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MOHD. DHANA ALI KHAN

v.

STATE OF WEST BENGAL

April, 11, 1975

B

[N. L. UNTWALIA AND S. MURTAZA FAZAL ALI, JJ.]

C

Maintenance of Internal Security Act, 1971—Whether a single incident of theft in a running train at night had nexus with disturbance of public order—S. 14—Whether confers a discretionary power on the Central Government to revoke or modify an order—Detaining authority had other material before him at the time of passing the order—Whether vitiates the order of detention.

D

The petitioner was detained under the provisions of the Maintenance of Internal Security Act, 1971. In a petition under Art. 32 of the Constitution the petitioner contended that a single incident of theft committed in a train had no nexus with the disturbance of public order, (2) that under S. 14 of the Act it was open to the Central Government to revoke or modify the order of detention and, therefore, there must be some material to show that the Government of India applied its mind under S. 14 of the Act and (3) that the District Magistrate was not only influenced by the grounds served on the petitioner but also by other materials on the record and as such the order of detention was vitiated.

E

Allowing the petition,

F

HELD : (1) The ground mentioned in the order of detention did have a nexus with the disturbance of public order. It is true that the ground contained a single incident of theft of valuable property from some passengers travelling in a running train and may amount to robbery. But that did not by itself take the case out of the purview of the provisions of the Maintenance of Internal Security Act. The allegation was that the petitioner had snatched away a wrist watch and a gold chain after putting the passengers of the compartment to fear of death. Secondly, the theft had taken place at night in a running train in a third class compartment. The effect of it would be to deter peaceful citizens from travelling in trains at night. This would undoubtedly disturb the even tempo of the life of the community. [126D to F]

G

(2) There is no material on record to show that the Central Government did not apply its mind at all under S. 14 of the Act. Section 14 merely confers a discretion on the Central Government to revoke or modify an order of detention made by the State Government. It does not confer any right or privilege on the detenu. It is for the Central Government to revoke or modify after the report was submitted to it. The mere fact that the Central Government did not choose to revoke or modify the order of detention without anything more cannot necessarily lead to the irresistible inference that the Central Government failed to apply its mind. It cannot, therefore, be said that as the Central Government did not apply its mind under S. 14 of the Act, this would invalidate the order of detention. [126G-H & 127A]

H

(3) The order of detention suffers from a very serious infirmity which goes to the root of the matter. The District Magistrate was influenced not only by the ground which was served on the petitioner but also by other materials on the record. The history sheet of the detenu which was placed before the District Magistrate had been produced and it could be seen from it that there were four incidents, many of which related to thefts in running trains. It is true that in another place in his affidavit the District Magistrate had stated that he was satisfied only on the basis of the incident mentioned in the ground served on the petitioner. But this was contradictory to what he had stated in the opening paragraph of the counter-affidavit. The District Magistrate, before passing the order of detention, had other materials also before him. It cannot, therefore, be

said to what extent the District Magistrate was influenced by the other materials and not by the material which is mentioned in the ground of detention. [127E-G]

Khudiram Das v. State of West Bengal, A.I.R. 1975 S. C. 550, referred to.

ORIGINAL JURISDICTION : Writ Petition No. 17 of 1975.

Petition Under Article 32 of the Constitution of India.

R. K. Jain—for the petitioner.

Sukumar Ghosh and *G. S. Chatterjee*, for the respondent.

The Judgment of the Court was delivered by—

FAZAL ALI, J.—The petitioner assails the order of detention passed against him on August 23, 1973 by the District Magistrate, 24 Parganas. A report was sent by the District Magistrate to the Government on August 27, 1973 and the detention was approved by the Government on 30th August, 1973. On September 10, 1973 the detenu made a representation to the Government which was rejected on September 12, 1973. Thereafter the matter was referred to the Advisory Board and after obtaining its opinion the order of detention was confirmed by the Government on November 14, 1973. We might also state that a report to the Central Government was also made immediately after the order of detention was passed.

Mr. R. K. Jain appearing for the petitioner as *amicus curiae* has been of much assistance to us and has advanced five contentions before us. In the first place he submitted that there was sufficient delay on the part of the District Magistrate in submitting his report to the Government and the explanation given by him is not convincing. In the counter affidavit, however, the District Magistrate has explained that he had to pass almost eight orders of detention on the 23rd August and all of them had to be typed out and as 26th August which was a Sunday had intervened, it was not possible for him to send the report to the Government earlier. In the circumstances, we are satisfied that the explanation given by the District Magistrate in his affidavit is convincing and satisfactory. In Writ Petition No. 23 of 1975 (*Gopal Mandal v. State of West Bengal* decided on 9th April, 1975) an identical explanation was given by the District Magistrate which was upheld by this Court. For this reason, the first contention raised by learned counsel is over-ruled.

It was next argued that the order of the Government rejecting the representation of the petitioner is not a speaking order and therefore the detention is illegal. This matter appears to be concluded by a decision of this Court in *John Martin v. State of West Bengal*⁽¹⁾ following *Hardan Shah's* case where a similar argument put forward by this Court was rejected outright. This contention of the learned counsel does not therefore survive.

It was next contended that the ground of detention served on him amounted to a single incident and had no causal connection with the

(1) Judgement in W.P. No. 467/74 dt. 21-1-1975

A disturbance of the public order. The ground served on the petition was as follows :

B “That on 3-8-1973 between 21-10 and 21-20 hrs. you and your associates being armed with daggers boarded a 3rd class compartment of 5L 257 Up train of E. Rly. Sealdah Division at Gocharan R. S. and putting the passengers of the compartment to fear of death snatched away a wrist watch and a gold necklace from one Nirmal Chatterjee and his wife in between Gocharan and Surajpur R. Ss. you then decamped with booty from the running train at Suryapur R. S.

C Your action caused confusion, panic and disturbed public order there then.

You have thus acted in a manner prejudicial to the maintenance of public order.”

D From a perusal of this we are unable to accept the contention of the petitioner that this ground has no nexus with the disturbance of public order. It is true that the ground contains a single incident of theft of valuable property from some passengers travelling in a running train and may amount to robbery. But that does not by itself take the case out of the purview of the provisions of the Maintenance of Internal Security Act. There are two pertinent facts which emerge from the grounds which must be noted. In the first place the allegation is that the petitioner had snatched away a wrist watch and a gold chain after putting the passengers of the compartment to fear of death. Secondly, the theft had taken place at night in a running train in a third class compartment and the effect of it would be to deter peaceful citizens from travelling in trains at night and this would undoubtedly disturb the even tempo of the life of the community. For these reasons we are satisfied that the ground mentioned in the order did have a nexus with the disturbance of public order.

G The fourth contention put forward was that under s.14 of the Maintenance of Internal Security Act it was open to the Central Government to revoke or modify the order of detention after receiving a report from the State Government and therefore there must be some material to show that the Government of India applied its mind under section 14. In the first place s.14 merely confers a discretion on the Central Government to revoke or modify an order of detention made by the State Government. It does not confer any right or privilege on the detenu. It is for the Central Government to revoke or modify after the report is submitted to it. The mere fact that the Central Government does not choose to revoke or modify the order of detention without anything more cannot necessarily lead to the irresistible inference that the Central Government failed to apply its mind. So far as the State Government is concerned, its duty comes to an end after it has sent a report regarding the detention order to the Central Government. In these circumstances, it cannot be said by any stretch of imagination that as Central Government did not apply its mind under section 14 of the Act, this would invalidate the order of detention. There is no

material before us to show that the Central Government did not apply its mind at all under section 14 of the Act. The argument on this score is, therefore, rejected.

Lastly, it was contended that it would appear from the affidavit filed by the District Magistrate that while detaining the petitioner the District Magistrate was not only influenced by the ground served on the petitioner but also by other materials on the record. In paragraph 5 of the counter affidavit the District Magistrate stated as follows:—

"I say that I made the detention order after being bona-fide satisfied from the materials on record (relating to the detention of the detenu) that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it is necessary to detain him under the provisions of the Maintenance of Internal Security Act, 1971. I further say that the ground furnished to the detenu is the only ground on which I based my satisfaction for making the detention order."

It would, thus appear that the District Magistrate has taken a contradictory stand. A close perusal of his counter affidavit would disclose that he was influenced not only by the ground which was served on the petitioner but also by other materials on the record. The history sheet of the detenu which was placed before the District Magistrate has been produced before us and we find that there were as many as four incidents many of which relate to thefts in running trains. It is true that in another place in his affidavit, the District Magistrate has stated that he was satisfied only on the basis of the incident mentioned in the ground served on the petitioner. But this is contradictory to what he has stated in the opening paragraph 5 of the counter affidavit. In these circumstances, therefore, we are satisfied that the District Magistrate before passing the order of detention had other material also before him. It cannot be said to what extent the District Magistrate was influenced by the other materials and not by the material which is mentioned in the ground of detention. Thus the order of detention suffers from a very serious infirmity which goes to the root of the matter. The liberty of the subject being an extremely precious right, where any infraction of such a right is involved the court must act as a watch-dog and a sentinel on the *qui vive* to see that every benefit of the *lacunae* goes to the detenu. We are fortified in our view by reason of the decision of this Court in *Khudiram Das v. State of West Bengal*⁽¹⁾ where their Lordships observed as follows:—

"It is, therefore, not only the right of the court, but also its duty as well to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other

(1) A.I.R. 1975 S.C. 550

A basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts of materials apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority."

C
D Learned counsel appearing for the State justified the order of detention on the ground that there is an express statement made by the District Magistrate that he was satisfied only on the incident mentioned in the ground of detention. This argument however is not tenable because it is not supported by a perusal of the affidavit filed by the District Magistrate as a whole. We are therefore of the opinion that the order of detention must be set aside and the petitioner be set at liberty forthwith. The application is accordingly allowed and the rule is made absolute.

P.B.R.

Appeal allowed.