

Ashoke Kumar Dutta Vs. the State of ors.

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Court : Kolkata

Decided On : Dec-13-1974

Reported in : 1975CriLJ1054

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

Appellant : Ashoke Kumar Dutta

Respondent : The State of ors.

Judgement :

Bimal Chandra Basak, J.

1. This is an application for a Writ in thef; nature of Habeas Corpus challenging the order of detention passed by the Commissioner of Police. Calcutta, on the 13th July, 1974 in exercise of powers conferred by Sub-section (1) (a) (ii) read with r Sub-section (2) of Section 3 of the Main- I penance of Internal Security Act, 1971 (hereinafter referred to as the said Act). The said order was made with a view to i preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. The grounds of detention which were served on the detenu relies on the incident set out hereinbelow :-

That at about 22.00 hours on 28-1-1974, you alone with your associates, all belonging to Sibnarayan Das Lane (Calcutta) group being armed with iron rods and bombs formed an unlawful assembly on Guru Prasad Chowdhury Lane.

Calcutta and committed riot with your rivals, belonging to Guru Prasad Chowdhury Lane (Calcutta) Group over old enmity on Guru Prasad Chowdhury Lane in front of premises No. 52 (Guru Prasad Chowdhury Lane) and when a Police party rushed to the spot on receipt of the information of the aforesaid disturbances and arrested you on Guru Prasad Chowdhury Lane at the aforesaid date and time after a hot chase with a bomb in your hand, you- instantly exploded the said bomb, which was in your illegal possession, on Guru Prasad Chowdhury Lane at the aforesaid date and time in order to facilitate your retreat. In consequence Const. Ram Adesh Singh (sic) on his part, son resulting in his admission in the hospital. As a result of your action as aforesaid, fear, frightfulness and insecurity prevailed in the above areas and thereby affected the maintenance of public order.

2. Mr. Dilio Kumar Dutt. learned Advocate appearing in support of the Rule, firstly contended that the order of detention was made in mala fide exercise of power, in this connection he referred to the averments made in paragraphs 8 and 14 of the petition wherein it has been alleged as follows: '

(8) That the petitioner states that the ground for detention is false, frivolous, non-existent and has been engineered, by the officer-in-charge and the other officers namely the respondent No. 5 who investigated the case No. 35 of 1974 at-IfC, held to the Amherst Street Police Station, who are inimical towards the petitioner.

(14) That the petitioner states that the aforesaid facts clearly show that the 'order of detention was passed mala fide and for collateral purposes by the detaining authority at the behest of the officer in-charge of the Amherst Street Police station and the respondent No. 5 who are inimical, towards the petitioner and are determined to implicate him in various fake cases.

He admitted that- the Commissioner of Police has affirmed an affidavit dealing with the said allegation but he wanted the Court to take notice of the fact that other persons, against whom allegations of mala fide have been made have not: filed any affidavit controverting the same. In this context he relied on a decision of the Supreme Court in G. Sadanandan ,v.. State of Orissa reported in : 1966 CriLJ1533

Mr. D. Choudhury. learned Advocate-appearing on behalf of the respondents, strongly disputed these contentions of Mr. Dutt. He submitted that the allegation of mala fide in paragraph 8 of the-petition, is very vague in nature. He further pointed out that such allegation is' directed not against the detaining authority but against some other persons. So-far as paragraph 14 of the petition is--concerned, Mr. Chowdhurv submitted that..' there is nothing new in this paragraph irr addition to what has been stated in nira-graph 8 of the petition. In this context he relied on the averments made in oara-graphs 11, 12 and 17 of the affidavit affirmed by the detaining authority dealing with the allegations of mala fide alleaed in the petition and submitted that in the-facts and circumstances of the present; case there is sufficient and specific denial of the allegation of mala fide. Paragraphs. 11, 12 and 17 of the affidavit of the detaining authority relied on by Mr. Chowdhury are set out hereinbelow.

(11) With reference to the statements .contained in paragraph 8 of the-said petition. I deny each and every allegation contained therein. I deny that, the ground is false, frivolous and. nonexistent. I deny that the ground hay-been engineered by anyone. I deny that anyone is inimical towards the detenu as-alleged. As already stated hereinbefore the detenu was caught red-handed in connection with the incident which forms the subject-matter of the ground of detention.

(12) With further reference to the' statements contained in paragraph 8 of the-said petition, I sav that before making' the order of detention, I personally scrutinised the genuineness of the materials which formed the Ground of detention and after being satisfied about their dependability I made the order of detention.

(17) I deny each and every allegation contained in Paragraph 14 of the said petition. As already stated hereinbefore, T made the detention order bona fide. I deny that I passed-the detention order at the behest of the Officer-hvCharge of the-Amherst Police Station or Shri Salil Jha. Sub-Inspector attached to Amherst Police-Station at the material time.

3. The law is now well settled 1;o the effect that an order of detention can be setasidfi if it has been passed mala fide or1 incolourable exercise of powers. ' It is

alsQiwell settled that if there is an allegation as to mala fides an affidavit has not to be affirmed by the detaining authority. On the other hand it is also well settled that an allegation of mala fide must be made specifically and that it should be directed against the person making the order. In the case of *C. S. Rowjee v. State of Andhra Pradesh* : [1964]6SCR330 their Lordships observed as follows.

It is, no doubt, true, that allegations of mala fide and improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several cases which have come up before this and other Courts, and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least might stick. Consequently, it has become the duty of the Court to scrutinise these allegations with a care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact.

4. In the present case, it is to be remembered, there is no specific allegation of mala fide against the Commissioner of JPoMce himself. In spite of the same the Commissioner of Police has affirmed an affidavit wherein, as pointed out, he has specifically denied that the ground has been engineered by any one or that the order has been passed at the behest of any such person. He has further categorically stated that before making the Order of detention, he had personally scrutinised the genuineness of the materials which formed the ground of detention and after being satisfied about their dependability, he had made the order of detention. In our opinion, having regard to the scope and nature of the allegation made in the petition, this is sufficient denial of the charge of mala fide.

5. In this context it may be pointed out that if an allegation of mala fide is challenged in the affidavit affirmed by the respondent, the Court is not entitled to go into the merits of the same. In the case of *Mohd. Sabir v. State of Jammu and Kashmir* : 1971 CriLJ1271 it was observed that if the statement in the affidavit on behalf of the respondents was true, there cannot be any question of mala fides. In this context it was pointed out that the Court cannot go into the merits whether the facts stated in the affidavits are correct or not, but the Court can see that on these

facts, no Charge of mala fide can be made out. The other thing to be noticed is that in the present case the detaining authority is the Commissioner of Police against whom there is no specific allegation of mala fide but charges are made against the respondent No, 5 and the Officer-in-Charge of the Arasht Street Police Station. In the case of Kedar Nath v. State of Punjab : AIR 1972 SC873 the petitioner challenged, on the ground of inter alia, mala fide, the decision of the Government to discontinue a post. Dealing with the same it was observed as follows :-

Moreover, all that the appellant has been able to say is that his superiors in the department were hostile to him. But we are concerned not with the action of his immediate superiors but the action of the Government. The decision to discontinue the post was the decision of the Government and it is not alleged in the writ petition that in taking this decision the Government acted mala fide. We therefore agree with the High Court that there is no substance in the allegation that the post was discontinued or abolished in order to punish the appellant.

6. In the case of R. P, Driver v. General Manager, Eastern Railway reported in (1970) 70 Cat WN 390 similar observations were also made by a Division Bench of this Court to the following effect. 'Out of the two short, submissions of learned Advocate for the appellant the first one is that the order of removal is mala fide. The story of the appellant that the whole proceeding is mala fide was not believed by Sinha, J. and we affirm the said finding. There is neither any definite charge of mala fide nor any evidence of mala fide. The statement in paragraph 7 of the petition falls short of such allegation. Even if allegation of mala fide, may with difficulty, be spelt out against Mr. Barbaro, not a whisper of such allegation is made against the Divisional Superintendent who is the dismissing authority and who has passed the final order.'

7. In the present case it may be pointed out that even allegations against the respondents Nos. 4 and 5 are limited in nature. It is alleged that they were inimical towards the petitioner. This in our opinion, is not even an averment of mala fides, so far as the impugned order of detention is concerned. In the case of State of Haryana v. Raiendra reported in (1972) 11 LLJ 205 SC it was observed as follows:-

Certain incidents have been on record which Mil show that pollent mav have incurred the respects on record may have incurred the displease.

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