Bijai Bahadur And Ors. vs State on 19 February, 1954

Equivalent citations: AIR1954ALL626, AIR 1954 ALLAHABAD 626

JUDGMENT

Desai, J.

1. This is an application by four men against their conviction under Section 52, Prisons Act. There is no dispute about the facts which have been proved satisfactorily. Vijay Bahadur applicant was convicted on 8-2-1950 by a Magistrate under Sections 147 and 332, I. P. C., and sentenced to imprisonment for six months. He was sent to the District Jail, Kanpur. to undergo the sentence of imprisonment. The other three applicants were detained since 1-3-1950 in the same District Jail in pursuance of an order issued by the Governor of Uttar Pradesh under Section 3(1)(a)(ii) of the Preventive Detention Act (No. 4 of 1950). The applicants have been found guilty of having disobeyed orders of the Superintendent of Jail and the district authorities, committed acts of indiscipline and assaulted the jail and police authorities on 4-3-1950. They challenge their conviction on the sole ground that they were not prisoners and were not governed by Section 52, Prisons Act.

2. Section 52 of the Prisons Act lays down that:

> "If any prisoner is guilty of any offence against prison discipline which..... in the opinion of the Superintendent, is not adequately punished by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class having jurisdiction,..... and such Magistrate shall thereupon enquire into and try the charge so brought against the prisoner and, upon conviction, may sentence him to imprisonment which may extend to one year."

The only question is whether the applicants were prisoners on 4-3-50 within the meaning of this provision, it being beyond dispute that if they were, their conviction could not be challenged in revision.

3. As regards Bijay Bahadur applicant there can be no doubt and it was also not disputed before us, that he was a prisoner on 4-3-50. He could, therefore, be convicted under Section 52 of the Act. Before his conviction under Sections 147 and 332, I. P. C., he had been detained in the District Jail under an order passed on 29-7-1949 under Section 3. U. P. Maintenance of Public Order Act of 1947, but he had been released before 28-1-50 and consequently that fact was wholly irrelevant to the question of his status on 4-3-50. His application lias absolutely no merit.

4. The orders passed against the other three applicants on 1-3-50 by the Governor are in these words :

> "……In exercise of the powers conferred by Sub-clause (ii) of clause (a) of Sub-section (1) of Section 3 of the Preventive Detention Act, 1950, (Act No. IV of 1950), the Governor of Uttar Pradesh is hereby pleased to direct that the said……..shall be detained in the custody of Superintendent of any jail in Uttar Pradesh."

What we have to decide is whether this order made them "prisoners" within the meaning of Section 52. The word "prisoner" is not defined in the Act, but the word "prison" is defined in Section 3(1) to mean "any jail or place used permanently or temporarily under the general or special orders of a Provincial Government for the detention of prisoners."

5. The words "criminal prisoner", "convicted criminal prisoner" and "civil prisoner" are defined and the applicants did not come within any of those definitions. In every prison there must be a Superintendent (vide Section 6) whose duty it is to manage the prison in all matters relating to discipline, labour expenditure, punishment and control (vide Section 11). The Act does not lay down who will be detained inside a prison; it simply deals with how persons should be dealt with on being admitted into prison. The Prisoners Act (No. 3 of 1900) contains the law relating to prisoners confined by the order of a court. Section 3 provides that "the officer in charge of a prison shall receive and retain all persons duly committed to his custody….. .by any court"; admittedly the three applicants were not detained in the jail under that provision because they were committed to the custody of the Superintendent not by any court but by the Governor. There is no other provision in the Act, so far as we are aware, empowering the Superintendent to confine in the jail other persons such as detainees e.g., persons detained under the Preventive Detention Act or the Maintenance of Public Order Act. Section 3(1)(a)(ii) of the Preventive Detention Act is as follows:

> "The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order…….. it is necessary so to do, make an order directing that such person be detained."

6. Section 3A provides that a detention order may be executed in India in the manner provided for warrants of arrest under the Code of Criminal Procedure, but that provision relates only to the execution of the order of detention or its service upon the person concerned and not with how he should be dealt with on being arrested. Section 4 is an important section and reads as follows:

> "Every person in respect of whom a detention order has been made shall be liable,
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> (a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify."

7. The State Government, which was the appropriate Government in the present case, made general rules in accordance with that provision on 13-3-1950. Those rules had no retrospective effect and could not, and did not, govern the maintenance, discipline and punishment for breaches of discipline of the applicants. There were previously in force Revised Security Prisoners Rules, 1949,

but they were made under the U. P. Maintenance of Public Order Act, 1947, and did not govern persons detained under the Preventive Detention Act. Tile Act was passed on 25-2-1950, and only the rules made under its authority or the rules prescribed in the order of detention would govern the persons detained under it. There were no rules made under the authority of the Act and the detention orders also did not prescribe any rules to govern the detention of the applicants. The orders were completely silent about the maintenance, discipline and punishment of the applicants for breaches of discipline. In the absence of general or specific orders within the meaning of Section 4, the applicants could not be dealt with under Section 52 of the Prisons Act.

8 The mere fact that the applicants were confined in a prison did not make them "prisoners" within the meaning of Section 52. A prisoner may be a person who is confined in a prison but every person who is confined in a prison may not be a prisoner; whether lie is a prisoner or not would depend upon the authority under which he is confined. The detention orders here simply ordered the applicants to be detained in the custody of the Superintendent of any jail in Uttar Pradesh. I pass by the question whether they justified the detention in the custody of a particular Superintendent of jail. There is another defect in the orders and it is that the applicants are ordered to be detained in the custody of a Superintendent and not in any jail or prison. Under those orders, it is open to a Superintendent of a jail to confine the applicants in a place other than the jail. The orders do not require him, in so many words, to confine them in the jail of which he is the Super intendent. The words "of any jail" simply describe the word "superintendent" and do not at all prescribe the place of detention. As the orders are worded, so long as the applicants are detained in the custody of a Superintendent, they are carried out regardless of the place of detention.

It cannot, therefore, be argued that the orders themselves are the authority for the applicants' detention in any jail. If they are detained in a jail, it is not because the orders prescribe their detention in it, but because the jail has been chosen by the Superintendent as the place for their detention. The Superintendent was not required by any rule or order to detain them in the jail. It was simply his discretion that he selected the jail as the place of detention. If a person is detained in a prison by a superintendent, not because he is required by any law to detain him in it, but because in his own discretion he selects it as the place the person does not become a "prisoner". A Superintendent of jail has no power to confer the status of prisoner upon any person according to his sweet will. Under Section 15, Prisoners Act a Superintendent of jail outside the presidency towns may give effect to any order for the detention of any person passed by any court or tribunal, but the Governor of a State is neither a court nor a tribunal and therefore Section 15 would be no authority for a Superintendent's giving effect to an order of detention passed under the Preventive Detention Act by confining him in the jail. If a court commits a person to the custody of a Superintendent of jail, Section 3, Prisoners Act requires him to detain him in the jail but there is no such provision for his detaining in the jail any person committed to his custody by a Governor of State. If a Governor wants a person to be detained in a jail under the Preventive Detention Act, he has the power of ordering that he be so detained. If he passes such an order, the Superintendent will receive and detain him in the jail. But if he does not pass such an order, he is not required to detain him in the jail.

8a. The Government of India Act of 1935 dealt separately with detainees and prisoners. Item 1 of List I of seventh schedule of the Government of India Act related to "preventive detention..... .for reasons of State", item 1 of List II to preventive detention for reasons connected with the maintenance of public order" and item 4 to "persons..... .and persons detained therein" and item 3 of List III to "removal of prisoners and accused persons" and item 34 to "persons subjected to preventive detention under federal authority".

The Constitution also deals with them separately. Item 4 of List II relates to "persons..... .and persons detained therein"; and item 3 of List III to "preventive detention for reasons connected with the security of a state" and item 4 to "removal.. ....of prisoners, accused persons and persons subjected to preventive detention". But it would be wrong to conclude from this separate treatment that detainees and prisoners are always distinct from each other. Detainees are dealt with separately from prisoners not because they are necessarily distinct from each other, but because in some instances detainees may not be prisoners, as for example, when they are detained in a place other than a prison. Under the various detention Acts, it is open to the detaining authority to prescribe the place of detention and he may prescribe a place other than a prison. It is because a detainee is not always a prisoner that separate provisions have been made for detainees and prisoners in the Constitutions. Similarly, the fact that detainees are exempted from the operation of clauses (1) and (2) of Article 22 does not lead to the conclusion that a detainee is distinct from a prisoner.

9. The U. P. Maintenance of Public Order Act (No. 4 of 1947) Section 3, contained provisions similar to those of Section 4, Preventive Detention Act. The State Government in exercise of the powers conferred by Section 16, Maintenance of Public Order Act made the United Provinces Security Prisoners Rules, 1949. They were detailed rules and dealt with matters which are dealt with in the Prisons Act, suggesting that the provisions of the Prisons Act were not to apply to detainees. If detainees were prisoners and governed by the provisions of the Prisons Act, there would not have been any necessity for the State Government's framing rules in respect of the matters which were already provided for in the Prisons Act.

Rule 57 was to the effect that the Superintendent might inflict on a security prisoner any of the punishments that he might award to a convicted prisoner for any offence specified in Section 45 of the Prisons Act and that if any security prisoner was guilty of any offence against prison discipline, which was not adequately punishable by the infliction of any punishment which the Superintendent had power under the abovementioned provision to award to a security prisoner, he might forward him to a Magistrate who might try him on the charge brought against him and convict and sentence him. That provision was similar to that contained in Section 52, Prisons Act. The State Government made the provision in the rules because according to their interpretation of Section 52, Prisons Act, it did not apply to detainees. If a detainee were a prisoner, he would be governed not only by Section 52, Prisons Act but also by rule 57.

Though Rule 57 was similar to Section 52, Prisons Act, it was not exactly identical in words and there were some differences between the two provisions. A Magistrate acting under Section 52, Prisons Act, may instead of sentencing the prisoner to imprisonment, sentence him to any of the punishments metioned in Section 46 of the Act, but a Magistrate acting under rule 57 had no such

power. There was nothing in the Maintenance of Public Order Act to suggest that persons detained under it would be governed by the Prisons Act and that if any State Government made rules in exercise of the powers conferred by Section 16, they would supersede the provisions of the Prisons Act. It cannot be contended that if the State Government did not frame rules, Section 52, Prisons Act, would govern detainees and that if they made rules, the rules and not Section 52 would govern them. No person can be governed by two rules which are inconsistent with each other.

On the coming into force of the Constitution, the Preventive Detention Act superseded the Maintenance of Public Order Act and in exercise of the powers conferred by Section 4 of it, the U. P. Government framed the Uttar Pradesh Security Prisoners Rules, 1950. These Rules are almost a reproduction of the United Provinces Security Prisoners Rules, 1949. Rule 57 of the 1950 Rules is almost in the same words as rule 57 of the 1949 Rules discussed above. It is clear that the State Government continued to hold that persons detained under the Preventive Detention Act were not prisoners and would not be governed by Section 52, Prisons Act. Thus the interpretation that I havi placed on the provisions of Section 52 of the Prisons Act is in conformity with the interpretation placed by the State Government themselves.

10. It is laid down in Section 52, Prisons Act, that the Magistrate who tries a prisoner on the charge levelled against him and convicts him, may sentence him to imprisonment which may extend to one year, "such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence". This provision means that the section contemplates that the prisoner is a person who has already been sentenced to a term of imprisonment. A person detained under the Preventive Detention Act is not a person who has been sentenced to undergo imprisonment for any offence. The imprisonment inflicted under Section 52 of the Act has got to be in addition to the imprisonment which the prisoner was undergoing at the time when he committed the offence; this mandatory provision cannot be complied with in the case of a detainee. Obviously Section 52, Prisons Act, was not intended to apply to a person detained under any Preventive Detention Act.

11. There is no direct authority on the question whether a detainee Is a prisoner within the meaning of Section 52, Prisons Act but certain observations made by the Supreme Court in -- 'Maqbool Husain v. State of Bombay', AIR 1953 S. C. 325 (A), support the view that he is not. In that case, J, V and P were detained in a jail in the Punjab under the Preventive Detention Act, 1950. They were governed by the Punjab Communist Detenus Rules, 1950, framed by the Government of Punjab under Section 4 (a) of the Act. They committed some offences against the prison discipline on 6-2-50 and 7-2-50 and a complaint was made against them by the Superintendent of jail under Rule 41 (2) of the Punjab Communist Detenus Rules (the language of which is similar to that of Section 52 of the Prisons Act) in the court of a Magistrate. The detainees had been already punished by the Superintendent of Jail, departmentally by being separately confined & prevented from reading books & papers and receiving letters and visitors. It was contended on behalf of the detainees that the proceedings taken against them by the Superintendent previously amounted to judicial proceedings and that they could not be again tried and punish-ed for the same offences. The Supreme Court repelled the contention that the Superintendent when he inflicted the departmental punishments acted judicially. They observed on page 332:

> "Their confinement in the prison was for the sake of administrative convenience and was also prescribed by the rules themselves and the provisions of the Prisons Act did not apply to them."

The Supreme Court obviously was of the view that a person detained under the Preventive Detention Act is not a prisoner and is not governed by the Prisons Act.

12. I, therefore, hold that Mohan Lal Shukla, Mohammad Nasir and Chakrapani Awasthi were not prisoners within the meaning of Section 52 of the Prisons Act on 4-3-50 and were, therefore, not liable to be punished under that provision. Their application should be allowed and their conviction and sentences should be set aside.

Asthana, J.

13. I agree.

By The Court

14. Applicants Mohan Lal Shukla, Mohammad Nasir and Chakrapani Awasthi were not prisoners within the meaning of Section 52, Prisons Act on 4-3-50 and were not liable to be punished under that provision. Their application is allowed and their conviction and sentences set aside. Their bail bonds are discharged. The application of Bijai Bahadur is dismissed.