Abdul Gaffer vs State Of West Bengal on 20 January, 1975

Equivalent citations: AIR1975SC1496, 1975CRILJ1233, (1975)4SCC59, 1975(7)UJ198(SC), AIR 1975 SUPREME COURT 1496, (1975) 4 SCC 59 1975 SCC(CRI) 309, 1975 SCC(CRI) 309

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Bench: R.S. Sarkaria, V.R. Krishna Iyer

JUDGMENT

R.S. Sarkaria, J.

1. Abdul Gaffer, petitioner challenges the order dated 18-5-1972, of his detention made under Section 3 of the Maintenance of Internal Security Act, 1971. The detention order states that the detention was necessary to prevent the petitioner from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The impugned order was passed on these grounds:

> 1. On 18-7-71 at 02.15 hrs. you along with your associates being armed with deadly weapons like daggers etc. committed theft in respect of D.O plates from the Rly. Yard near Tikiapara Rly. Over Bridge. Being challenged by the person on duty R.P.F. party you and your associates attacked them by pelting stooes causing injury to the R.P.F. Party. The R.P.F. had to open fire when you and your associates fled away leaving behind 3 (three) pieces of D.O. Plates. In consequence of theft of Rly. property running of the train services were disrupted.
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> 2. On 25-11-71 at 14.15 hrs in between Chandmari Bridge and Tikiapara Foot over bridge you along with your associates being armed with deadly weapons committed theft in respect of batteries from empty rakes standing on the Rly. track. Being challenged by the R.P.F. Party you and your associates attacked them by pelting stones in order to take away the stole batteries by terrorising them. The R.P.F Party in exercise of right of private defence fired two rounds and one of your associates being injured was arrested at the spot, while you along with your other associates fled away leaving behind six pieces of batteries, one implement of battery opener and iron rod etc. which were recovered by the RPF Party. As a result of this act train services in Howrah-Burdwan Line was seriously disrupted.
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> 3. On 20-2-1972 at 09.25 hrs, at Howrah Goods Yard near Oriapara Quarters you along with your associates being armed with deadly weapons viz, bombs, iron rods

> etc. committed theft of wheat bags from a wagon No. ER 86018 standing on Line No. 28. Being challenged by the RPF party you and your associates attacked them by pelting stones and hurling bombs. As a result one RPF Sub-Inspector was injured. The RPF party in exercise of right of private defence fired one round and you and your associates fled away leaving behind 2 bags of wheat. One iron rod which were recovered by the RPF party. One of your associates as a result of firing sustained injury who was subsequently arrested at Howrah General Hospital. As a result of this act train services on Howrah-Burdwan Line was suspended for a considerable period.

2. In respect of these incidents, three cases were registered with the police in regard to offences under Sections 147, 148, 337, 307 and 379, Penal Code. The petitioner was arrested in respect of those offences on March 10, 1972 and forwarded to the judicial Magistrate who released him on bail on the same day. It was on 18-5-72 that the impugned order was made and the petitioner preventively detained.

3. The District Magistrate who had passed the impugned order has not filed any affidavit. Instead his successor-in-office has, in response to the Rule Nisi, filed the counter.

4. Mr. Inder Sen Sawhney, learned Counsel appearing as amicus curiae for the petitioner contends that in the circumstances of the case, the detaining authority could not possibly be satisfied with regard to the tendency of the petitioner or act prejudicially in the manner referred to in the detention order. The order, proceeds the argument, has been passed mechanically without applying the mind. It is added that the power has been misused and exercised in a colourable manner. Strees has been laid on the fact that the detaining authority has not filed the counter-affidavit, and the return filed in his place by another officer does not satisfactorily explain why the prosecution of the petitioner for the substantive offence in respect of which he was arrested and named in the F.I.R. was not proceeded with. According to Counsel the so called explanation given in the counter that the witnesses being afraid were not coming forward to give evidence was too ridiculous to be believed by any reasonable person.

5. It appear to us that there is a good deal of force in these contentions.

6. The petitioner was named as culprit in the F.I.R. It is common ground that he was seriously wounded as a result of bullet fired by the R.P.F. The counter affidavit is mysteriously silent as to who had removed him from the spot to the Hospital from where he is alleged to have been arrested. One of his companions was admittedly shod dead at the spot. In the absence of anything to the contrary in the affidavit, it will not be unreasonable to presume that he was removed from the scene to the Hospital by the R.P.F. or by somebody else at their instance. In such a situation the only material witnesses who could give evidence for the prosecution would be members of the Railway Protection Force. It is a para police organisation. The bald but sweeping allegation in the counter that these witnesses were also afraid of giving evidence in court against the petitioner is a version which is too incredulous to be swallowed even by an ultra credulous person without straining his credulity to the utmost. In Sri Lal Show v. State of West Bengal W.P. 453/1974, decided on 4-12-1974 this Court was dealing with a similar assertion, Chandrachud, J. who spoke for the Court

refused to accept such an ipse dixit in the counter, with these observations:

> ...If the facts stated in the ground are true, this was an easy case to take to a successful termination We find it impossible to accept that the prosecution could not be proceeded with as the witnesses were afraid to depose in the public against the petitioner. The Sub Inspector of Police who made the Panchoama, we hope, could certainly not be afraid of giving evidence against the petitioner. He had made the Panchnama of seizure openly and too the knowledge of the petitioner. Besides, if the petitioner's statement was recorded during the course of investigation under the Act of 1966. that itself could be relied upon by the prosecution in order to establish the charge that the petitioner was in unlawful possession of Railway property.

7. In Noor Chand Sheik v. State of West Bengal it was pointed out by this Court that the circumstances in which the prosecution of the detenu was dropped and he was discharged, are not irrelevant and must be explained. Recently this point was again stressed by this Court in Dalai Roy v. State of West Bengal, W.P. No. ??? of 1974, decided on 15-1-1975.

8. The conclusion therefore is inescapable that the petitioner has been preventively detained with application of mind as to whether the prosecution against him was foredoomed to failure on the ground of witnesses being afraid to depose against the detenu in court. The impugned order has been made in a casual and cavalier manner.

9. Mr. Chatterjee, learned Counsel for the State cited Nandlal Roy v. The State of West Bengal . The ratio of that decision is not material for determination of the point before us. There the Court was concerned whether a certain incident was related to law and order or public order while we are concerned whether the power has been exercised in the present case in a colourable manner as a cloak for subverting the process of criminal law and irksome court procedure. Our answer, as already indicated above, is that the power in the present case has been so exercised and the impugned order is an act of colourable exercise of jurisdiction.

10. We therefore allow this petition, quash the impugned order and direct that the petitioner be released forthwith.