Suru Mallick vs State Of West Bengal on 5 September, 1974

Equivalent citations: AIR1974SC2305, 1974CRILJ1534, (1975)4SCC470, 1974(6)UJ560(SC), AIR 1974 SUPREME COURT 2305, 1975 4 SCC 470 1975 SCC(CRI) 582, 1975 SCC(CRI) 582, 1975 SCC(CRI) 582 1975 4 SCC 470, 1975 4 SCC 470

Bench: P. Jaganmohan Reddy, P.K. Goswami

JUDGMENT

Jaganmohan Reddy, J.

1. Three grounds have been urged against the validity of the dention order. Firstly, that petitioner being an illiterate person, the grounds have not been communicated to him. Secondly, that in Criminal proceedings filed against him he was discharged on the same charges, which formed the grounds of his subsequent detention. Thirdly, relying on the decision in Jagdish Prasad v. The State of Bihar and Anr. (1974) 4 S.C.R. 455, wherein the District Magistrate did not file an affidavit, it is contended that the absence of such an affidavit is fatal to the validity of the order of detention; None of these in our view has merit. No doubt the detenu has put his thumb impression, but his representation immediately after the service of the order shows that it must have been communicated to him because he understood the grounds and made an effective representation. On the second ground the learned advocate Mr. Gupta, appearing as amicus curing submits that though the detenu was discharged, he could not have again been detained for the same offence. In support of this contention, he says that the petitioner was arrested on 20th June, 1972 and the detention order is dated 22nd June, 1972 so that was known to the detaining authority at the time when the detention order was made that they would not proceed with the criminal charge against the detenu. If this is so, then his submission is that the statement in the affidavit that the Magistrate discharged the detenu, as witnesses were not forthcoming cannot be correct. We are not prepared to go into this question, as that would amount to an enquiry into the truth or otherwise of the assertion made in the affidavit. Even otherwise, it does not appear to us that on the face of it the submission of the District Magistrate is incongruous because when serious offences are being committed which disrupt communication and prejudicially effect the maintenance of essential services to the community, persons incharge of law and order will be armed with authority to detain the persons, if no specific instances can be established in a criminal court, for want of evidence or where witnesses are not willing to come forward, The mere fact that the detention order was issued soon after the arrest, does not mean that the authority concerned did not at that time consider that no criminal prosecution could be proceeded with. It is only when it was found that witnesses were not willing to come forward that the detention was resorted to. This case is similar to other cases where the activities of anti-social elements which have disrupted generally the law and order in those particular areas, had to be detained by the concerned authorities immediately after the persons

alleged to have been indulging in prejudicial activities were discharged On this score the detention order cannot be declared invalid. Lastly, it is contended that Krishna Iyer, J. in Jagdish Prasad v. The State of Bihar and Anr. (supra) had laid down that if the District Magistrate does not swear to an affidavit showing his satisfaction, the detention order cannot be sustained. A perusal of the judgment cited by the learned advocate, does not in our view, justify this submission made on the observations at pp. 458-459. Krishna Iyer, J. no doubt commented on the absence of the affidavit of the District Magistrate because no explanation was given as to why he could not swear to an affidavit. In that case only an Upper Division Assistant had sworn to an affidavit with no personal knowledge and his statement made on the perusal of the record was characterised as "paper wisdom" by the learned Judge. In our view whether the affidavit is sworn by the Upper Division Assistant or by a Deputy Secretary both of whom have no personal knowledge but who swear to facts gathered from the record can have only "paper wisdom" and nothing else, But what we think was being commented upon was that it was not shown as to why even if the District Magistrate did not swear to an affidavit, the next best person, namely a Senior Officer in the secretariat who has been associated with the handling of the case at the Government level had not sworn to an affidavit stating the facts as appeared to him from the record. Neither the absence of an affidavit from the District Magistrate, nor the swearing by an Upper Division Assistant was at any rate considered to be fatal because the habeas corpus petition was in the result dismissed.

2. In this case, it may be pointed out that the affidavit is of the Deputy Secretary (Home Department) who is dealing with these matters. This Deputy Secretary has stated that the District Magistrate was not available because he was pre-occupied with some urgent business and was engaged on pressing duties connected with the maintenance of law and order in the district. In our view, the affidavit filed by the Deputy Secretary (Home Department) shows that the order was made by the District Magistrate on being satisfied that the detention of the petitioner was necessary to prevent him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. There being no other ground urged against the legality of the detention order, this petition is dismissed.