Vimal Kishore Mehrotra vs State Of Uttar Pradesh And Anr. on 14 July, 1955

Equivalent citations: AIR1956ALL56, 1956CRILJ13, AIR 1956 ALLAHABAD 56, ILR (1956) 2 ALL 527

JUDGMENT

Oak, J.

1. This is a petition by Vimal Kishore Mehrotra under Article 226 of the Constitution for a direction or writ in, the nature of habeas corpus. The petitioner is one of the General Secretaries of Suti Mill Mazdoor Sabha, Kanpur. The workers of textile mills at Kanpur went on strike from the early part of May, 1955. The strike lasted for several weeks. The petitioner was arrested on 28-4-55 but was released on 11-5-1955. The petitioner was again arrested by the police on 18-5-1955. He was produced before a Magistrate on 19-5-1955.

The petitioner was informed that he had been arrested under Section 7, Criminal Law Amendment Act, 1932. Since then he is in jail custody. According to the petitioner, his arrest and detention are illegal for a variety of reasons. He, therefore, prays that he be set at liberty, and orders for detention be quashed. The petitioner filed an affidavit in support of his petition.

2. Notices were issued to the opposite parties. The State of Uttar Pradesh is respondent 1, while the Superintendent, Jail, Kanpur is respondent 2. The petitioner was produced before this Court on 27-6-1954 as directed by the Court. The learned Deputy Government Advocate appearing on behalf of the two respondents filed a counter-affidavit to justify the petitioner's arrest and detention. The counter-affidavit is by one Suraj Singh who is a Sub-Inspector of Police posted in district Kanpur. On 27-6-1955, the petitioner filed a supplementary affidavit as rejoinder to the Sub-Inspector's counter-affidavit.

3. Throe points were raised on behalf of the petitioner. The first point was that he was detained in police custody for more than twenty-four hours before he was produced before a Magistrate. It was urged that the detention was in contravention of Clause (2) of Article 22 of the Constitution. It is common ground that the petitioner was arrested on 18-5-1955, and was produced before a Magistrate on 19-5-1955. But parties are not agreed about the exact time of arrest and production before the Magistrate. Accordingly to the petitioner, he was arrested on the 18th May, at 8.40 a. m.

According to the Sub-Inspector's counter-affidavit, the petitioner was arrested at 11.15 a. m. There is also a slight difference between the parties as regards the time when the petitioner was produced before the Magistrate. According to both the parties, the interval between the time of arrest and the time of production before the Magistrate was a little over twentyfour hours. According to the

counter-affidavit, the time taken in bringing the petitioner from the place of arrest to the Magistrate's Court accounts for the excess time. Learned counsel for the petitioner did not press this point.

4. The second point urged on behalf of the petitioner is that Section 7, Criminal Law Amendment Act, 1932 is ultra vires the Constitution. The learned counsel argued that Section 7 of the Act prohibits peaceful picketing, and such prohibition is unconstitutional.

5. Sub-section (1) of Section 7, Criminal Law Amendment Act (23 of 1932) runs thus;

> "Whoever--
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> (a) with intent to cause any person to abstain from doing or to do any act which such person has, a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof, or
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> (b) loiters or does any similar act at or neat the place where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering or approaching or dealing at such place, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both".

6. It will be noticed that acts of various kinds have been made punishable under Section 7 of the Act. The learned counsel's argument that the section prohibits picketing only is not sound.

7. In -- 'Byron Thornhill v. State of Alabama' (1939) 84 Law Ed 1093 (A), it was held as follows:

> "A statute making it an offence to go near to or loiter about, without a just cause or legal excuse therefor, the premises of anyone engaged in a lawful business, for the purpose or with the intent of influencing or inducing other persons not to have business dealings with or be employed by such person, or to picket the works or place of business of another for the purpose of hindering, delaying or interfering with or injuring any lawful business or enterprise which, as authoritatively construed and applied, leaves no room for exceptions based either on the number of persons engaged in the proscribed activity, the peaceful character of their demeanour the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute, and which therefore prohibits any means used in the vicinity of a labour dispute to publicize the facts of the dispute, violates the constitutional guarantees of freedom of speech and of the press".

This decision by the Supreme Court of United States lends support to the contention of the learned counsel for the petitioner that, prohibition of peaceful picketing is unconstitutional. But, as already observed, the operation of Section 7, Criminal Law Amendment Act is not confined to peaceful picketing.

8. Learned counsel for the petitioner relied upon Sub-clause (a) of Clause (1) of Article 19 of the Constitution. This sub-clause lays down that all citizens shall have the right to freedom of speech. But Clause (2) (after its amendment) of Article 19 provides that--

> "Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence".

Thus, Clause (2) of Article 19 makes it clear that, the right of freedom of speech and expression do'es not entitle a person to incite others to commit offences.

9. According to the Sub-Inspector's counter-affidavit, the petitioner was arrested for reasons disclosed in annexure 'C' of the counter-affidavit. Annexure "C" is a copy of a report lodged by one Janardan Pandc at police station Sisamau. According to Janardan Pande's report, he and certain other men were going to J. K. Jute Mill for work on the morning of 18-5-1955. Vimal Kishore Meh-rotra and his friends met Janardan Pande on the way. The petitioner said to labourers who were on strike.

> "Note these men. They are all rebels. They will not listen to verbal persuasion, until their hands and feet are broken".

Janardan Pande and his friends went away quietly due to fear. But their lives and property are in danger from Vimal Kishore Mehrotra and others. The contents of annexure "C" of the counter-affidavit were denied in the petitioner's supplementary affidavit. But in this proceeding we shall not decide the question whether the allegations made in annexure "C" are true or false. That point will have to be decided by the trial Court if the case goes for trial. In this proceeding I merely note that, the petitioner was arrested because such a report was made to the police.

For purposes of this petition, we have to assume that the allegations made in annexure "C" may be true. According to annexure "C", the petitioner told his friends that it was necessary to break Janardan Pande's limbs in order to teach him a lesson. In other words, the petitioner incited his friends to violence.

10. According to Sub-section (1) of Section 7, Criminal Law Amendment Act, .

> "Whoever --

> (a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at.....
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> (b) loiters or does any similar act.....shall be punished.. ."

Now, the learned counsel for the petitioner conceded that, no one has the right to obstruct or use violence to or intimidate a person lawfully engaged in his work. So, prohibition of such improper interference cannot be criticised as unconstitutional. The allegations made in annexure 'C' of the counter-affidavit seem to make out the offence of criminal intimidation made punishable by Section 506 I. P. C. Learned counsel did not argue that Section 506 I. P. C. is ultra vires the Constitution. If Section 506 I. P. C. is intra vires the Constitution, so is the first part of Clause (a) of Sub-section (1) of Section 7, Criminal Law Amendment Act. The allegations of annexure 'C' make out against the petitioner a case under the first part of Clause (a) of Sub-section (1) oi' Section 7 of the Act. This part of Section 7 is not open to the criticism that the prohibition is ultra vires the Constitution.

11. It may be (I do not express and definite opinion on the point) that, prohibition of peaceful picketing is unconstitutional, as laid down in the case of -- 'Thornhill v. State of Alabama', (A). For this reason it may be that, Clause (b) and certain portions of Clause (a) of Sub-section (1) of Section 7 of the Act are unconstitutional. But it does not follow that the entire Section 7 is ultra vires the Constitution.

12. In the case of -- 'Ram Manohar v. Superintendent, Central Prison, Fatehgarh', (S) AIR 1955 All 193 (B), it was held by this Court that--

> "If any provision of an Act is unconstitutional, it can he ignored as it it did not exist, without affecting the enforcement of the others. If good and bad provisions are joined together by using the word 'and' or 'or', and the enforcement of the good provision is not made dependent on the enforcement of the had one, i. e., the good provision can be enforced even if the bad one cannot be, or had not existed, the two provisions are severable and the good one will be upheld as valid and given effect to.
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> On the other hand, if there is one provision (as distinct from several joined together) and it hits valid objects as well as invalid ones, which cannot be separated without altering the language (which is beyond the jurisdiction of Courts) and is capable of being used for a legal purpose as well as for an illegal one, it is invalid and cannot be allowed to be used even for the legal purpose."

13. Section 7 Criminal Law Amendment Act prohibits several acts. It may be that prohibition of some of these acts is unconstitutional. But it does not follow that prohibition of other acts also is unconstitutional. It is possible to separate the valid part from the invalid parts. So assuming (without deciding) that certain parts of Sub-section (1) of Section 7 of the Act are ultra vires the Constitution, the entire Section 7 cannot be condemned on that ground.

I hold that Section 7, Criminal Law Amendment Act (23 of 1932) is intra vires the Constitution at least so far as it relates to the charge against the petitioner. I, therefore, overrule this contention raised on behalf of the petitioner.

14. The last point urged by learned counsel for the petitioner is that, the ground for the petitioner's arrest was not communicated to him as required by Clause (1) of Article 22 of the Constitution. Clause (1) of Article 22 runs thus:

> "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the ground for such arrest....."

15. This point was not expressly raised in the petition dated 23-5-1955. In para. 9 of the petition it was merely stated that, the applicant was informed by the jail authorities on 19-5-1955 that he was arrested under Section 7, Criminal Law Amendment Act, 1932. On this point it was stated in para. 12 of the Sub-Inspector's counter-affidavit that--

> "the applicant was told at the time of his arrest itself that he was being arrested under Section 7, Criminal1 Law Amendment Act, 1932, and may have been further informed by the jail authorities that he was being detained for that offence as alleged in para 12 of Sri Goswami's affidavit."

It was suggested on behalf of the petitioner that, the point was not expressly raised in the petition, as the peition was moved only five days after the arrest. It was, however, argued that the ground of arrest was hot communicated to the petitioner even up to the date of the final hearing of the petition. In para, 7 of the petitioner's supplementary affidavit dated 27-6-1955, it was stated that --

> "No facts alleged against the deponent or grounds of the deponent's arrest have yet been communicated to the deponent except that he is detained under Section 7, Criminal Law Amendment Act."

16. It was urged on behalf of the respondents that, details were communicated to the petitioner without any delay. The learned Deputy Government Advocate requested for permission to file another affidavit, as the point under consideration was not expressly raised in the petition dated 23-5-1955. But in view of the definite statement contained in the Sub-Inspector's counter-affidavit that the petitioner was told that he was being arrested under Section 7, Criminal Law Amendment Act, 1932, we were not disposed to permit the respondents to file another affidavit on the same point.

I take it that the ground for his arrest was communicated to the petitioner as mentioned in para. 10 of the petitioner's affidavit and in para. 12 of the Sub-Inspector's counter affidavit, but no further details were supplied up to 27-6-55. I have to see whether under these circumstances there was sufficient compliance with Clause (1) of Article 22 of the Constitution.

17. In the case of -- 'State of Bombay v. Atma Ram', AIR 1951 SC 157 (C), it was held by their Lordships of the Supreme Court that, the test is whether it is sufficient to enable the detained person to make a representation at the earliest opportunity.

18. Similarly in the case of -- 'Magan Lal Jivabhai, in re', AIR 1951 Bom 33 (D), it was held that, the only possible and reasonable construction that can be put upon the language of Art 22(6) is that the detaining authority, while furnishing grounds of detention, is required to state facts on account of which he is satisfied that the detention is necessary in the. interest of the security of the State, maintenance, of public order, etc. The only privilege a detaining authority can claim against disclosure of facts is on grounds of public interest. If no facts at all leading to the detention of a detenu are to be mentioned in the grounds which are to be furnished to him, then obviously the intention underlying the enactment of Article 22(6) is frustrated.

19. In both the cases referred to above, the persons had been detained under the provisions of Preventive Detention Act. The information to be supplied to such a person is governed by Clause (5) of Art, 22. In the present case the petitioner has been arrested for a specific offence. His case is governed by Clause (1) and not by Clause (5) of Article 22. However, under both the clauses, certain information has to be supplied to the person arrested and detained.

Under Clause (1), the ground for arrest has to be communicated to the person arrested. Under Clause (5) the grounds on which the order of detention has been made has to be communicated to the person detained. So decisions of Courts under Clause (5) of Article 22 will be of much assistance in interpreting Clause (1) of Article 22.

20. The object underlying the provision that the ground for arrest should be communicated to the person arrested appears to be this. On learning about the ground for arrest, the man will be in a position to make an application to the appropriate Court for bail, or move the High Court for a writ of habeas corpus. Further, the information will enable the arrested person to prepare his defence in time for purposes of his trial. For these reasons, it has been provided by the Constitution that, the ground for the arrest must be communicated to the person a rested as soon as possible. In the present case it was not contended on behalf of the respon-dents that, it was impracticable to give the information to the petitioner soon after the arrest. The contention on behalf of the respondents is that, the necessary information has already been supplied to the petitioner. The alleged occurrence described in snnexure 'C' took place at Kanpur. The petitioner was arrested in Kanpur City. The jail is located at Kanpur. The necessary iniormation could easily be supplied to the petitioner within a week of his arrest.

21. However, all that the petitioner was told that, he had been arrested under Section 7, Criminal Law Amendment Act, 1932. This information could not give the petitioner any idea about the offence, which he is supposed to have committed. We have seen that S. V of the Act prohibits a variety of acts. By merely learning that he has been arrested under Section 7 of the Act, the petitioner would not know what exactly he is alleged to have done. For purposes of Clause (1) of Article 22, it is not necessary for the authorities to furnish full details of the offence But the information should be sufficient to enable the arrested person to understand why he has been

arrested. The ground to be communicated to the! arrested person should be somewhat similar to the charge framed by the Court for the trial of a case. In the present case the petitioner should have been told that the charge against him is that, on the morning of 18-5-1955 near J. K. Jute Mill, Kanpur he threatened Janardan Pande in order to dissuade him from going to work.

No such information was supplied to the petitioner. He was merely told that he had been arrested under Section 7, Criminal Law Amendment Act, 1932. That was not sufficient. I hold that there was contravention of Clause (1) of Article 22 of the Con-stitution.

22. The learned Deputy Government Advocate argued that even if there was non-compliance with Clause (1) of Article 22 of the Constitution at one time, that does not render the present detention of the petitioner unlawful. Reliance was placed upon the case of -- 'Ram Narayan Singh v. State of Delhi', AIR 1953 SC 277 (E).' In that case their Lordships of the Supreme Court held that, in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. In the present case the writ petition was moved on 23-5-1955. This Court Sx-cd 27-6-1955 as the date of the return. We have therefore, to consider whether the petitioner's detention in jail on 27-6-1955 was unlawful,

23. I have shown above that, the necessary information could easily be supplied to the petitioner within a week of his arrest i. e., by 25-5-1955. So, the petitioner's detention in jail on 26-5-1955 and on subsequent dates was illegal. The learned Deputy Government Advocate argued that the petitioner knows the ground now, and the present detention is not illegal. I do not agree. If the petitioner's detention on 26-5-1955 and on subsequent days was illegal, the fact that the necessary information somehow reached the petitioner on 27-6-1955, would not render the detention legal. The petitioner's detention in jail even on 27-6-1955 was illegal. He should, therefore, be released.

24. I am, therefore, of opinion that this petition should be allowed, and the petitioner should be released forthwith.

Desai, J.

25. The allegation that the applicant was detained in police custody for more than 24 hours before being produced before a Magistrate is denied in the counter-affidavit and was not present before us.

26. Section 7, Criminal Law Amendment Act 23 of 1932, contains several provisions which are of a severable nature; therefore, the unconstitutionality of anyone of them would not affect the operation of the others. On the Constitution coming into force, only those provisions of the section, which Were inconsistent with the provisions of the Constitution, became void and the others remained good. There was, therefore, no sense in contending that Section 7 was unconstitutional. Unless all its provisions were unconstitutional, the whole section could not be said to be unconstitutional.

There is also no force in the contention that the section makes no distinction between an act covered by the guarantee of Article 19 and an act outside the scope, of the guarantee, or that it punishes violent and non-violent picketing both. Such an argument would be acceptable only if the

constitutional and the non-constitutional provisions are so mixed up in a section as not to be severable.

27. The particular provision of Section 7 which is said to apply to the act alleged to have been done by the applicant is that, "'Whoever, with intent to cause any person to abstain from doing ..... any act which such person has a right to do ..... intimidates such person ..... shall be punished with imprisonment for a term which may extend to six months". There is no allegation that the applicant fortered or did any similar act at or near the place where a certain person carries on a business, or persistently followed him from place to place. Punishment for peaceful picketing may be constitutional or may not be constitutional, and it may be or may not be punishable under some provision of Section 7, but the applicant has not been arrested on the charge of doing peaceful picketing.

Whatever may be the law regarding peaceful picketing, it cannot be doubted that intimidating a person with intent to cause him to abstain from doing an act which he has a right to do is not peaceful picketing. If peaceful picketing is made an offence under the section and to do so infringes the guarantee contained in Article 19 of the Constitution, the section may be unconstitutional to that extent, but only to that extent; as regards is making it an offence for any person to intimidate another with intent to cause him to abstain from doing an act which he has a right to do, it admittedly does not infringe the guarantee, and is not unconstitutional.

We are not concerned in the present proceedings with the truth of the allegation made against the applicant; we have to decide whether on that allegation the applicant could be legally arrest-ea. Therefore, his plea that the allegation made against him is false cannot be entertained in these proceedings. Also the State's claim that the allegation makes out an offence punishable under the above quoted provision of Section 7 has some force and cannot be rejected summarily in those proceedings; it must be inquired into through a regular trial. There is nothing unconstitutional in the provision of Section 7 under which the applicant is sought to be punished ior doing the act, and admittedly the applicant could be arrested on the charge that he was guilty under Section 7. Therefore the arrest of the applicant was legal.

28. It is the fundamental right of every person that on being arrested he: must be "informed, as soon as may be, of the grounds for such arrest"; he cannot, be detained in custody without being so informed. It is the common case of the parties before us that the applicant on being arrested was informed merely that he had been arrested under Section 7 of the Act; there is no allegation that any other information was given to him. Section 7 is a wide section containing several provisions and he was not informed under which particular provision he was arrested. Nothing was said to him about the allegation made against him or the act alleged to have been done by him and amounting to an offence punishable under Section 7.

29. The rule in Article 22(1) that a person on being arrested, must be informed of the grounds for tiie arrest is similar to, though not exactly identical with, the rules prevailing in England and in United States of America. The rule prevailing in England is that " in normal circumstances an arrest without warrant either by a policeman or by a private person can be justified only if it is an arrest on

a charge made known to the person arrested"; (per Viscount Simon L. C. in -- 'Christie v. Leachinsky (1947) AC 573,' at p. 586 (F).

It is a rule of the common law and is described in different languages by different authorities, but the meaning is the same; the arrested person must be told for what he is arrested or the cause of his arrest. In the United States the accused has the constitutional right "to be informed of the nature and cause of the accusation"; see 6th Amendment to the American Constitution, In -- 'Hooper v. Lane', (1857) 6 HLC 443 : 10 ER 1368 (G), one ol the reasons for the rule was said to be that the person arrested should know whether he is or is not bound to submit to the arrest. In 'Leachinsky's. case (F)' Lord Simonds observed at page 591:

> "Putting first things first, I would say that it is the right of every citizen, to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. And I would say next that it is the corollary of the right of every citizen to be thus free from arrest that he should be entitled to resist arrest unless that arrest is lawful. How can these rights be reconciled with the proposition that he may be arrested without knowing why he is arrested? .....Blind, unquestioning obedience is the law of tyrants and of slaves: it does not yet flourish on English soil".

Professor Glanvile L. Williams in his article "Requisites of a Valid Arrest in (1954) Criminal Law Review, page 6 at page 16, criticised the reason given by Lord Simonds as "somewhat legalistic" because few people know the law of arrest in such. a way that they can decide on the spot whether the arrest to which they are being subjected is legal. In his opinion the true reason is a different one, e. g., the reason given by Viscount 11th Simon L. C. in the same case at page 588 in the following words:

> "If the charge on suspicion of which the man if arrested is then and there made known to him, he has the opportunity of giving an explanation of any misunderstanding or of calling attention to other persons for whom he may have been mistaken with the result that further inquiries may save him from the consequences of false accusation."

Another reason given by Lord Simonds at page 592 is that the arrested person may without a moment's delay take such steps as will enable him to regain freedom. One more reason is that it acts as a safeguard against despotism and over-zeal. As remarked by Professor Glanville L. Williams (supra, at page 17) "the rule has the effect of preventing the police from arresting on vague general suspicion, not knowing the precise crime suspected but hoping to obtain evidence of the commission of som& crime for which they have power to arrest".

In 'McNabb v. United States of America', (1943) 318 US 332 (H), Frankfurter, J. observed at page 343:

> "Experience has therefore counselled that safeguards must be provided against the dangers of the overzeaious ay well as the despotic ..... Legislation such as this,

> requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard".

In 'United States v. Cruikshank', (1876) 92 US 542 at page 559: 23 Law Ed 588 at p. 594 (I), it was observed by Waite C. J. that the accused is given the right to have a specification of the charge against him in order that he may decide whether he should present his defence by motion to quash, demurrer or plea. The debates of the Constituent Assembly which framed the Constitution are relevant for the purpose of ascertaining the reason behind a certain enactment. In the Draft Bill of the Constitution the Article corresponding to the Article under consideration was 15A. The reason given for the provisions of the Article was that they were safeguards against illegal or arbitrary arrests (9 Constituent Assembly Debates, p. 1497),

30. The words "grounds for such arrest" occuring in Article 22(1) should be interpreted in the light of the reasons given above for the provision. If a person is arrested on a warrant, the grounds or reasons for the arrest are the warrant; if the warrant is read over to him, that is sufficient compliance with the requirement that he should be informed of the grounds for his arrest. If he is arrested without a warrant, he must be told why he has been arrested. If he is arrested for committing an offence, he must be told that he has committed a certain offence for which he would be placed on trial. In order to inform him that he has committed a certain offence, he must be told of the act done by him which amounts to the offence.

He must be informed of the precise act done by him for which be would be tried; informing him merely of the law applicable to that act would not be enough. Thus it would not he enough to tell him, "You have committed an offence punishable under Section 7, Criminal Law Amendment Act" and it would be still less enough to tell him, "You are arrested under Section 7, Criminal Law Amendment Act". It would have been quite useless to tell the applicant that he was arrested for committing an offence under Section 7. The section contains several provisions, some of which may be valid and others not, and unless he was told under which particular provision he was arrested, he would not know whether his arrest was legal or not and could not take immediate action to regain freedom.

The act alleged to have been done by him for which he is said to be liable to be punished under Section 7 of the Act is that he had intimidated Janardan Pandey etc. on 18-5-1955 with a view to cause them to abstain from going to the mills for work; that was the ground or reason for his arrest which should have been communicated to him under the Constitution.

31. In the debate in the Constituent Assembly it was pointed out by one member:--

> "The usual grounds for such arrests are that there is a credible or reasonable information against him that be has committed or is concerned with a cognizable crime or that from his demeanour or other circumstances, the officer arresting him has reasonable suspicion that he is connected with a cognizable crime or he is about to commit such a crime. These are the general nature of the circumstances in which an arrest is effected.

> Other circumstances are there is a warrant or summons against him or there is an order, by an appropriate authority, for his arrest. These are circumstances which it is easy for the police officer to explain, 'though not immediately before the arrest or at the time of making the arrest, at least immediately after that": (See page 1509) In 'Leachinsky's case (F)' at page 593, Lord Simottds called it a fundamental principle that 'a man is entitled to know what, in the apt words of Lawrence, L. J., are 'the facts which are said to constitute a crime on his part". The requirement -that the arrested person must be informed of the reason for his arrest does not mean that technical or precise language need be used. In the words of Professor Glanville, L. Williams (page 16) "the charge need not contain the same accurate description of the offence as an indictment. In deed, the precise charge need not be formulated, provided that tbe accused is told the act for which he is arrested".

I, therefore, agree with my learned brother that when the applicant was informed at the time of his arrest that he was arrested under Section 7, Criminal Law Amendment Act, it did not amount to his being informed of the grounds for his arrest. (32) It is a fundamental right of a person that on being arrested he must be informed of the reason for his arrest; the very nature of the right indicates that if he is not informed, his detention after the arrest is illegal. The Constitution prohibits his being detained without being informed of the grounds for his arrest; if he is detained (without being informed of the grounds for his arrest), the detention is illegal being a prohibited act, and he must be released on a habeas corpus application. Every person whose fundamental right is infringed is entitled to the remedy of a writ. In 'Leachinsky's case (F)' Lord Du Parcq observed at page 600:--

> "The omission to tell a person who is arrested at, or within a reasonable time of, the arrest with what offence he is charged cannot be regarded as a mere irregularity".

According to Viscount Simon in the same case "The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed" (p. 587).

Leachinsky was arrested without a warrant by a police officer who suspected on reasonable grounds that he had stolen a bale of cloth. But the police officer told him that he was arrested on a charge of unlawful possession under the Liverpool Corporation Act. He had no power to arrest him without a warrant under that Act; so the reason given by him did not justify the arrest.

He could be arrested on the ground of being suspected to have stolen some property, but that ground was not given to him as the ground for his arrest. It was held by the House of Lords that the arrest and the subsequent detention were unlawful. The House of Lords attached so much importance to the rule that an arrested person must be informed of the ground for his arrest that, though there existed at the time of his arrest a valid ground for his arrest, they held his arrest -and subsequent detention unlawful merely because he was told that he was arrested on account of some other ground which did not justify the arrest.

It was established in -- 'Hooper v. Lane', (G) (supra) that if a police officer holding a valid warrant in one case and an invalid warrant in another case arrests a person on both the warrants and informs him of both the warrants, the arrest is good and that if he arrests him on the invalid warrant only, he cannot justify the arrest by subsequently relying upon the valid warrant.

33. Under Article 22(5) when a person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order must communicate to him the grounds on which the order has been made. What is the meaning of 'grounds' in this provision has been discussed in several decisions. If an authority is empowered by a Preventive Detention Act to detain a person on its being satisfied about a certain matter, it has been held that it is not enough for it to inform the person that it was satisfied about the matter and that it must state the grounds on which its satisfaction was based.

There is much force in the contention that the words "grounds for such arrest" and the words "the grounds on which the order has been made" under a Preventive Detention Act occurring in Article 22 must be construed in the same manner. The object behind an arrested person's being informed of the grounds for his arrest is more or less the same as that behind a detenu's being informed of the grounds for his detention.

In one case he may wish to defend himself against his arrest or regain freedom, by showing that his arrest is illegal or unjustified or by applying for bail and in the other case he may wish to defend against the detention and get the detention order cancelled. It may be conceded that the effect of failure to inform an arrested person of the grounds for his arrest may not be so serious as that _ of failure to inform a detenu of the grounds for his detention.

An arrested person, though he is not informed of the grounds for his arrest immediately on his being arrested, will in a majority of c'ases be placed on trial and will know why he has been arrested; but a detenu will never be placed on trial and has no opportunity of defending himself except through a representation which he cannot make effectively unless he is told of all the acts done by him on account of which the authority has been satisfied of the necessity of his detention.

But I do not think that this should make any Difference to the effect of the failure to inform an arrested person of the grounds for his arrest. He is denied his fundamental right as much as a detenu is denied of his fundamental right if he is not informed of the grounds for his detention. If the preventive detention becomes illegal on account of the failure, the detention after arrest also becomes illegal on account of the failure.

34. On behalf of the State it was contended that in a habeas corpus proceeding a High Court is concerned with the question of the legality of detention on the date of return and not earlier. The applicant has been told of the grounds for his arrest in the return. Now he knows why he was arrested and is being detained; it was, therefore, argued that he cannot be released on habeas corpus now. I am afraid the argument is fallacious.

The law is not that detention following arrest is illegal so long as the grounds for the arrest are not communicated to the person; it is that he must be informed of the grounds for arrest "as soon as may be", and once there has been a faiilure to do so, his detention becomes illegal once for all. Informing him of the grounds at a later stage is no satisfaction of his fundamental right and is as good as not informing him at all.

Under the Common Law of England an arrested person must be told why he is arrested at once, i.e., at the earliest reasonable moment; see 'Leachinsky's case (F)' (supra) page 600. In the present case it was possible to inform the applicant, the moment he was arrested of the report made against him by Janardan Panday etc., on the basis of which he was arrested. The reason for the arrest was within the knowledge of the person arresting him and there was nothing to prevent its being communicated to him.

If he could be informed at the moment of his arrest of the grounds for his arrest, it means that he was not informed "as soon as may be". Informing him through the return cannot possibly be said to be "as soon as may be." The very nature of the right conferred and the reason for the confirment of the right prevent effective communication of the grounds of arrest to an arrested person with the slightest delay; once the moment when he could be informed of the grounds has passed, it is impossible to inform him with retrospective effect or to comply with the requirement of the Constitution.

If the law were that detention of a person, who is informed of the grouns for his arrest not "as soon as may be" but with some delay, is legal, it would leave him without redress. As pointed out by Professor Glanville L. Williams (supra, page 20) this would be not only an undesirable incentive to resistance, but, in a peaceful community, would leave the duty to state the grounds for arrest without effective sanction.

If the detention of a person for whose arrest a valid ground existed at the moment of bis arrest but who was told a different ground that would not justify the arrest, is illegal, as it is, the detention of a person who is informed of the grounds for his arrest with delay is equally illegal. If the arresting authority's informing the arrested person of the correct grounds for his arrest by substitution of the incorrect grounds given at the moment of the arrest is without any effect, his communicating to him the correct grounds for his arrest with delay without having communicating to him any grounds at the moment of his arrest is all the more without any effect.

Since the law is that detention is unlawful so long as the grounds for arrest are not communicated, once the detention becomes unlawful, it cannot later become lawful on the grounds being communicated but would remain unlawful notwithstanding the communication.

35. I agree with my learned brother that the applicant's detention is illegal, because he was not informed of the reasons for his arrest as soon as it was possible to do so and that he should be forthwith released from custody. There is no question of our quashing the proceedings pending against him, because whether he has done the act alleged to have been done by him and whether it amounts to an offence punishable under Section 7, Criminal Law Amendment Act are questions

which will be decided during the trial and cannot be decided in advance of it.

It may be that the applicant's freedom will be short-lived because he can be arrested again and detained after full compliance with the provisions of Article 22(1), but that would be no ground for our not releasing him from the present unlawful detention.