

Subhas Chandra Awan Vs. the District Magistrate and ors.

Subhas Chandra Awan Vs. the District Magistrate and ors.

SooperKanoon Citation : sooperkanoon.com/874329

Court : Kolkata

Decided On : Feb-25-1972

Reported in : 1972CriLJ1089

Judge : Anil Kumar Sen and ;N.C. Mukherji, JJ.

Appellant : Subhas Chandra Awan

Respondent : The District Magistrate and ors.

Judgement :

Anil Kumar Sen, J.

1. An order of detention dated May 12, 1971 passed by the Additional District Magistrate, Hooghly in exercise of his powers under Section 3(1) read with Section 3 (3) of the West Bengal (Prevention of Violent Activities) Act 1970 hereinafter referred to as the said Act and the consequent detention of the detenu Subhas Chandra Awan is the subject-matter of challenge in this Rule. It appears that the Additional District Magistrate passed the aforesaid order being satisfied that such detention was necessary with a view to preventing the detenu from acting in any manner 'prejudicial to the security of the State or the maintenance of public order.' The grounds of detention as served on the detenu under Section 8 of the said Act recite as follows 'that you have been acting in a manner prejudicial to the security of the State or the maintenance of public order as evidenced by the particulars given below:

(1) On 26-1-1971 at about 17.00 hrs you demanded subscription of Rs. 500/-for C. P. I. (ML) fund from one Phani Bhusan Horn Chowdhury of Madhabpur, P.S. Chanditala but Shri Horn Chowdhury did not comply with the demand. So on the night of 29-1-1971 at about 01.30 hours you along with your associates armed with lethal weapons went to the house of Shri Phani Bhusan Horn Chowdhury at Madhabpur under P.S. Chanditala and asked him to open the door. As he refused to open the door, you exploded two bombs on the wall of his house to terrorise him and the inmates of the house.

(2) On 2-3-1971 at about 10.30 hours you along with your associates stabbed Dr. Ranjit Chatterjee, President of local Bangla Congress Committee to death on the Jonai Station Road. P. S. Chanditala.

(3) On 1-5-1971 at about 21.15 hours you along with your associates entered the Dankuni Post Office, P.S. Chanditala armed with daggers and compelled the Post Master to open the iron safe and looted away postal cash Rs. 1014.79 paise.

2. This Rule is being contested by the respondents who have filed an affidavit in opposition and Mr. Sanyal is appearing on their behalf.

3. Mr. Mukherjee appearing in support of this Rule has raised four points. In the first place, Mr. Mukherjee has contended that the Additional District Magistrate could not have arrived at his satisfaction alternatively with regard to the security of the State and maintenance of public order. Similarly it is contended by Mr. Mukherjee that in setting out the grounds the Detaining Authority should have specified which of the grounds relate to security of the State and which to the maintenance of public order and that not having been done on the facts of the present case the detention is not in accordance with law. In the second place, Mr. Mukherjee has contended that none of the particulars set out in the grounds has any proximate relevance to maintenance of public order and accordingly it is suggested that the detention is based on irrelevant grounds. Thirdly, Mr. Mukherjee has contended that the detention is not bona fide. Mr. Mukherjee's last contention is that the order of detention having been made by the Additional District Magistrate while acting as a judicial officer is ultra vires his powers. Each of the points raised by Mr. Mukherjee has been contested by Mr. Sanyal.

4. On the first point raised we are of the opinion that on the particular provisions of the Act under which the detention has been effected there was no irregularity in recording the satisfaction in the alternative manner with reference to security of State or maintenance of public order or to draw up the grounds as drawn up in the present case. Section 3 (1) of the said Act authorises preventive detention of any person if his detention is considered necessary with a view to preventing him from 'acting in any manner prejudicial to the security of the State or the maintenance of public order.' Sub-para. (2) incorporates a statutory definition of what is meant by 'acting in any manner prejudicial to the security of the State or the maintenance of public order' by setting out different activities in different clauses which constitute such acting, Therefore, in our opinion by statutory fiction on the provisions of the statute under consideration the very act which may constitute prejudicial to the maintenance of public order would necessarily constitute prejudicial to the security of the State. The normal difference in the concept of the security of the State and the maintenance of public order has for the purpose of this Act been wiped away and both the things have been equated to each other. This being the position, no irregularity arises if on the same set of acts of the detenu if the acts come within the sanction of Section 3 (2) of the Act the Detaining Authority arrives at a satisfaction that the person concerned was acting in a manner prejudicial to the security of the State or the maintenance of public order and refers to same set of acts as grounds for such a satisfaction. This view of ours finds ample support from the decision of the Supreme Court in the case of *Shamlal v. The State of West Bengal* : 1971 CriLJ1703 In this view we find no merit in the first objection raised by Mr. Mukherjee and overrule the same.

5. On the second point Mr. Mukherjee has taken great pains to refer to us a number of Supreme Court decisions in the cases of *Arun Ghosh v. The State* : 1970 CriLJ1136 *Sudhir Kumar Saha v. The Commr of Police* : 1970 CriLJ843 *Puskar Mukherjee v. The State* : 1970 CriLJ852 and *Sushanta Goswami v. The State* AIR 1969 SC 1004. Comparing with the grounds under consideration by the Supreme Court in these cases Mr. Mukherjee has contended that the grounds of detention in the present case are quite comparable to those under consideration by the Supreme Court and as such on the authority of the decisions of the Supreme Court it must be held to be irrelevant to public order. In our view Mr.

Mukherjee's approach to the problem raised by him is not correct. In most cases grounds or incidents constituting the basis of detention are not comparable to each other nor is it proper to compare them bereft of their respective context which are seldom the same. As a matter of fact the learned Chief Justice in Arun Ghosh's case. : 1970 CriLJ1136 observed, 'a large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's case : 1966 CriLJ608 examples were given by Sarkar and Hidayatulla. JJ. They show how similar acts in different context affect differently law and order on the one hand and the public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to us is: does it lead to disturbance of the current life of the community so as to amount a disturbance of public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another'. Thus while in Sushanta Goswami's case AIR 1969 SC 1004 the Supreme Court had found some of the incidents of stabbing or assaulting a constable to be a ground irrelevant to public order, a ground nearly similar was found to be relevant to public order in the case of Shyamlal Chakravarty v. Commr of Police : [1970]1SCR762 .

6. In our view the correct approach to the problem should be to remember the distinction between concepts of law and order and public order and further remember that though the statute under consideration sanctions preventive detention in order to prevent people from acting in a manner prejudicial to public order, it affords no such sanction when the person concerned is acting in a manner prejudicial only to law and order. We must further remember that while the Supreme Court was dealing with the provisions of the Preventive Detention Act of 1950 in all the cases referred to hereinbefore and relied on by Mr. Mukherjee the detention in the present case is under the provisions of the West Bengal Prevention of Violent Activities Act, 1970 which provides a statutory definition of what constitutes acting in a manner prejudicial to public order. So in the case now before us we have the assistance from the statute itself to find out whether the acts referred to in the grounds of detention can come within the definition of acting in a manner prejudicial to public order. It is, of course, true that apart from Clause (a) (ii) and (c) of Section 3 (2) all other clauses incorporate within them a

requirement that acts referred to therein must also result in disturbance or likely disturbance to public order. It is now well settled that public order means something more than the mere law and order. Its true import is to be found again in the decision of the learned Chief Justice in Arun Ghosh's case : 1970 CriLJ1136 which has also been accepted as the guiding principle in other decisions of the Supreme Court. There the Chief Justice laid down with reference to the earlier decision in Ram Manohar Lohia's case : 1966 CriLJ608 'public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order'

7. Keeping these principles in our view we now proceed to consider if the three grounds or anyone of them can be said to be irrelevant to public order. The first ground incorporates two incidents integrally connected to each other. The detenu first demanded a sum of Rupees 500/- for a particular party viz. Communist Party of India Marxist Leninist from a particular resident of Madhabpur. On his refusal to pay the amount the detenu and his associates within a few days at night armed with lethal weapons attacked the said resident and threw bombs on his house. In our opinion this ground should not be equated with an ordinary incident of extortion from an individual on assault or on threat of assault. It is organised. First the detenu demands the money and gives the person concerned time to fulfil the demand obviously under the terror created and then when the demand is not fulfilled there is armed attack and explosion of bombs to keep up the terrorising effect. Further such attempt at extortion is being made on behalf of a political party. In our opinion the effect of this act cannot be considered to be limited to affect the individual concerned but must have affected the community at large in the locality. It is true that Mr. Mukherjee has drawn our attention to the concluding part of the recital of this ground wherein it is recited that Such explosion of bombs was to terrorise the resident himself and the inmates of his house. No reference is made to the community in the locality or the general public.

But in our opinion Mr. Sanyal is right in his contention that we should not go by that part of the recital only. We should on the other hand consider the ground as a whole and the incident in its true perspective to find out whether it had disturbed the public order or likely to have disturbed such an order. Judging from this point we are in agreement with Mr. Sanyal that the act of the detenu was quite likely to have disturbed life of the community at large in the locality and thus to breach the public order itself. The explosion of the bomb would amount to an offence contemplated by Section 3 (2) (d) and on our findings made hereinbefore it would come within the sanction of the statute itself.

8. Similar is the position with the second ground which was a case of daylight murder on the Jonai Station Road of one Dr. Ranjit Chatterjee President of a local rival political party. Such a murder cannot be equated with an individual murder effected out of any private motive. Mr. Mukherjee wanted to suggest that political affiliations of the person murdered is wholly irrelevant. According to him it remains nothing but murder of an individual by another group of people. We are unable to accept this contention of Mr. Mukherjee. To judge the acts on its context and to find the true extent of its effect, the political affiliation of the murderer and his associates and the political affiliation of the person murdered are in our opinion very much relevant. We are clearly of the opinion that the murder referred to in the second ground was bound to have its repercussion on the life of the community at large in the locality and as such to affect the tranquillity. It would also answer the description of an offence as in Section 3 (2) (d) of the said Act and would accordingly on the provisions of the statute be an act prejudicial to the maintenance of public order. Same is our view with reference to the third ground. It is a case of armed robbery or dacoity from the local Post Office committed just after the afternoon. In our opinion in the context of things such a robbery or dacoity cannot be equated with ordinary robberies or dacoities as we find in the normal life of our community. The detenu and his associates were obviously acting in furtherance of a political ideal and was procuring money either by extortion or by robberies referred to in these grounds. We have no doubt in our mind that the grounds read as a whole or individually clearly make out a picture that the detenu and his associates were out to overawe the local people and put them into fear by their own unlawful activities. On these conclusions we are unable to accept the

contention of Mr. Mukherjee that any of the grounds is in any way irrelevant to public order or is beyond the sanction of the statute now under consideration. The second point raised by Mr. Mukherjee must, therefore, fail and is overruled.

9. On the third point raised we do not find any specific substantial allegation of malice ascribed as against the Detaining Authority. What is alleged is that while the detenu was released on bail he was served with the order of detention. In our opinion that by itself does not make the order mala fide. An affidavit has been filed by the Additional District Magistrate himself who has clearly stated that he passed the order in good faith and on a bona fide satisfaction that the detenu and his associates were anti-social elements who were consistently acting in such a manner as to affect the public order. People were so terrorised that nobody was agreeable to give evidence against them out of fear of their lives. Such being the position we find no merit in the suggestion that the order was passed in mala fide exercise of powers.

10. It is difficult for us to appreciate the last point raised by Mr. Mukherjee. All the inspiration for this contention is derived by Mr. Mukherjee from a Court seal attached to the impugned order of detention. It is the seal of the Court of the District Magistrate, Hooghly. In our opinion use of such a seal is wholly inconsequential. Additional District Magistrate is an authority duly empowered under Section 3 (3) of the said Act so that if he had the authority to detain and had passed the order of detention we are unable to appreciate how use of a Court seal makes any difference. Further for a long time there have been separation of judiciary from the executive in the District of Hooghly and an Additional District Magistrate like the present one discharging executive functions cannot be said to be exercising any judicial function. In any event the question whether the order is ultra vires the powers of the maker thereof would depend upon the existence of the authority in him. When there can be no dispute that such an authority was there we cannot strike down the order as an ultra vires act only because some irregularity if any was committed by affixing a Court seal to the order. In this view we must overrule the last contention raised by Mr. Mukherjee.

11. As all the points raised in support of this Rule fail the application fails and the Rule is discharged.

N.C. Mukherji, J.

12. I agree.

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