

(2024) 12 SC CK 0026

Supreme Court Of India

Case No: Criminal Appeal No. 5204 Of 2024 (Arising Out Of Special Leave Petition  
(Criminal) No.12516 Of 2024)

Arjun S/o Ratan Gaikwad

APPELLANT

Vs

State Of Maharashtra And  
Others

RESPONDENT

Date of Decision: Dec. 11, 2024

Acts Referred:

- Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 - Section 3(2)

Hon'ble Judges: B.R. Gavai, J; K.V. Viswanathan, J

Bench: Division Bench

Advocate: Nachiketa Joshi, Sandeep Sudhakar Deshmukh, Nishant Sharma, Ankur S. Savadikar, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Aditya Krishna, Preet S. Phanse, Adarsh Dubey

Final Decision: Allowed

Judgement

Sr.

No.,"Office with whom

offence registered","Crime No., Date and

Section","Charge sheet and

Date",Remark

1,"Sub-Inspector, State

Excise, Pathhari","20/2023 dt. 29/1/2023

Maharashtra

Prohibition Act Sec.

65(e)", "SCC No.211/2023 dt.

25.3.2023", Subjudice

2, "Inspector, State

Excise, Parbhani", "61/2023 dt. 18/3/2023

Maharashtra

Prohibition Act Sec.

65(e)", "SCC No.335/2023 dt.

23.8.2023", Subjudice

3, "Inspector, State

Excise, Parbhani", "89/2023 dt. 24/4/2023

Maharashtra

Prohibition Act Sec.

65(e)", "SCC No.338/2023 dt.

23.8.2023", Subjudice

4, "Inspector, State

Excise, Parbhani", "126/2023 dt.

17/05/2023

Maharashtra

Prohibition Act Sec.

65(d)(e)", "SCC No.358/2023 dt.

04.09.2023", Subjudice

5, "Inspector, State

Excise, Parbhani", "253/2023 dt.

09/09/2023

Maharashtra

Prohibition Act Sec.

65(e)(f)", "SCC No.419/2023 dt.

20.9.2023",Subjudice

6,"Inspector, State

Excise, Parbhani","327/2023 dt.

18/10/2023

Maharashtra

Prohibition Act Sec.

65(e)(f)"„On

not spare him. It is further stated that he had not filed a complaint with the police against the appellant herein due to fear.,,,,

11. Insofar as another witness is concerned, almost similar statement is recorded and the only difference is that the date mentioned here is somewhere",,,,

in the month of November, 2023 and the time is 20:30 P.M. Incidentally, both these witnesses happened to meet the appellant at the Gram Panchayat",,,,

Office.,,,,

12. The distinction between a public order and law and order has been succinctly discussed by Hidayatullah, J. (as His Lordship then was) in the case",,,,

of Ram Manohar Lohia v. State of Bihar and Another (1966) 1 SCR 709 : 1965 INSC 175:.,,,,

“54. ... Public order if disturbed, must lead to public disorder. Every 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. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and.,,,,

order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects 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 thus not necessarily sufficient for",,,,

action under the Defence of India Act but disturbances which subvert the public order are.â€‘',,,,

55. It will thus appear that just as "public order"™ in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting,,,,

"security of State"™, "law and order"™ also comprehends disorders of less gravity than those affecting "public order"™. 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 security of,,,,

State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.â€",,,,,

13. It could thus be seen that a Constitution Bench of this Court in unequivocal terms held that every breach of peace does not lead to public disorder. ....

It has been held that when a person can be dealt with in exercise of powers to maintain the law and order, unless the acts of the proposed detainee" ,,,,

are the ones which have the tendency of disturbing the public order a resort to preventive detention which is a harsh measure would not be,,,,

permissible. ....

14. Recently, a Bench of this Court has referred to various judgments of this Court while following the law laid down by this Court in the case of Ram" ,,,,

Manohar Lohia (supra), it will be appropriate to reproduce the following paragraph from the judgment of this Court in the case of Ameena Begum v." ,,,,

State of Telangana and Others (2023) 9 SCC 587. ....

â€œ38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking" ,,,,

feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated" ,,,,

by Hon'ble M. Hidayatullah, C.J. in Arun Ghosh v. State of W.B. [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , is this : (SCC p. 100, para 3)" ,,,,

â€œ3. â€| Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect,,,,

merely an individual leaving the tranquillity of the society undisturbed?â€",,,,,

39. In Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , the petitioning detenu was detained by an order of a District Magistrate" ,,,,

since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the",,,,

petitioning detenu could be reprehensible, it was further held that it (read : the offending act) "does not add up to the situation where it may be said that the",,,,

community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. (Arun Ghosh case [Arun Ghosh",,,,

v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC p. 101, para 5)"",,,,

40. In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia [Ram Manohar Lohia v. State of",,,,

Bihar, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709] also ruled : (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC pp. 99-100,"",,,,

para 3)",,,,

"3. " Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country",,,,

as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to",,,,

the extent of causing a general disturbance of public tranquillity. 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. " It is always a question of degree of the harm and its effect upon the community. ",,,,

This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.",,,,

41. In Kuso Sah v. State of Bihar [Kuso Sah v. State of Bihar, (1974) 1 SCC 185 : 1974 SCC (Cri) 84] , Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was)",,,,

speaking for the Bench held that : (SCC pp. 186-87, paras 4 & 6)",,,,

"4. " The two concepts have well defined contours, it being well-established that stray and unorganised 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. ",,,,

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6. 'The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.' (emphasis supplied),,

15. As to whether a case would amount to threat to the public order or as to whether it would be such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order would depend upon the facts and circumstances of each case. For example, if somebody commits a brutal murder within the four corners of a house, it will not be amounting to a threat to the public order. As against this, if a person in a public space where a number of people are present creates a ruckus by his behaviour and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. Though, in a given case there may not be even a physical attack.,,

16. In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.",,

17. Insofar as statements of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which were stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses.,,, The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villagers which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order.,,,

18. In that view of the matter, we do not find that the subjective satisfaction of the detaining authority that the activities of the appellant were prejudicial to the maintenance of public order is substantiated.,,,

19. The appeal deserves to be allowed on this short ground.,,,,

20. The impugned judgment and order passed by the High Court dated 20th August 2024 so also the order of detention dated 5th March 2024 passed.,,,,

by the detaining authority and the order of confirmation dated 8th May 2024 are quashed and set aside and the appeal is, accordingly, allowed.".,,,,

21. The appellant is directed to be released forthwith, if his detention is not required in any other case.".,,,,

22. Pending application(s), if any, shall stand disposed of.".,,,,