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STATE OF U.P.

v.

HARI SHANKAR TEWARI

FEBRUARY 25, 1987

B [R.S. PATHAK, CJ, RANGANATH MISRA AND M.M. DUTT, JJ.]

National Security Act, 1980—Section 3(2)—Detention Order—Assailed in Court—Duty of Court—To find out whether impugned activities affect 'Public order' or 'law and order'.

C **A Division Bench of the High Court quashed the order of detention of the respondent, made under Section 3(2) of the National Security Act, 1980 as bad in law, following the earlier Full Bench decision in the case of Ashok Dixit v. State and others that a solitary assault on one individual which may well be equated with ordinary murder can hardly** D **be said to disturb public peace of place public order in jeopardy so as to bring the case within the purview of the Act, that it can only raise a 'law and order' problem and no more, and that the act or incident which may be attributed to the detenu may be reprehensible and yet if it concerns only specific individuals and has no impact on the general members of the community and has no potentiality of disturbing the** E **even tempo of life of the people, it cannot be held to be an activity prejudicial to public order.**

In appeal by the State, it was contended that the High Court was wrong in quashing the detention order.

F **Dismissing the appeal, this Court,**

HELD: Conceptually, there is difference between *law and order* and *public order* but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. Facts of each case have to be looked into to ascertain whether a matter relates to G **the larger circle or the smaller circle. An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquillity. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. No hard and fast rule** H **can really be evolved to deal with problems of human society. Every**

possible situation cannot be brought under water-tight classifications and a set of tests to deal with them cannot be laid down. As and when an order of detention is questioned, it is for the court to apply these well-known tests to find out whether the impugned activities upon which the order of detention is grounded go under the classification of public order or belong to the category of law and order. [432H; 434D-F]

In the instant case, it is unnecessary to examine the facts to find out whether the grounds furnished in support of the order of detention related to public order or not. The respondent suffered detention for a major part of the period covered by the order and was released when the High Court quashed it. The detention being one of 1984, in normal course, would have lapsed more than eighteen months back. [434H; 435A-B]

Pushkar Mukherjee and Ors. **v.** *State of West Bengal,* **[1969] 2 SCR 635;** *Superintendent, Central Prison, Fategarh* **v.** *Ram Manohar Lohia,* **[1960] 2 SCR 821;** *Dr. Ram Manohar Lohia* **v.** *State of Bihar and Ors.,* **[1966] 1 SCR 709;** *In re: Sushanta Goswami & Ors.,* **[1969] 3 SCR 138;** *Madhu Limaye* **v.** *Sub Divisional Magistrate, Monghyr and others,* **[1971] 2 SCR 711;** *Kanu Biswas* **v.** *State of West Bengal,* **[1972] 3 SCC 831;** *Arun Ghosh* **v.** *State of West Bengal,* **[1970] 3 SCR 288;** *Babul Mitra alias Anil Mitra* **v.** *State of West Bengal,* **[1973] 1 SCC 393;** *Kuso Sah* **v.** *State of Bihar and Ors.,* **[1974] 2 SCR 195;** *Ram Ranjan Chatterjee* **v.** *State of West Bengal,* **[1975] 3 SCR 301;** *Ashok Kumar* **v.** *Delhi Administration and others,* **[1982] 2 SCC 403;** *S.K. Kedar* **v.** *State of West Bengal,* **[1972] 3 SCC 816;** *Nagendra Nath Mondal* **v.** *State of West Bengal,* **[1972] 1 SCC 498, referred to.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 106 of 1987.

From the Judgment and Order dated 9.9.1985 of the Allahabad High Court in H.C.W.P. No. 16272 of 1984.

Yogeshwar Prasad, D. Bhandari and Vishal Jeet for the Appellant.

R.K. Garg, Mohan Pandey and R.B. Misra for the Respondent.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal by special leave is directed against the order of the Division Bench of the Allahabad High Court by which it has quashed an order of detention of the respondent

made under section 3(2) of the National Security Act (hereinafter referred to as 'the Act'). The High Court relied upon a decision of a Full Bench of that Court in *Ashok Dixit* v. *State and others* disposed of on 1.8.1985 being Habeas Corpus Petition No. 11161 of 1984 for its conclusion that the detention of the respondent was bad in law. The majority opinion of the Full Bench, as far as relevant said:

> "A solitary assault on one individual which may well be equated with ordinary murder can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act. It can only raise a 'law and order' problem and no more. Assaulting an individual in a bus or train on account of enmity may affect only certain individuals; but if the assault is made indiscriminately in the bus or train and passengers are harassed indiscriminately, the same would be likely to endanger public order as this kind of incident is bound to have such impact that it will disturb the even tempo of life of the community. The act or incident which may be attributed to the detenu may be reprehensible and yet if it concerns only specific individuals and it has no impact on the general members of the community and has no potentiality of disturbing the even tempo of life of the people, it cannot be held to be an activity prejudicial to public order."

The Full Bench in its turn referred to several decisions of this Court in its attempt to bring out a distinction between the concepts of *Law and order* and *public order* and one of such decisions of this Court is the case of *Pushkar Mukherjee* v. *State of West Bengal,* [1969] 2 SCR 635. This Court said therein:

> "The difference between the concepts of *public order* and law and order is similar to the distinction between *public* and *private* crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness or the social expediency which are the two most important factors which have lead to the designation of certain conduct as criminal. Dr. Allen has distinguished *public* and *private* crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. (See Dr. Allen's Legal

> Duties pp.249) There is a broad distinction along these lines, the differences naturally arise in the application of any such test."

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It is claimed that these observations of this Court were taken as the guideline by the Full Bench to ascertain whether the allegations brought the case within the purview of *public order*. Learned cousel for the appellant has strongly canvassed that the test laid down by Dr. Allen was not applicable to judge the validity of a detention order and the High Court has gone wrong in quashing the detention of the respondent.

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It has not been disputed at the Bar that *public order* and *law and order* are two distinct concepts. There is abundance of authority of this Court drawing the distinction between the two. In the case of *Superintendent, Central Prisons, Fatehgarh* v. *Ram Manohar Lohia,* [1960] 2 SCR 821 Subba Rao J., as he then was, spoke for the Court thus:

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> "The expression *public order* has a very wide connotation. *Public Order* is the basic need in any organised society. It implies the orderly state of society any community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge of the Supreme Court of America "the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery ..... It (public order) is synonymous with public peace, safety and tranquillity."

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In *Ram Manohar Lohia* v. *State of Bihar,* [1966] 1 SCR 709 Hidayatullah, J., as he then was, speaking for the majority view observed:

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> "One has to imagine three concentric circles. The *law and order* represents the largest circle within which the next circle representing public order and the smallest circle represents security of State. It is then easy to say that an act may affect *law and order* but not *public order* just as an act may affect public order but not *public order* just as an act may affect public order but not the security of the State."

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In *Sushanta Goswami & Ors.,* [1969] 3 SCR 138 case, this Court observed:-

> "The contravention of law always affects public order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is not necessarily sufficient for action under the Act but a disturbance which will affect public order can alone justify the detention under that Act."

A Constitution Bench was again called upon to deal with this problem. In the case of *Madhu Limay* v. *Sub Divisional Magistrate, Monghyr,* [1971] 2 SCR 742 Hidayatullah, CJ., speaking for the Court observed:-

> "In a judgment, the expression 'in the interest of public order' in the constitution is capable of taking within itself not only those acts which disturb the security of the State or act within *order puglique,* as described but also certain acts which disturb public tranquillity or are prejudice of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression *in the interest of public* order is very wide."

In *Kanu Biswas* v. *State of West Bengal,* [1972] 3 SCR 831 this Court stated:-

> "The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. Public order is, what the French call, is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order as laid down in the above case *Arun Ghosh* v. *State of West Bengal,* [1970] 3 SCR 288 is: Does it lead to disturbances of the current of life of the community so as to amount to a disturbance of public order or does it affect merely an individual leaving the tranquillity of society undisturbed?

In Babul Mitra v. *State of West Bengal,* [1973] 1 SCC 393 this court observed:

"The distinction between law and order and public order have been pointed out succinctly in *Arun Ghosh* v. *State of West Bengal* (supra). According to that decision the true distinction between the areas of law and order and public order is that one of degree and the extent of the reach of the act in question upon society. The Court pointed out that the act by itself is not determinative of its own gravity. In its quality, it may not differ but in its potentiality it may be very different."

A three-Judge Bench examined the same point in *Kuso Shah* v. *State of Bihar,* [1974] 2 SCR 195. Referring to the facts, the Court observed:

"These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well-defined contours. It being well-established that stray and unorganised crimes of theft and assaults are not matters of public order since they do not tend to effect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. As observed in *Pushkar Mukherjee* v. *State of West Bengal,* (supra) the 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 purely local significance which primarily injure specific individuals and only in a secondary sense, public interest. In *Dr. Ram Manohar Lohia* v. *State of Bihar,* (supra) Hidayatullah, J. has expressed this concept picturesquely by saying that one has to imagine three concentric circles: law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the security of the state. *Law and order* comprehends disorders of less gravity than those afecting *public order* just as *public order* comprehends disorders of less gravity than those affecting the security of state."

In *Ram Ranjan Chatterjee* v. *State of West Bengal,* [1975] 3 SCR 301 dealing with the same question, this Court stated:

"It may be remembered that qualitatively the acts which affect *law and order* are not different from the acts which

affect *public order*. Indeed a state of peace or orderly tranquillity which prevails as a result of the observance or enforcement of internal laws and regulations by the Government is a feature common to the concepts of *law and order* and *public order*. The distinction between the areas of law and order and public order, as pointed out by this Court in *Arun Ghosh* v. *State of West Bengal* (supra) is one of degree and extent of the reach of the Act in question on society. It is the potentiality of the Act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of the public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of public it would raise a problem of law and order only. These concentric concepts of law and order and public order may have a common epicentre but it is the length, magnitude and intensity of the terror-wave unleashed by a particular exception of disorder that helps distinguished it as an act affecting public order from that concerning law and order."

In *Ashok Kumar* v. *Delhi Administration*, [1982] 2 SCC 403 this Court re-examined the question and stated:-

"The true distinction between the areas of public order and law and order lies not in the nature or quality of the act but in the degree and extent of its reach upon society. The distinction between the two concepts of law and order and public order is a fine one but this does not mean that there can be no over-lapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order while in another it might affect public order. The act by itself therefore is not determinative of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of the public order."

These are sufficient to draw the conclusion that conceptually there is difference between *law and order* and *public order* but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. We may now refer to two cases of

this Court for that purpose. In Arun Ghosh's case (supra) Chief Justice Hidayatullah stated thus:

> "Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man. But in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and community. His act makes all the women apprehensive of their owner and he can be said to be causing disturbance of public order and not merely committing individual action which may be taken note by the criminal prosecution agencies."

Equally useful would be reference to two other cases, Mathew, J. in *S.K. Kedar* v. *State of West Bengal*, [1972] 3 SCC 816 approved the ratio of the decision referred to above and indicated:-

> "The question whether a person has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is one of degree and the extent of the reach of the act upon the society. An act by itself is not determinative of its own gravity. In its quality, it may not differ from other but in its potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. Public order is the even tempo of the life of the community taking the country as a whole or even as specified localities. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order."

In *Nagendra Nath Mondal* v. *State of West Bengal,* [1972] 1 SCC 498 the Court observed as follows:

> "The target of arson, was an educational institution and particularly the registers and other papers maintained by it. The object obviously was vandalism, to disrupt its working by burning its records and to create a scare so that neither the teaching staff nor the pupils would dare attend it for prosecution of studies. The acts in question no doubt, would be acts similarly to those committed by a person who resorts to arson, but in the circumstances, were acts different in potentiality and therefore, amounted to affecting public order."

In the final analysis, therefore, one has to turn to the facts on each case to ascertain whether the matter relates to the larger circle or the smaller circle. An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquillity. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. No hard and fast rule can really be evolved to deal with problems of human society. Every possible situation cannot be brought under water-tight classifications and a set of tests to deal with them cannot be laid down. As and when an order of detention is questioned, it is for the Court to apply these well-known tests to find out whether the impugned activities upon which the order of detention is grounded go under the classification of public order or belong to the category of law and order.

The criticism of learned council for the appellant against the ratio in *Pushkar Mukherjee's* case is perhaps not warranted. We have pointed out above that the ratio of that decision has been approved in several later cases. The reference to Dr. Allen's classification was obviously intended to bring into bold relief the basic distinction. The guideline indicated in that judgment in another part falls in line with the general principles adopted by this Court in several authorities. We do not find that the Full Bench of the Allahabad High Court adopted any wrong basis to draw the difference between the two concepts.

In our opinion, it is unnecessary to examine the facts of this case to find out whether the grounds furnished in support of the order of

detention related to public order or not. The respondent suffered detention for a major part of the period covered by the order and was released when the High Court quashed it. The detention being one of 1984, in normal course, would have lapsed more than eighteen months back. The appeal fails and is dismissed. A

N.P.V. Appeal dismissed. B