

S.A. Dange vs State Of U.P. And Others on 28 October, 1970

Author: M. Hidayatullah

Bench: J.M. Shelat, G.K. Mitter, C.A. Vaidialingam, M. Hidayatullah

CASE NO.:

Writ Petition (civil) 312 of 1970

PETITIONER:

S.A. DANGE

RESPONDENT:

STATE OF U.P. AND OTHERS

DATE OF JUDGMENT: 28/10/1970

BENCH:

M. HIDAYATULLAH CJ & J.M. SHELAT & G.K. MITTER & C.A. VAIDIALINGAM & A.N. RAY

JUDGMENT:

JUDGMENT 1970(3) SCC 218 The Judgment of the Court was delivered by M. HIDAYATULLAH, C.J.- The petitioner S.A. Dange, M.P. makes this petition under Article 32 of the Constitution for his release by a writ of habeas corpus from detention in District Jail, Sitapur, under Sections 107/117 of the Code of Criminal Procedure. The petitioner also challenges the constitutionality of the provisions of Sections 144, 107, 114 and 117 of the Code. By the order of the Special Bench, passed today, it has been held that these sections of the Code, as interpreted, are valid and constitutional. The order in that behalf gives full reasons and is to be read as part of this order. We accordingly reject the contention in this petition also.

2. Coming now to the merits of this petition we may state the facts. The petitioner is a member of the Communist Party of India and one of its leaders. He believes in the Directive Principles of the Constitution, particularly those which lay down that the ownership and control of material resources of the community must be so distributed as best to subserve the common good, and the economic system should so operate that it would not result in the concentration of wealth and means of production to the common detriment. Therefore, he set about fulfilling the objective of the Constitution that every citizen should have equal right to an adequate means of livelihood and to secure fair wages and employment. He found the economic structure of the community to be aiming at inequality inasmuch as vast areas of agricultural lands were concentrated in the hands of the few and there were hordes of Common men and women who were landless and without any means of subsistence. He found that legislation did exist by which ceilings were put on land holdings in the States, particularly in Uttar Pradesh, and yet little had been done to implement such laws. He, therefore, in common with his party felt that as Government had failed to implement its own laws, it became the duty of citizens to force their implementation by taking action in self-help.

3. According to his notions the big farms of the Birlas, needed to be taken over and re-distributed among the landless and his party, therefore, planned to occupy the farms and to distribute or cultivate them for the common good. To prevent this move the State of Uttar Pradesh put the entire districts under prohibitory order under Section 144 of the Code of Criminal Procedure and thus stopped the action of the Communist Party of India. The Communist Party of India decided to launch an agitation of a peaceful kind and the present action was taken against not only the petitioner but several members of his party by arresting and detaining them.
4. The petitioner was invited to address a public meeting at Lucknow on the evening of the 14th August but as a prohibitory order was already promulgated under Section 144 of the Code of Criminal Procedure, he was refused permission to hold or address the meeting. The petitioner cancelled the meeting but accepted an invitation to address a Press Conference at the office of the Communist Party at Lucknow. According to him, the Press Conference was to be in a room in the office and his suggestion was that the Press Conference had no connection with the apprehended action at Birla farm situated at Lakhimpur-Kheri planned for 15th August, 1970.
5. The petitioner avers that he was arrested at 4 p.m. along with several members of his party even before the Press Conference began on a warrant issued by the Additional Sub-Divisional Magistrate of Lakhimpur-Kheri. The warrant of arrest had authorised the Superintendent of Police, Lucknow, to arrest the petitioner on his arrival at Lucknow to be produced before the Magistrate without undue delay. It was issued under Section 114 of the Code on 12th August, 1970, even before the petitioner had arrived at Lucknow.
6. The petitioner was produced the same evening at 9.15 p.m. before the Magistrate (G.P. Varshney). A notice under Section 112 of the Criminal Procedure Code was read out to him to the effect that he was intending to occupy the Birla farm and thus had caused apprehension of breach of the peace. The petitioner admitted that he did intend to occupy the farm but denied that his action was illegal or that it had caused an apprehension of breach of the peace. He was asked to execute a personal bond with 2 sureties for maintaining peace but declined. As a result he was detained pending inquiry.
7. The case of the petitioner was that he was arrested (on a warrant issued three days before) at a place 30 miles away from where the farm is situated and was lodged at Sitapur Jail in quite a different district and therefore the action was illegal.
8. We gave the petitioner interim relief by limiting his movements to the Union Territory of Delhi and prohibiting him from entering Uttar Pradesh or to hold a meeting in connection with the said farm. It prima facie appeared to us that action against him was premature and he had not caused any real apprehension of breach of the peace when he was arrested.
9. At the hearing, however, we were shown a number of handbills, posters and other documents which showed that the projected action was not only confined to Lakhimpur-Kheri but was a part of a wide-spread move to grab unoccupied and occupied land. It appeared clear to us that the petitioner and his party had indeed planned a big agitation in that behalf and that it was a matter of

time only before the petitioner at the head of his party men would have invaded the farm.

10. We had the benefit of long arguments on the constitutionality of the provision invoked against him from the Code of Criminal Procedure. We have since considered the matter in the proper perspective and we are satisfied for the reasons we have given in our main order that action could be taken by the Magistrate for causing the arrest at Lucknow and also in anticipation of any overt act or move towards the Birla farm. In view of the admissions of the petitioner it is clearly apparent now, read with material brought to our notice by the State, that the threat to the Birla farm was real and but for the timely arrest of the petitioner a serious breach of the peace would have taken place. There was hardly any inquiry to be made into the truth of the information because it was admitted. The petitioner could therefore be asked to execute a bond and furnish sureties.

11. The special bench have pointed out in their order that the completion of an overt act is not necessary. All that is required is a reasonable apprehension of breach of the peace at the hands of a person and the necessity of such action to prevent it. All the ingredients of the section which justify action are present and therefore his arrest is justified.

12. We would have withdrawn the interim relief granted to the petitioner by us and remanded him to the custody of the Magistrate before whom the case was pending. But since he had already been released the petition has now become infructuous and is dismissed as such.