Indradeo Mahato vs The State Of West Bengal on 13 February, 1973

Equivalent citations: AIR1973SC1062, 1973CRILJ862, (1973)4SCC4, AIR 1973 SUPREME COURT 1062, 1973 4 SCC 4 1973 SCC(CRI) 645, 1973 SCC(CRI) 645

Author: A. Alagiriswami

Bench: A. Alagiriswami

JUDGMENT

I.D. Dua, J.

1. The petitioner in this case is being detained in Dum Dum Central Jail, pursuant to an order of detention dated August 18, 1971 made by the District Magistrate, Howrah in exercise of the powers conferred on him by Section 3(1) and (2) of the. Maintenance of Internal Security ACT, 26 of 1971 (hereinafter called the Act). The District Magistrate duly reported to the State Government the fact of having made the order together with the grounds of detention and all other particulars having a bearing on the matter. The State Government considered this report and approved the detention order on August 26, 1971 when it also submitted to the Central Government the necessary report as required by Section 3(4) of the Act. The petitioner could, however, be arrested only on June 16, 1972 as, according to the return "soon after the said order the detenu-petitioner was found to be absconding". The grounds on which the detention was ordered read:

> 1.On 20-4-71 at 02.00 hrs. you and your associates being armed with daggers, iron rods, bombs etc., trespassed into Shalimar Yard by scaling over the boundary wall and started looting railway materials stacked in front of D. S. P. Store, Shalimar. When resisted by the on duty R.P.F. Rakshak, you and your associates attacked him by throwing ballasts and hurling bombs at him with a view to scare him away and thus escaped with the looted railway property by terrorising him. Thus you acted in a manner prejudicial to the maintenance of public order.
>
> 2. On 21-6-71 at 03.30 hrs. you and your associates being armed with daggers, bombs etc., trespassed into Shalimar yard and committed theft of 7 bundles of Tarpauline valued Rupees 700/- from delivery shed. When resisted by the on duty R.P.F. Rakshaks, you and your associates attacked them and hurled bombs at them with a view to scare them away and escaped with the stolen property by terrorising them. As a result of your action panic prevailed in the area which was prejudicial to the maintenance of public order.

> 3. On 22-7-71 at 02.30 hrs. you and your associates being armed with iron rods, daggers, bombs etc., and rushed towards the loaded wagons stabled on Shalimar-Ramkrishnapore side line with a view to loot commodities by breaking open wagons. When resisted by the on duty R. "P. F. Rak shaks, you and your associates attacked them by throwing ballasts and hur ling bombs with a view to scare them away by terrorising them. As a result of your action panic prevailed in the area which was prejudicial to the maintenance of public order.

The order of detention as also the grounds of detention with a translation thereof in Indian language, were duly served on the petitioner on the day of his arrest. On June 29, 1972 the State Government received a representation from the petitioner which was considered and rejected on July 3, 1972. On July 5, 1972 the State Government placed the petitioner's case before the Advisory Board as required by Section 10 of the Act. The Board submitted its report on August 17, 1972 expressing its opinion that there was sufficient cause for the petitioner's detention. On August 26, 1972 the State Government confirmed the detention order as required by Section 12(1) of the Act and duly communicated its decision to the petitioner.

2. Shri V. C. Parashar, learned Counsel appearing as amicus curiae to assist this Court, submitted in the first instance that the gap of about 10 months between the order of detention and the arrest suggests that there was no real and genuine apprehension that the petitioner was likely to act in a manner prejudicial to the maintenance of public order. According to the submission, had the matter been grave and serious enough, the State would have taken adequate steps under Sections 87 and 88, Cr.P.C. for the purpose of securing the petitioner's early arrest. On this reasoning it was contended that the District Magistrate was in reality not satisfied that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and the case, therefore, does not fall within the purview of Section 3 of the Act. The petitioner's detention must accordingly be held to be contrary to law. We are unable to accept this contention.

3. Section 87, Cr.P.C. which occurs in Part C of Chapter VI of that Code merely empowers a court issuing a warrant of arrest to publish a written proclamation requiring the person concerned to appear at a specified place and time as required by that section, if the court has reason to believe that the said person has absconded or is concealing himself to evade execution of the warrant. Section 88 empowers the said court to attach the property belonging to the proclaimed person. In the case in hand no warrant was issued by any court as indeed Section 3 of the Act does not contemplate the authorities empowered to make orders of detention to function as courts. In terms, therefore, these sections may not be attracted. But even assuming it is permissible to have resort to such procedure the mere omission to do so could not, in our opinion, render the order of detention either illegal or mala fide as the suggestion connoted. The petitioner's detention cannot, therefore, be considered illegal on this ground.

4. The next point raised by Shri Parashar questioned the relevance of ground No. 1. According to the counsel this ground only suggests commission of an ordinary offence of theft, which could legitimately form the subject of a regular criminal trial in the ordinary criminal courts. He

contended that it does not raise a problem of public order but only an ordinary law and order problem. Reliance for this submission was placed on the decision of this Court in Kishori Mohan Bera v. State of W.B. . This submission is equally unacceptable. It may be recalled that according to the first ground at 2 O'clock in the midnight of April 20, 1971 the petitioner, along with his associates being armed with daggers, iron rods, bombs etc., had trespassed into Shalimar Yard by scaling over the boundary wall and had started looting railway materials stacked in front of D. S. K. Store, Shalimar. When they were resisted by the Railway Protection Force Rak shak on duty the petitioner and his associates attacked him by throwing ballast and hurling bombs at him with a view to scare him away and terrorise him and thus escaped with the plundered or looted railway property This ground, even though when taken in isolation, would clearly bring th petitioner's case within the ambit of Section 3 of the Act, has, in our opinion, to be read and considered along with the other two grounds, because all of them clearly appear to us to be founded on acts committed in the course of an organised plan to plunder or loot public property by terrorising and scaring away the Rakshaks of the Railway Protection Force. Acts of this nature which partake of the character of robbery by using deadly weapons like bombs against the R.P. Force discharging the duty of protecting the railway property have a far deeper impact on the peaceful pursuit of the normal avocations of life of the community than a simple case of. stealing private or even public property. It is, in our opinion, misleading to equate such acts of robbery with the common cases of ordinary theft for the purpose of determining the applicability of Section 3 of the Act. Difference between an ordinary law and order problem and that of public order has been explained by this Court on several occasions and the legal position is by now fairly crystallised. In Dr. Ram Manohar Lohia v. State of Bihar this Court dealt with the question at length and illustrated the difference by fictionally drawing three concentric circles, the largest representing law and order, the next representing public order and the innermost representing security of State. Every violation or breach of law would no doubt necessarily affect order and the frequency of such infraction may pose a problem of law and order, but it need not necessarily affect public order just as every act affecting public order may ,not automatically affect security of the State. In Pushkar v. State of W.B. the difference between the concept of "public order" and "law and order" was stated to be similar to the distinction between "public" and "private" crimes in the realm of jurisprudence. The real test seems to us to depend on the degree and extent of the disturbance an act causes to the normal balanced peaceful tempo of civil life of the community and not on the mere definition of crime given to such acts in the law of crimes. Similar acts in different situations may give rise to different problems: in one set of circumstances an act may pose only a law and order problem whereas in another it may generate deep and widespread vibrations having serious enough impact on the civilised peace-abiding society so as to affect public order. One has to weigh the degree and sweep of the harm the act in question is capable of in its context Every case has, therefore, to be considered on its own facts and circumstances. In the present case the acts cannot but shake the public confidence in the efficacy of the Railway Protection Force in effectively safeguarding and protecting the railway property. This may also tend to dissuade people from transporting their goods through the railway carrier which in an orderly civilised society is as a rule considered quite safe. In addition, such acts may also create a feeling of panic amongst the people resorting to the railway yards for loading and unloading wagons. It is futile to contend that the acts in question in their context are not grave and serious enough in their potentiality for disturbing the even tempo of the life of the community. In somewhat similar cases this Court has regarded similar acts as justifying the orders of detention. See Sk. Kader v. State

of W. B. , Netaipada Saha v. State of W.B. and Kishori Mohan Bera (supra)).

5. The fact that the petitioner could be tried for the commission of offences disclosed in these grounds is also immaterial because his liability to be tried in a court of law cannot debar the authority concerned from detaining him if his acts bring his case within the purview of Section 3 of the Act. In Borjaban Gorey v. State of W.B. it was ruled that the liability of the detenu to be tried in courts of law for being punished for the commission of an offence does not impinge upon the operation of the Act. The respective fields of operation of the law providing for trial and punishment for the commission of offences and of the Act are not co-extensive. One is meant to punish for past offences while the other is designed to prevent the person concerned from future mischief irrespective of his liability to be punished in a court of law on the basis of the same acts. Their operation is not alternative, the detenu's liability to be tried not invalidating his detention. This challenge is thus equally devoid of merit.

6. The petition accordingly fails and is dismissed.