Anand Kumar Singh Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Dec. 11, 2008

Acts Referred: Constitution of India, 1950 â€" Article 22, 226
Criminal Procedure Code, 1973 (CrPC) â€" Section 161
National Security Act, 1980 â€" Section 3(2)
Penal Code, 1860 (IPC) â€" Section 143, 332, 352, 353, 500

Citation: (2009) 1 ACR 668

Hon'ble Judges: Vijay Kumar Verma, J; Barkat Ali Zaidi, J

Bench: Division Bench

Advocate: Samit Gopal, for the Appellant; Amit Sinha, Addl. S.G.I. and A.G.A., for the Respondent

Judgement

Barkat Ali Zaidi, J.
The Petitioner challenges his detention under the National Security Act, 1980 as No. 65 of 1980 (hereinafter referred

to as the "Act"). What led to his implication under the provisions of National Security Act, vide detention order dated 30.6.2008, passed by

District Magistrate, Allahabad is that on 10.6.2008, the Petitioner entered the Laboratory in the Department of Chemistry of Allahabad University

alongwith other boys and told Prof. Arun Kumar Srivastava, that in the University Examination, 2008, he had tendered assistance to his relatives in

the examination, and when the Professor denied the same, the Petitioner blackened his face, by sprinkling black ink on his face and placed garland

of old shoes around his neck. All this happened in the presence of other students and Professors, who were present at that time as also in presence

of his wife, who is also a Professor in the university. The Petitioner had brought a photographer with him, and Prof. Srivastava was photographed

in this condition. While going away, the Petitioner told Prof. Srivastava that Students Union Election could not take place because of him and he

will disrupt the teaching as soon as university opens and will not allow varsity to function.

2. The Petitioner has, therefore, come under Article 226 of the Constitution of India seeking to quash the detention order.

3. The question which arises for consideration is whether this Act on the part of the Petitioner amounts to disrupting public order or will be a mere

breach of law and order?

4. Heard, Sri G. S. Chaturvedi, senior advocate assisted by Sri Samit Gopal, advocate for the Petitioner, Sri Amit Sinha, advocate for the Union

of India and Addl. Government Advocate for the State.

5. Counsel for the Petitioner has argued that this would amount to merely breach of law and order and nothing more, while counsel for the State

contended that it was a clear violation of public order.

6. The Supreme Court in its pronouncement in the case of Arun Ghosh Vs. State of West Bengal, has very clearly and succinctly delineated how

and when an act will amount to breach of public order, and has also given examples of the same.

7. We have, therefore, before us a clearly laid down yardstick, for determination of the question, whether a particular act amounts to breach of law

and order or public order. It is, therefore, imperative to remind ourselves, what the Supreme Court has said:

The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore, the

detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this

submission reference is made to three cases of this Court: Dr. Ram Manohar Lohia Vs. State of Bihar and Others, ; W. P. No. 179 of 1968,

Pushkar Mukherjee v. State of West Bengal, dated 7.11.1968 (SC) and W. P. No. 102 of 1969, Shyamal Chakraborty v. Commr. of Police,

Calcutta, dated 4.8.1969 (SC).In Dr. Ram Manohar Lohia Vs. State of Bihar and Others, this Court pointed out the difference between

maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. 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. Take for instance, a man stabs another. People may be shocked

and even disturbed, but the life of the community keeps moving at an even tempo, however, much one may dislike the act. Take another case of a

town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are

deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the

community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its

own gravity. In its quality it may not differ from another but in its potentiality it may be very different. 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 way-laid 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 the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of

public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that

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. The French distinguish law and order and public order by

designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law

and order. Justice Ramaswami in Writ Petition No. 179 of 1968 (SC) draw a line of demarcation between the serious and aggravated forms of

breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the

public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts

directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia Vs. State of Bihar and Others,

examples were given by Sarkar and Hidayatullah, JJ. They show how 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. The question to ask is: Does it

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 this question has to be faced in every case on facts. There is no formula by which one case can be

distinguished from another.

8. Applying the criteria laid down above by the Supreme Court, we have no hesitation in coming to the conclusion that the act of the Petitioner

should be deemed to be a breach of public order. The Petitioner assaulted and insulted the Professor in presence of his wife and other students

and threatened to disrupt the functioning of the university. This act of the Petitioner sent shock waves in the campus, and other Professors and

teachers were likely to feel insecure, because, the same thing might happen with them, and besides a feeling of dislocation and disturbance must

have been experienced by the entire university. If the Petitioner had a brawl with the Professor at his house, the matter would have been different

and would have been merely a breach of law and order. Since it happened in the varsity campus and in the laboratory and in presence of other

Professors and students, it has wide ranging repercussions.

9. What is still more significant, is that, the incident caused immense damage to the image and reputation of the university. We must, therefore, hold

that the act of the Petitioner amounted to breach of public order.

10. The counsel for the Petitioner argued that a separate criminal case (Case Crime No. 306/2008 under Sections 332, 353, 143, 500, 506, 352,

I.P.C. and Section 7, Crl. Law Amendment Act, Police Station Colonelganj, district Allahabad) is pending in the Court against the Petitioner, and

a case under the National Security Act was slapped upon him subsequently, and is, therefore, not maintainable. The argument that a case under the

provisions of Indian Penal Code is pending against the Petitioner and National Security Act cannot be imposed is clearly unsustainable, because

there is no restriction in National Security Act or elsewhere, that, it cannot be applied if an accused is being tried under the other provisions of law.

No case law was cited in support of this ingenious contention.

11. It was further argued by counsel for the Petitioner that the name of the Petitioner was not mentioned in the first information report and was

subsequently disclosed in the statement recorded u/s 161, Cr. P.C. There is no principle of law, that a man cannot be prosecuted if his name is not

mentioned in the first information report and is revealed in the statement recorded u/s 161, Cr. P.C.

12. It was further argued by counsel for the Petitioner that in the first information report, it is only mentioned that an effort was made to blacken the

face of the Professor and a photographer was brought along, and other details have not been mentioned. It is settled law that the first information

report need not contain all the details of the incident, because the first information report is not a systematic document of everything which

transpired.

13. It was also argued that there has been delay in consideration of representation made by the Petitioner. The representation reached Joint Home

Secretary, Union of India on 25.7.2008 and orders were passed by Union Home Secretary on 14.8.2008 and as such, there was delay in disposal

of the representation, which is fatal and renders the application of National Security Act invalid.

14. Learned Counsel in this connection has cited the case of Rajammal v. State of Tamil Nadu (XXXVIII) 1999 ACC 312: 1999 (1) ACR 392

(SC),wherein it has been observed as follows:

It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is

prescribed by Article 22 of the Constitution of India for the decision to be taken on the representation the words ""as soon as may be"" in Clause (5)

of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the

authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly

consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a

Constitutional Bench of this Court in K. M. Abdulla Kunhi and B. L. Abdul Khader v. Union of India and others. The following observations of

the Bench can profitably be extracted here:

It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation

and dispose of the same as expeditiously as possible. The words ""as soon as may be"" occurring in Clause (5) of Article 22 reflects the concern of

the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay.

However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period

prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The

requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any

unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued

detention impermissible and illegal.

The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will

adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the

representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or

range of delay, but how it is explained by the authority concerned.

15. It will be noted that it has been mentioned by the Supreme Court that if there is sufficient explanation for the delay, it will not affect the

application of National Security Act.

16. We have, therefore, to see whether there is sufficient explanation or not? The explanation offered from Respondent Union of India in this

regard, is, that there was bomb blast on 25.7.2008 in Bangalore, and, on 26.7.2008 in Ahmadabad, which caused extensive damage, and Union

Home Secretary remained preoccupied because of these terrible happenings, and that is why he could pass orders only on 14.8.2008. The matter

of life and death of thousands of people were certainly more important than the detention of a detenu for a few days. In these circumstances the

explanation should be held sufficient. As such, if there was some delay, it cannot be said, that there was no sufficient reason, for the same.

17. We, therefore, uphold the imposition of National Security Act on the Petitioner.

18. Petition dismissed.