

COLLECTOR & DIST. MAGISTRATE AND ORS.

v.

S. SULTAN

(Criminal Appeal No. 567 of 2008)

MARCH 31, 2008

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

*Preventive Detention:*

A.P. Prevention of Dangerous Activities of Bootleggers,

C Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 – ss.3(1), 3(2) r/w s.2(a) and (g)

– Order of detention – Indicating instances in respect of offences covered by definition of the expression 'goonda' in s.2(g) – Not based on stale incidents as alleged – Activities of

D detenu prejudicial to "public order" – Hence, High Court not justified in quashing the detention order in exercise of its writ jurisdiction – However, period of detention as fixed in the detention order already over – State Government to consider the need for detaining the detenu for the balance period

E covered by the original order of detention – Constitution of India, 1950 – Arts. 22 & 226.

Words and Phrases – 'Law and order', 'public order' and 'security of the State' – Meaning of – Discussed.

F Writ petitions were filed before the High Court challenging the order of detention passed under ss.3(1), 3(2) r/w s.2(a) and (g) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers

G Act, 1986. It was contended that the order of detention was illegal, arbitrary, unconstitutional and violative of Article 22 of the Constitution; that the instances referred to, did not affect the "public order" at all, and, in any event, since some of the grounds related to offences punishable

under the Explosive Substances Act, 1908, detention under the Act was impermissible. High Court quashed the order of detention. Hence the present appeals. A

Allowing the appeals, the Court

HELD: 1. In all the instances given in the grounds of detention, the indicated offences are punishable under either Chapters XVI or XVII and/or XXII of the IPC. In addition, in certain instances reference has been made to offences punishable under the Explosive Act. Therefore, it is not correct as observed by the High Court that some of the grounds related to offences punishable under Sections 3 and 5 of the Explosive Act only. It is really not so. Even otherwise, all instances indicated are in respect of offences covered by the definition of the expression 'goonda'. The test is whether the detenu is a 'goonda' in terms of Section 2(g) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. Reference to other provisions does not affect that conclusion. There may be cases where offences may be punishable under different statutes. Inevitably, therefore, reference has to be made to them when giving details of an incident. That will not be a factor to render detention invalid. [Paras 8, 9] [770-C, D, E, F] C

2. So far as the stand that incidents were stale, it is to be noted that most of the incidents highlighted are of November 2005. The order of detention was passed on 20.3.2006. The State Government approved the order of detention on 28.3.2006. The Advisory Board confirmed the order of detention and based on the recommendation of the Advisory Board, the Government confirmed the order of detention for a period of 12 months from the date of detention. That being so, it cannot be said that the order of detention was based on stale incidents. [Para 10] [770-F, G; 771-A] F

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A 3.1. So far as the question as to whether the public order was involved, the grounds of detention elaborately described the acts which created dangerous and terrorized situations in the village and frequently disturbed public peace and public order because of the acts of violence and danger was caused to the lives of the villagers. In all these instances deadly weapons were used causing injuries to various persons. [Para 11] [771-A, B]

B 3.2. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the 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 life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'. [Para 12] [771-C, D, E, F]

C 3.3. 'Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State.

D The true test is not the kind, but the potentiality of the act

in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. [Para 15] [772-E, F, G, H]

3.4. The true distinction between the areas of "law and order" and "public order" lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. 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 touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect 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. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". In the instant case, the incidents related to public order situations. [Paras 17, 18] [773-C, D, E, F, G; 774-A, B]

A *Kanu Biswas v. State of West Bengal AIR (1972) SC 1656; Dr. Ram Manohar Lohia v. State of Bihar and Ors. (1966) 1 SCR 709; Kishori Mohan Bera v. The State of West Bengal (1972) (3) SCC 845; Pushkar Mukherjee v. State of West Bengal (1969) 2 SCR 635; Arun Ghosh v. State of West Bengal (1970) 3 SCR 288; Nagendra Nath Mondal v. State of West Bengal (1972) 1 SCC 498; Babul Mitra alias Anil Mitra v. State of West Bengal and Ors. (1973) 1 SCC 393; Milan Banik v. State of West Bengal (1974) 4 SCC 504; Kuso Sah v. The State of Bihar and Ors. (1974) 1 SCC 185; Harpreet Kaur v. State of Maharashtra (1992) 2 SCC 177; T.K. Gopal v. State of Karnataka (2000) 6 SCC 168 and State of Maharashtra v. Mohd. Yakub (1980) 2 SCR 1158 – relied on.*

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4. Looked at from any angle, the impugned judgment of the High Court cannot be sustained and is set aside.

D However, the period of detention as fixed in the detention order is already over. It would be open to the State Government to consider whether there is a need for detaining the detenu for the balance period covered by the original order of detention. [Para 19] [774-B, C]

E. CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 567 of 2008.

From the final Judgment and Order dated 13.09.2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad

F in Writ Petition No. 158290 of 2006.

WITH

Criminal Appeal Nos 568-571 of 2008

G D. Bharathi Reddy for the Appellants

T. Anamika for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted in each

H case.

2. Challenge in these appeals is to the order passed in each case by a Division Bench of the Andhra Pradesh High Court in writ petitions filed for quashing the order of detention passed by the Collector and District Magistrate, Nellore, under Sections 3(1), 3(2) read with Section 2(a) and (g) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (in short the 'Act') in respect of Shri Pralayakaveri Bhaskar, Sri Pamanji Chenna Reddy, Sri Pralayakaveri Gnanaiah, Sri Voila Babu and Sri Pamanji Babu (each described as 'detenu' hereinafter)

3. Respondent claiming to be a friend of the detenu challenged the validity of the order stating it to be illegal, arbitrary, unconstitutional and violative of Article 22 of the Constitution of India, 1950 (in short the 'Constitution'). The main ground of challenge was that the grounds of detention referred to certain acts which are punishable under the Indian Penal Code, 1860 (in short 'IPC'), as well as the Explosive Substances Act, 1908 (in short 'Explosive Act') and, therefore, shows non-application of mind.

4. It was the stand of the writ petitioner who had filed the Habeas Corpus Petition that the instances referred to do not affect the public order at all and in any event since some of the grounds related to offences punishable under the Explosive Act, the detention under the Act was impermissible. The High Court accepted the stand and quashed the order of detention.

5. In support of the appeals, learned counsel for the appellants submitted that Section 2(g) of the Act defines a 'goonda'. Undisputedly, all the instances detailed in the order of detention related to offences punishable under IPC and also under some of the provisions of the Explosive Act. Therefore, the impugned judgment of the High Court is indefensible.

6. In response, learned counsel for the respondent submitted that some of the instances are not relatable to offences punishable under IPC and, therefore, Section 2(g) of

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A the Act has no application. In any event, it is submitted that most of the incidents highlighted are stale incidents and do not in any manner constitute violation of public order.

7. Section 2(g) of the Act reads as follows:

B "Goondas means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."

C 8. Undisputedly, in all the instances given in the grounds of detention, the indicated offences are punishable under either Chapters XVI or XVII and/or XXII. In addition, in certain instances reference has been made to offences punishable under the Explosive Act.

D 9. Therefore, it is not correct as observed by the High Court that some of the grounds related to offences punishable under Sections 3 and 5 of the Explosive Act only. It is really not so. Even otherwise, all instances indicated are in respect of offences covered by the definition of the expression 'goonda'.

E The test is whether the detenu is a "goonda" in terms of Section 2(g) of the Act. Reference to other provisions does not affect that conclusion. There may be cases where offences may be punishable under different statutes. Inevitably, therefore, reference has to be made to them when giving details of an

F incident. That will not be a factor to render detention invalid.

G 10. So far as the stand that incidents were stale incidents, it is to be noted that most of the incidents highlighted are of November 2005. The order of detention was passed on 20.3.2006. The State Government approved the order of detention on 28.3.2006. The Advisory Board confirmed the order of detention and based on the recommendation of the Advisory Board, the Government confirmed the order of detention for a period of 12 months from the date of detention.

H That being so, it cannot be said that the order of detention was

based on stale incidents. A

11. So far as the question as to whether the public order was involved, the grounds of detention elaborately described the acts which created dangerous and terrorized situations in the village and frequently disturbed public peace and public order because of the acts of violence and danger was caused to the lives of the villagers. In all these instances deadly weapons were used causing injuries to various persons. B

12. The crucial issue, therefore, is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the 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 life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed"? This question has to be faced in every case on its facts. C D E F G

13. "Public order" is what the French call 'ordre publique', and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act H

A affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? (See *Kanu Biswas v. State of West Bengal* (AIR 1972 SC 1656)).

B 14. "Public order" is synonymous with public safety and tranquility: "it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State". Public order if disturbed, must lead to public disorder. Every

C breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by

D the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. (See *Dr. Ram Manohar Lohia v. State of Bihar and Ors.* (1966 (1) SCR 709)

E 15. 'Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting

F law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have

G such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order

H and the security of the State. [See *Kishori Mohan Bera v. The*

*State of West Bengal* (1972 (3) SCC 845); *Pushkar Mukherjee v. State of West Bengal* (1969 (2) SCR 635); *Arun Ghosh v. State of West Bengal* (1970 (3) SCR 288); *Nagendra Nath Mondal v. State of West Bengal* (1972 (1) SCC 498).

16. The distinction between 'law and order' and 'public order' has been pointed out succinctly in *Arun Ghosh's* case (supra). According to that decision the true distinction between the areas of 'law and order' and 'public order' is "one of degree and extent of the reach of the act in question upon society". 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 *Babul Mitra alias Anil Mitra v. State of West Bengal and Ors.* (1973 (1) SCC 393), *Milan Banik v. State of West Bengal* (1974 (4) SCC 504).

17. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. 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 touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

18. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect 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. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public

A "order" comprehends disorders of less gravity than those affecting "security of State". [See *Kuso Sah v. The State of Bihar and Ors.* (1974 (1) SCC 185, *Harpreet Kaur v. State of Maharashtra* (1992 (2) SCC 177, *T.K. Gopal v. State of Karnataka* (2000 (6) SCC 168, *State of Maharashtra v. Mohd. Yakub* (1980 (2) SCR 1158)]. In the instant case, the incidents related to public order situations.

19. Looked at from any angle, the impugned judgment of the High Court cannot be sustained and is set aside. However, the period of detention as fixed in the detention order is already

C over. It would be open to the State Government to consider whether there is a need for detaining the detenu for the balance period covered by the original order of detention.

20. The appeals are allowed.

D B.B.B. Appeals allowed.