

PETITIONER:
KUSO SAH

Vs.

RESPONDENT:
THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT 08/11/1973

BENCH:
CHANDRACHUD, Y.V.
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CHANDRACHUD, Y.V.
DWIVEDI, S.N.
GOSWAMI, P.K.

CITATION:
1974 AIR 156 1974 SCR (2) 195
1974 SCC (1) 185
CITATOR INFO :
RF 1975 SC1215 (5)
R 1987 SC 998 (6)

ACT:
Constitution of India Art. 32-Habeas Corpus-Petitioner detained for two reasons : maintenance of public order and maintenance of essential supplies and services-Two out of three grounds in respect of first reason found irrelevant-Held entire order of detention is illegal as the two reasons cannot be bifurcated.

HEADNOTE:
The petitioner was detained pursuant to an order of detention dated April 2 1973 passed by the District Magistrate, Monghyr, with a view to preventing the petitioner from "acting in any manner prejudicial to the maintenance of public order and the maintenance' of supplies and services essential to the community." The grounds of detention served on the petitioner on April 6, 1973' were divided into two parts, the first relating to public order and the second to essential supplies and services. Two out of the three grounds mentioned in the first part set out facts which referred respectively to a stray incident on a public street and an assault on a public servant. The petitioners challenged the order of detention by a habeas corpus petition in this Court.

Allowing the Petition,

HELD : (1) The two concepts law and order' 'and 'public order' have well defined contours. Stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. "Law and order comprehends & orders of less gravity than these affecting "public order", just as public order, comprehends disorders of less gravity than those affecting "security of State. [196G]

Pushkar Mukherjee and others v. The State of West Bengal [1969] 2 S.C.R. 635, 642 and Dr. Ram Manohar Lohia v., State of Bihar and Others [1966] 1 S.C.R. 709, 746. referred to.

(2) Two of the grounds on which the order of detention rests

bear no rational connection with "public order", in the interests of which the petitioner was ordered to be detained. The order of detention expressly states that it was passed with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of public order and the maintenance of supplies and services essential to the community, and the District Magistrate was satisfied that if the petitioner was allowed to remain at large he will indulge in activities prejudicial to the maintenance of public order and maintenance of supplies and services essential to the community. The two reasons maintenance of public order and maintenance of supplies and services essential to the community cannot therefore be bifurcated and considered in separate compartments. The subjective satisfaction of the detaining authority embraces both the reasons and since two out of the three grounds mentioned in the first part are irrelevant, the entire order is illegal. [179D, 198D]

Pushkar Mukherjee & Ors. V, The State of West Bengal [1969] 2 S.C.R. 635, 642 and Motilal Jain v. State of Bihar & Ors. [1968] 3 S.C.R, 587, 593, referred to.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 1607 of. 1973.
Under Article 32 of the Constitution for issue of a Writ in the nature of habeas corpus.

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P. K. Chatterjee and Rathin Das, for the petitioner.

K. K. Sinha and S. K. Sinha for the respondents.

The Judgment of the Court was delivered by

CHANDRACHUD J.-By this petition for the writ of habeas corpus, the petitioner challenges an order of detention dated April 2, 1973 passed by the District Magistrate, Monghyr with a view to preventing the petitioner from "acting in any manner prejudicial to the maintenance of public order and the maintenance of supplies and services essential to the community"

The grounds of detention served on the petitioner on April 6, 1973 are divided into two parts, the first part referring to acts prejudicial to the maintenance of public order and the second to those prejudicial to the maintenance of supplies and services essential to the community.

Two out of the three grounds mentioned in the first part read thus

"(b) On 20-1-71 at about 2 A.M. he and his brother, Garib Sao were leading two trucks with stolen Railway property in a car bearing No. WBJ 6949. On the railway crossing near Jamui Rly. Station other, standing trucks on the road caused a bottleneck in his hurried journey. This led to a clash and his men assaulted the truck drivers and threatened them with fire arms. Some 15 of his Men were arrested then and there by the Police with the help of the public while he managed to escape along with his brother in the, car bearing No. WBJ 6948. This car is registered in the name of his brother Rabig Sao. A case was registered in this connection vide Lakshmipur P.S. Case No. 9 (1) 71 dated 20-1-71.

(c) He assaulted Shri Ram Singhasan Rai, Asst. Suptd. Commercial Taxes, Intelligence Branch, Bhagalpur who had gone to his factory

in course of his duties and discharge of his legal obligations as Asst. Suptd. Commercial Taxes Intelligence Branch and in connection therewith he has been arrested. in Jamalpur P.S. case No. 21 dated 29-8-72 u/s 143, 333, 307, 325 etc. I.P.C."

These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well defined contours, it being well Established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. As observed in Pushkar Mukherjee & Ors. v. The State of West Bengal(1), a line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local signi-

(1)[1969] 2 S.C.R. 635, 642.

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ficance which primarily injure specific individuals and only in a secondary sense public interest. 'In Dr. Ram Manohar Lohia v. State of Bihar and, Ors., (1) Hidayatullah, J. has expressed this concept picturesquely by saying that one has to imagine three concentric circles; law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the security of State. "Law and Order". comprehends disorders of less gravity than those affecting "public order", just as "public order" comprehends disorders of less gravity than those affecting "security of State".

The facts set out in ground (b) of the first part refer to no more than a stray and simple fracas arising out of a traffic bottleneck on a public street. Those set out in ground (1) refer to an assault on a public servant, undoubtedly reprehensible if true, but not of the kind that would reasonably affect public order.

Thus, two of the grounds on which the order of detention rests bear no rational connection with "public order", in the interests of which the petitioner was ordered to be detained. This Court in Pushkar Mukherjee's case observed : "that it is well established that the constitutional requirement that the grounds must not be vague must be satisfied with regard to each of the grounds..... and therefore even if one ground is vague, and the other grounds are not vague, the detention is not in accordance with procedures established by law and is therefore illegal. The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. In Motilal Jain v. State of Bihar & Ors.(2) this Court observed : "the subjective satisfaction of the detaining authority must be properly based on all the reasons on which it purports to be based. If some out of those reasons are found to be non-existent or irrelevant, the court cannot predicate what the subjective satisfaction of the authority would have been on the exclusion of those reasons. To uphold the order on the remaining reasons would be to substitute the objective standards of the court for the subjective satisfaction of the authority."

The order of detention expressly states that it was passed

with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of public order and the maintenance of supplies and services essential to the community. The statement of grounds contains at the end the assertion that the District Magistrate was satisfied that if the petitioner was allowed to remain at large he will indulge in activities

(1) [1966] 1 S.C.R. 709, 746.

(2) [1968] 3 S. C. R. 587, 593.

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activities prejudicial to the maintenance of public order and supplies and services essential to the community. (emphasis supplied). The two reasons, maintenance of public order and maintenance of supplies and services essential to the community, cannot therefore be bifurcated and considered in separate compartments. The subjective satisfaction of the detaining authority embraces both the reasons and since two out of the three grounds mentioned in the first part are irrelevant, the entire order is illegal.

For these reasons I set aside the order of detention. We had earlier directed on the conclusion of the arguments that the petitioner be set at liberty forthwith.

S.B.W.

Petition allowed-

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