

(1960) 11 AHC CK 0018

Allahabad High Court (Lucknow Bench)

Case No: Criminal Miscellaneous Case No. 288 of 1960

S.N. Tangri

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision: Nov. 11, 1960

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 46, 80
- Preventive Detention Act, 1950 - Section 3A

Citation: AIR 1961 All 542

Hon'ble Judges: R.A. Misra, J; J.K. Tandon, J

Bench: Division Bench

Advocate: Party in person and G.H. Naqui, for the Appellant; Additional Government Advocate and G. Imam, for the Respondent

Final Decision: Dismissed

Judgement

Tandon, J.

The petitioner Sri S. N. Tangri is a resident of Lucknow. He was detained by an order dated the 8th August, 1960, passed by the District Magistrate, Lucknow, under Sub-clause (ii) of clause fa) of Section 3 of the Preventive Detention Act, 1950. The detention order was executed, so is the allegation of the petitioner, while he was present in front of the Filmistan Cinema situate at Hazratganj, Lucknow.

This was done by Ran Bahadur Singh Station Officer. Police Station, Hazratganj. According to the petitioner though he was taken in custody at the place mentioned by the abovenamed police officer, the said police officer failed to show him the warrant of arrest which might have been issued by any competent authority. His allegation further is that after his arrest he was taken to the police station, Hazratganj, where he was served with the detention order issued by the District Magistrate.

2. Consequent upon his detention the petitioner had been served by the District Magistrate, who made the detention order, the reason for his detention. In due course the Advisory Board examined the case and also held that there was sufficient cause for detention. We are, however, not concerned in this petition with any of those facts as the only question raised here is about" the constitutionality of the petitioner"s detention for the reason, as alleged, that at the time when he was taken into custody the police officer, though asked, had failed to show him the detention order or to communicate to him the grounds for his arrest.

3. The above allegation, namely, that the detention order had not been shown to him or that the cause for detention had not been communicated to him, is denied by the respondent who have produced an affidavit also of the officer who effected the petitioner"s arrest. His assertion is that he had actually communicated these details to him. In view of the affidavit and the unequivocal assertion therein that the above details had been actually carried out, we have considerable difficulty in accepting the contrary version by the petitioner who is an interested party. We, however, consider that it is not necessary for disposing of this petition to pursue the above controversy on facts further.

4. Article 22 of the Constitution which is in the Part relating to Fundamental Rights, no doubt, provides in Clause (1) that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be denied the right to consult and to be defended by, a legal practitioner of his choice, but Clause (3) thereof also lays down that nothing in the above clause shall apply to any person who is arrested or detained under any law providing for preventive detention.

Thus the constitutional protection assured to a person by Clause (1) of article 22 is not made available to a person who is arrested or detained under a law providing for preventive detention. The petitioner who has been detained and was also arrested under such a law is, therefore, not entitled to the above protection.

5. Section 3A of the Preventive Detention. Act, 1950, has laid down the manner of execution of detention orders. The petitioner who-undoubtedly has been taken into custody in connection with such an order--the petitioner too has relied in challenging the validity of his detention on the above provision--has claimed that by reason of the said section all the provisions relating to the execution of a warrant of arrest contained in the Code of Criminal Procedure are made applicable to detention orders served under the Preventive Detention Act, thus Section 80 also of the Code of Criminal Procedure which requires that the police officer or other person executing a warrant of arrest shall notify the substance thereof, to the person to be arrested, and, if so required, shall show him the warrant also, is attracted.

His contention is that though the Constitution may have enjoined that the provisions of Clause (1) of article 22 will be inapplicable to detention orders passed under any

law relating to preventive detention, the Preventive Detention Act of 1950 had made the provisions of Section 80 of the Code of Criminal Procedure applicable as was open also to the Legislature to do.

6. It does not appear necessary to us to decide the question as regards the competence of the legislature to make such a provision in the Preventive Detention Act though we have reasons, to think that it will require to be considered when and where it should arise. The decision of this case as shall presently appear is dependent on the true scope of Section 3A, on its plain language and meaning. The provision in Section 80 of the Code of Criminal Procedure is not attracted in the case of detention orders.

The section lays down that a detention order may be executed at any place in India in the manner provided for the execution of warrants of arrests under the Code of Criminal procedure, 1898. What it has indeed laid down is the manner of the execution of detention orders. A detention order has not been given the place of a warrant of arrest issued under the Code of Criminal Procedure but the manner alone of the execution of the latter has thereby been imported into the Detention Act and for the purposes of execution only of those orders.

A warrant of arrest, in the matter of its execution, is governed by Section 46 of the Code of which provides that in making an arrest the police officer or other person effecting the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. If the person to be arrested submits to the custody of the police officer Or other person making the arrest, by word or action, his arrest is complete.

If, however, he does not so submit the person executing the arrest warrant can touch his body or confine him and this will also complete the arrest. The manner of execution of a warrant of arrest is thus contained in the above section. Section 80 on which the petitioner has founded his grievance does not relate to the manner of execution of a warrant of arrest.

It on the other hand imposes an obligation on the police officer or the person effecting the arrest to perform the further act, once the arrest has been effected, to notify to the person arrested the substance of the warrant and if so required to show him the warrant also. This duty is not; part of the legal process for the execution of the warrant of arrest though it gives rise to the further duty in the case of the arresting officer to notify to the person arrested the substance of the arrest warrant and also to show it to him.

The manner pf execution ends with the effecting of the arrest and whatever has to be done in pursuance of Section 80 of the Code is some further duty which the law has imposed on the officer effecting the arrest to do in favour of the person arrested.

7. In the above view of Section 3A of the Preventive Detention Act, and Sections 46 and 80 of the Code of Criminal Procedure we are unable to hold that it was necessary for the officer who executed the detention order to have notified to the petitioner the substance of the detention order at the time of taking him into custody.

8. There is another aspect of Section 80 which also cannot in our opinion be ignored. This section requires that the police officer or the person executing the warrant of arrest shall notify the substance thereof to the person to be arrested and if so required by the person to show him the warrant. The section thus requires the duty therein created to be carried out in a case where an arrest warrant is executed.

A detention order is not an arrest warrant as defined in the Code and Section 3A of the Preventive Detention Act has not laid down that a detention order shall be treated at par with an arrest warrant except in the matter of executing it- The obligation laid u/s 80 of the Code of Criminal Procedure on the person arresting cannot under the circumstances be extended to the case of a detention order which is entirely different from a warrant of arrest.

9. In view of what we have said above we are unable to accept the petition. We accordingly reject it but make no order as to costs.