The petition is, therefore, allowed, the conviction and sentence are set aside and the petitioner is acquitted. The petitioner need not surrender to his bail and his bail bond is discharged.

13. The Rule is accordingly made absolute.

Mitter J.

I agree.