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**SASTI @ SATISH CHOWDHARY**

v.

**STATE OF WEST BENGAL**

May 2, 1972

[J. M. SHELAT AND H. R. KHANNA, JJ.]

B

*Maintenance of Internal Security Act, 1971—Detention under s. 3—Alleged theft of copper wire by detenu mentioned as ground of detention—Detention under Act whether valid when prosecution under Indian Penal Code can be launched against detenu.*

C

The petitioner was detained by an order under s. 3 of the Maintenance of Internal Security Act 1971. In a petition under Art. 32 of the Constitution it was urged on behalf of the petitioner that a prosecution for theft under the Indian Penal Code could have been launched on the facts alleged against him in the grounds of detention and therefore his detention was illegal.

Rejecting the plea,

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**HELD :** It is always open to the detaining authority to pass an order for the detention of a person if the grounds of detention are germane to the object for which a detention order can legally be made. The fact that the particular act of the detenu which provides the reason for the making of the detention order constitute an offence under the Indian Penal Code would not prevent the detaining authority from passing the order for detention instead of proceeding against him in a court of law. The detaining authority might well feel that though there was not sufficient evidence admissible under the Indian Evidence Act for securing a conviction, the activities of the person ordered to be detained were of such a nature as to justify the order of detention. Even in cases where a person has been actually prosecuted in a court of law in respect of an incident and has been discharged by the trying magistrate, a valid order of his detention can be passed against him in connection with that very incident. [469 H—470 C]

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*Mohd. Salim Khan v. Shri C. C. Bose & Anr.* (Writ petition No. 435 of 1971 decided on April 25, 1972) relied on.

*Sahib Singh Duggal v. Union of India*, [1966] 1 S.C.R. 323 referred to.

G

The particulars of the incident in the grounds of detention in the present case showed that the petitioner and his associates committed theft in respect of overhead electric wires. The above act of the petitioner and his associates created complete dislocation of electric supplies of the area. The above ground of detention was germane to the object for which a detention order can be made under section 3(1)(a)(iii) of the Act. According to that provision, the detaining authority may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, it is necessary so to do, make an order directing that such person be detained. [470 E—F]

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*Pushkar Mukherjee & Ors. v. The State of West Bengal*, [1969] 2 S.C.R. 635, *Arun Ghosh v. State of West Bengal* [1970] 3 S.C.R. 288 and *Nagendra Nath Mondal v. State of West Bengal*, [1972] 2 S.C.C. 498, referred to.

ORIGINAL JURISDICTION : Writ Petition No. 37 of 1972. A

(Under Article 32 of the Constitution of India for a writ in the nature of *habeas corpus*.)

*T. S. Arora*, for the petitioner.

*S. C. Majumdar* and *G. S. Chatterjee*, for the respondent. B

The Judgment of the Court was delivered by—

**Khanna, J.** This is a petition through jail under article 32 of the Constitution for the issuance of a writ of *habeas corpus* by *Sasti alias Satish Chowdhary*, who has been ordered by the District Magistrate Howrah to be detained under section 3 of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as the Act). The order recited that it was made with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. C

The order of detention was passed by the District Magistrate on September 8, 1971. The petitioner, it is stated, was found to be absconding soon after the passing of the order. He was arrested on November 23, 1971 and was served with the order of detention and the grounds of detention together with vernacular translation thereof on the same day. In the meanwhile on September 8, 1971 the District Magistrate sent report to the State Government about his having made the order of detention along with the grounds of detention and other necessary particulars. The matter was then considered by the State Government. It approved the detention order on September 10, 1971. The same day the State Government sent report to the Central Government along with necessary particulars regarding the necessity of the order. On December 10, 1971 the State Government received a representation of the petitioner. The said representation, after being considered, was rejected by the State Government on December 21, 1971. On December 22, 1971 the State Government placed the case of the petitioner before the Advisory Board. The representation of the petitioner was also sent to the Advisory Board. The said Board, after considering the material placed before it, including the representation of the petitioner, and after hearing him in person, sent its report to the state Government on January 28, 1972. Opinion was expressed by the Advisory Board that there was sufficient cause for the petitioner's detention. On February 11, 1972 the State Government confirmed the order of detention of the petitioner. Communication of the said confirmation was thereafter sent to the petitioner. D  
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A In opposition to the petition Shri Dipak Kumar Rudra, District Magistrate, who made the impugned order, has filed his affidavit. Mr. Arora has argued the case *amicus curiae* on behalf of the petitioner, while the State has been represented by Mr. Majumdar.

B Before dealing with the contention advanced by Mr. Arora, it would be pertinent to reproduce the portion of the grounds of detention which contains the necessary particulars :

C "You are being detained in pursuance of detention order made in exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 3 of the Maintenance of Internal Security Act, 1971 (Act No. 26 of 1971), on the grounds that you have been acting in a manner prejudicial to the maintenance of supplies and services essential to the community as evidenced by the particulars given below :—

D (1) On 9.7.71 at about 23.30 hrs. you and your associates Sk. Nazam, Kesta Adhikary, Bablu Das, Kachi Chakravarty and 3/4 others were found to commit theft in respect of overhead electric wires between two posts near Zanana Latrine of Lawrence & Co. at Chak-kashi by the darwans on duty. You and your associate Sk. Nazam were seen on the top of the post cutting one end of the electric wire, while your associates were rolling the cut end of the wire from other post. The darwans raised alarm and surrounded you with the help of local people. Your associate Sk. Nazam with other escaped and you and two other of your associates could be arrested at the spot with stolen copper wire. This created complete dislocation of electric supplies of the area."

E It is argued by Mr. Arora that as the act attributed to the petitioner in the grounds of detention constituted an offence under the Indian Penal Code, the petitioner could only be tried in a court of law for the offence and no order for his detention on that score could be made. This contention, in our opinion, is devoid of force. It is always open to the detaining authority to pass an order for the detention of a person if the grounds of detention are germane to the object for which a detention order can legally be made. The fact that the particular act of the detenu which provides the reason for the making of the detention order constitutes an offence under the Indian Penal Code would not prevent the detaining authority from passing the order for detention instead of proceeding against him in a court of law. The detaining authority might well feel that though there was

not sufficient evidence admissible under the Indian Evidence Act for securing a conviction, the activities of the person ordered to be detained were of such a nature as to justify the order of detention. There would be no legal bar to the making of detention order in such a case. It would, however, be imperative that the incident which gives rise to the apprehension in the mind of the detaining authority and induces that authority to pass the order for detention should be relevant and germane to the object for which a detention order can be made under the Act. Even in cases where a person has been actually prosecuted in a court of law in respect of an incident and has been discharged by the trying magistrate, a valid order of his detention can be passed against him in connection with that very incident. It was recently observed by this Court in the case of *Mohd. Salim Khan v. Shri C. C. Bose & Anr.* (Writ petition No. 435 of 1971 decided on April 25, 1972) that from the mere fact that a detenu was discharged in a criminal case relating to an incident by a magistrate, it could not be said that the detention order on the basis of that incident was incompetent, nor could it be inferred that it was without basis or *mala fide*. Reliance in this connection was placed upon the case of *Sahib Singh Duggal v. Union India*(<sup>1</sup>).

The particulars of the incident in the grounds of detention show that the petitioner and his associates committed theft in respect of overhead electric wires between two posts near Zanana Latrine of Lawrence & Co. at Chakkashi. The above act of the petitioner and his associates created complete dislocation of electric supplies of the area. The above ground of detention, in our opinion, was germane to the object for which a detention order can be made under section 3(1)(a) (iii) of the Act. According to that provision, the detaining authority may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, it is necessary so to do make an order directing that such person be detained.

Mr. Arora has referred to the case of *Pushkar Mukherjee & Ors. v. The State of West Bengal*(<sup>2</sup>) wherein this Court dealt with the difference between the concept of public order and law and order and observed that the said difference was similar to the distinction between public and private crimes in the realm of jurisprudence. It was observed that a line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest.

(1) [1966] 1 S.C.R. 313

(2) [1969] 2 S.C.R. 635.

A *Pushkar Mukherjee's* case<sup>(1)</sup> was referred to in a later decision of this Court in the case of *Arun Ghosh v. State of West Bengal*<sup>(2)</sup> and it was pointed out that the true distinction between the areas of "law and order" and "public order" was one of degree and extent of the reach of the act in question upon society. Acts similar in nature, but committed in different contexts and circumstances might cause different reactions; in one case it might affect the problem of the breach of law and order, and in another the breach of public order. It was observed that the analogy resorted to in the *Pushkar Mukherjee's* case (supra) of crimes against individuals and crimes against the public though useful to a limited extent would not always be apt. An assault by one individual upon another would affect law and order only and cause its breach. A similar assault by a member of one community upon a leading individual of another community, though similar in quality, would differ in potentiality in the sense that it might cause reverberations which might affect the even tempo of the life of the community. The Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different." (see also *Nagendra Nath Mondal v. State of West Bengal*<sup>(3)</sup>).

The distinction between public order and the maintenance of law and order has, however, not much material bearing on the present case because, as stated above, the petitioner has been detained not with a view to preventing him from acting in any manner prejudicial to the maintenance of public order but with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community.

No other infirmity in the detention order and the consequent detention of the petitioner has been brought to our notice. The petition consequently fails and is dismissed.

G.C.

*Petition dismissed.*

(1) [1969] 2 S.C.R. 635.

(2) [1970] 3 S.C.R. 288.

(3) [1972] 2 S.C.C. 458.