

Swapan Chandra Vs. the State

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Court : Kolkata

Decided On : Feb-20-1975

Reported in : 1975CriLJ1051

Judge : Sudhamay Basu and; Bimal Chandra Basak, JJ.

Appellant : Swapan Chandra

Respondent : The State

Judgement :

Sudhamay Basu, J.

1. This Rule relates to an order dated 7th of May, 1974 passed by the District Magistrate, 24-pafr-ganas in exercise of the powers conferred upon him under Sub-section (1) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 with a view to preventing the detenu from acting in a manner prejudicial to the maintenance of public order. The grounds served upon the detenu are two of which the first ground is as follows:-

2. On 9-3-1974 at about 15.30 hrs. you along with your associates namely 1. LaltuDas. 2. Sunil. 3. Rantu Singh and others demanded money from Sudarsan Mukherii of Noapara. P. S. Barasat at Dut-' tapurkurhat. As Sri Sudarsan Mukher.ii refused to pay the money, you along with your associates seriously assaulted him and snatched away his wrist watch. In consequence of your such activity. thep

public order in the locality was seriously disturbed, in that the people who assembled in the Hat for marketing, ran away helter skelter and the shop keepers closed their shops immediately fearing that they would be killed by you and your associates. Witnesses are, however, afraid of deposing against you fearing that if they deposed, they would be killed by you and your associates'.

3. Mr. D. P. Kundu, learned Advocate appearing in support of the Rule submitted that the first ground was irrelevant to the object of detention. According to him, the incident involved in the said ground constitutes an infraction of law and order and did not affect public order. Mr. P. R. Roy, learned advocate appearing on behalf of the State, however, disputed the submissions made by Mr. Kundu, and contended that the ground was germane and relevant to the object of detention. According to him, the incident involved in the ground affected public order. Mr. Roy for this purpose relied on a recent decision of the Supreme Court in Writ Petition No. 476 of 1974 dated 22-1-1975 : (1975 Cri LJ 588) (SC).

4. After careful consideration of the grounds and the aforesaid judgment and other relevant decisions of the Supreme Court we, however, find substance in the contention of Mr. Kundu.

5. It appears- that in the said writ petition No. 476 of 1974. D/- 22-1-1975 : (1975 Cri LJ 588) (SO. (Ram Raman Chatterjee v. State of West Bengal) there were three grounds. In the first ground the detenu and his associates were in possession of explosives and there was an actual explosion in a thickly populated area. The detenu and his associates also threatened the local people with dire consequences even up to causing death. In the second incident of the said case the detenu and his associates were armed with daggers and other dangerous weapons. They entered into a grocery shop in a bazar, attacked the shop-keeper and threatened him and others present with instant death if they protested. In a third incident in that case there was a murderous attack by hurling recklessly dangerous bombs on the villagers who came to resist on hearing a surprise attack on one Siddique Sk. It will thus appear that the incident involved in the instant case is quite different from the incidents involved in the said writ petition No. 476 of 1974, P/- 22-1-1975 : (1975 Cri LJ 588)

6, What affects public order is not capable of being defined in precise terms. But numerous decisions of the Supreme Court have helped to clarify what are implicit therein by providing some guidelines and principles. The application of these principles and guidelines to the facts of diverse cases, however, have caused difficulties. In *Dr. Ram Manohar Lohia's Case* reported in AIR 1966 SC 74 - (1966 Cri LJ 608) *Hidayatullah, J.* after reviewing a large number of cases including those of *Ramesh Thapar v State of Madras* reported in : 1950 CriLJ1514 s* ((1950) 51 Cri LJ 1514) (which held public order to be an expression of wide connotation signifying that state of tranquillity which prevails among the members of political society as a result of internal regulations enforced by Government....), *Brijbhushan v. State of Delhi* reported in : 1950 CriLJ1525 and others, explained the concepts of security of State, public order and law and order by the fictional concentric circles, the largest of them representing law and order within which is the next circle representing public order and the smallest circle representing the security of the State. An act might affect law and order but not public order, just as an act might affect public order but not security of State. In the case of *Sudhir Saha v. State of West Bengal* reported in : 1970 CriLJ843 *Hesde. J.* followed *Ram Manohar Lohia's* case and held that the disturbance of public order was 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 extent which determines whether the disturbance amounts to a breach of law and order. *Hidayatullah, J.* further explained in *Arun Ghose v. The State of West Bengal* reported in : 1970 CriLJ1136 that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of public order is a question of degree and the extent of the reach of the act upon the society. An act by itself is not determinative of its own gravity. In its nature it may not differ from another but in potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand and public order on the other, public order embraces more of the community than law and order. Public order is equated to the even tempo of the life of the community taking the country as a whole or specific locality. In the context of the facts of different cases the Supreme Court has from time to time decided many cases in this regard and has

explained the concept of public order. We may refer to some of these cases such as. *Sushanta Goswami v. State of West Bengal* reported in : 1972 CriLJ1006 ; *Nagen Mondal v. The State of West Bengal* : 1972 CriLJ482 ; *Japan Mukherjee v. State of West Bengal* AIR 1972 SC 840 : (1972 Cri LJ 651); *Kishore Bera v. The State of West Ben-M*; : AIR 1972 SC1749 ; *Shyamal Chakra-torty v. The State of West Bengal* . : [1970]1SCR762 ; *Amiya Karmakar v. The State of West Bengal* : AIR 1972 SC2259 ; *Manu .Bhusan Rov v. The State of West Jierigal* : 1974 CriLJ401 ; *Joydeb Mitra v. The State of West Bengal* . : 1973 CriLJ901 ; *Nagen Murmu v. The State of West Bengal* : 1973 CriLJ667 ; *Milon Banik v. The State of West -^Bengal* : 1974 CriLJ917 and *Golam Hossain v. The State . -of ,West Bengal* : 1974 CriLJ938 . It may be noted that in *Sudhir Saha's* case there were three incidents of which one involved attack by the detenu along with some others armed with knives upon the local people in course of which specified individuals .sustained stab iniuries. The detenu and his associates also hurled soda water bot-m, ties and brickbats towards local people . -endangering their lives and safety. The second incident was one in which the de-__ tenu and others were armed with bombs 9 and created disturbance at Raia Manindra ,: 'Road in course of which he and his associates hurled bombs, used sword, iron -. rods and lathis against the local people. ,fThe grounds were, however, held not to 'amount to disturbance of the maintenance \$:of public order. But hurlinp- bombs and brickbats and soda water bottles in Public street while clashing with a rival eroup t, was held to be germane in *Golam Hossain v. Police Commissioner, Calcutta*, : : AIR 1973 SC1336 . in the case of *Arun Ghose* the details of the activities included teasing of a girl and when her .father protested assaulting him; attempts to assault one *Dipak Kumar Roy* at *Malda Sadar Hospital* where he was being treated for injuries a previous assault made by the detenu. obscenely teasing *Smt. Sima Das* and beating her with chappals etc. These were held not to affect public order. In *Dipak Basu v. The State of West Bengal* reported in : AIR 1972 SC2686 the detenu along with his associates armed with certain weapons including bombs committed murder of two specific individuals in public road ,on two different dates creating panic and terror in the locality. Yet the grounds were held to fall within 'f- the area of law and order as thie inci- dents 'pertained to specific individuals'. It was explained that every assault in a public place like a public road and terminating in

the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all such incidents do necessarily cause disturbance or dislocation of the community. In the case of Manu Bhusan Roy Pradhan there were allegation of murderous assault on a Person on the road in front of the office of Mahila Samitv, Dhupguri Police Station causing several iniuries oh a person. The person died subsequently in hospital. In another ground it was alleged that the detenu along with other forcibly entered into the High School and set fire to the school building causing irreparable loss to the institution. The teachers and the local people became panic stricken and public peace was alleged to be ^reatlv disturbed. The around No. 1 was held to be not germane to the object and the entire order of detention was held to be invalid. But in the case of Milan Banik the grounds involved committing robbery at point of dagger on a public road on two occasions, one by stoppin rickshaw and the other by attacking a bus conductor. The grounds were held to be of such nature as terrorised the local people and created a sense of panic. The decisions in the case of Dipak Basu which involved two murders and that of Milan Banik involving two robberies are almost at the two extreme end and difficulties no doubt 'arise in reconciling them and some other decisions such as Sudhir Saha's case and the case of Golam Hossain referred to above. Yet on a consideration of the principles elucidated from time to time and some of which have been earlier referred to we consider that the incidents involved in the first around does not affect public order. It may be pointed out that neither the nature of the act by itself nor even the nature of the effect per se seems to determine the matter. As was pointed out in the case of Golam Hossam v. The State of West Bengal knocking nedestnan while driving will not necessarily disturb public order. In such av.'.case people may be running helter skelter and there may be a temporary panic at the scene of occurrence on account of reckless driving but that will not necessarily disturb' public order Again, in the caise reported in AIR 1969 SC 1004. one of the cases involved raiding a shoo in a bazar and forcibly taking away some money, wrist watch and gold ring from some Persons; that was also not held to affect public order It will depend upon the facts and circumstances of each case. If on a consideration of the totality of the circumstances it appears that the act involved is such as to disturb the even tempo of life of the community it would be held to be one which affect? public

order. In that view of the matter we find substance in the submission of Mr. Kundu and in our view the first ground is not relevant to the object of detention, As Mr, Kttndu succeeds in his said submission it is not necessary to deal with other points taken up in toe petition. It is well known that if one of the grounds is found to be bad it will invalidate the entire order as it is not possible to predicate what would, be the subjective satisfaction of the detaining authority in the absence of the said ground. The entire order of detention under the circumstances must be held to be bad.

7. The petition, therefore, ceeds, The Rule is made absolute, the detenu be released, forthwith custody.

Bimal Chandra Basak, J.

8. I agree.

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