

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.45396 of 2018

Date: 13.06.2019

Between:

Shaik Moulana

...Petitioner

And

The State of Telangana,
Rep.by the Principal Secretary,
Home Department, (POLL),
Secretariat Building, at Hyderabad, and others.

...Respondents

Counsel for the petitioner : Mr. Arun Kumar Mudi

Counsel for the respondents: Mr. S. Sharath
Special Government Pleader

The Court made the following:

ORDER: (Per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)

Alleging that his son, Shaik Baba, aged 23 years, is involved in five crimes of theft registered in 2018, and is being preventively detained by order dated 29.09.2018, passed by the Commissioner of Police, the respondent No.3, and confirmed by order dated 08.10.2018 by the Principal Secretary, Home Department, the respondent No.1, the unfortunate father, Shaik Moulana, has approached this Court.

Briefly, the facts of the case are that by relying on the five recent most cases registered against the detenu, the Commissioner of Police passed the detention order on 29.09.2018. According to the respondent No.3, the detenu was involved in as many as fifteen burglaries and temple thefts. But, merely relying on the recent most five cases, the detention order was passed. Subsequently, by order dated 08.10.2018 the detention order was confirmed by the respondent No.1. Hence, this petition before this Court.

Mr. Arun Kumar Mudi, the learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, relying only on the five recent most cases registered against the detenu, the detention order is passed. However, there is not an iota of evidence about the other fifteen alleged cases registered against the detenu.

Secondly, curiously, all the cases registered in 2018 relate to the offence of theft, under Section 380 and of lurking house trespass under Section 457 of IPC.

Thirdly, such petty cases can easily be tackled by the criminal justice system by holding a criminal trial. Therefore, all these cases fall within the ambit of “law and order problem”. Relying on the case of **Ram Manohar Lohia v. State of Bihar**¹, learned counsel has pleaded that a distinction has to be maintained between “a law and order problem” and “a public order problem”. Since the cases narrated by the detaining authority do not fall within the ambit of “disturbance of public order”, the detaining authority was not justified in invoking the Act. Therefore, the detention of the detenu is patently illegal. Hence, the detaining authority is unjustified in claiming that these petty cases have created a panic and have “disturbed the public order”.

Fourthly, youngmen, like the detenu, are randomly picked up by the police and falsely implicated. Therefore, the detaining authority is not justified in invoking a draconian power under the preventive detention laws. According to the learned counsel, the detaining authority has to be extremely careful while passing a detention order. For a detention *ipso facto* adversely affects the fundamental right of personal liberty enjoyed by the people under Article 21 of the Constitution of India.

¹ AIR 1966 SC 740

Lastly, even while confirming the detention order dated 29.09.2018 by order dated 08.10.2018, the respondent No.1 has not applied his mind to the facts and circumstances of the case. In fact, the confirmation order has been passed in a mechanical manner. Admittedly, in the present case, the detenu had not filed any bail applications in the five cases relied upon by the respondent No.3. Further, the bail application filed in Crime No.149 of 2018 of P.S.Choppadandi vide CrI.M.P.No.1973 of 2018 on the file of the learned Special Judicial Magistrate of First Class, Karimnagar, which is not the case among the five cases relied on by the third respondent, is also pending consideration. Thus, the detenu will continue to be in judicial custody. Despite the fact that the detenu was in custody, still the preventive detention order has been passed against the detenu. Therefore, even the confirmation order deserves to be set aside by this Court.

On the other hand, Mr. Sharath, learned Special Government Pleader, has vehemently pleaded that despite his young age, the detenu has indulged in a large number of criminal cases. Recently he has indulged in theft cases in different localities. Therefore, the series of thefts committed by him have created a sense of insecurity and panic in the minds of the people. Hence, the case falls within the ambit of “public order”. Therefore, the detaining authority was certainly justified in passing the impugned orders. Thus, the learned counsel has supported both the impugned orders.

Heard the learned counsel for the parties and perused the impugned orders.

In the case of **Kanu Biswas v. State of West Bengal**², the Supreme Court has opined as under:

“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 ‘order publique’ and 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, is: Does it lead to disturbance of the current of 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?”

In **Ram Manohar Lohia**’s case (supra) the Hon’ble Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. The Hon’ble Supreme Court has observed as under:

“54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by 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. Does the expression “public

² (1972) 3 SCC 831

order' take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. 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. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances."

A bare perusal of the impugned order, dated 29.09.2018, clearly reveals that although the detaining authority claims that the detenu was involved in as many as fifteen cases of burglaries and temple thefts, not a single case has been mentioned by the detaining authority. Therefore, the statement made by the detaining authority cannot be accepted as a gospel truth.

Moreover, the detaining authority has taken only five cases which were registered against the detenu in the year 2018 as the basis for preventively detaining the detenu. But, the five

cases are for offences under Sections 457 and 380 IPC. Since these are petty cases, the detenu can certainly be tried under the normal criminal justice system and, if convicted, can certainly be punished by the Court of law. Thus, the case does not fall within the ambit of the words “public order”. Instead, it falls within the scope of the words “law and order”.

It is, indeed, trite to state that preventive laws are draconian in nature as they adversely effect the personal liberty of an individual. Therefore, in catena of cases, the Hon’ble Supreme Court has repeatedly opined that preventive detention laws should be used sparingly, rather than being used frequently. It is only when it is a case of disturbance of public order that the detaining authority would be legally justified in invoking and in using the powerful weapon of the preventive laws. But, the preventive laws cannot be used in order to control petty offences. In case the use of preventive detention laws were permitted for tackling petty offences, it will make a mockery of criminal justice system.

A bare perusal of the impugned order, dated 29.09.2018, clearly reveals that the detaining authority is not even aware of the fact that the detenu continues to be in judicial custody. Thus, the impugned order, dated 29.09.2018, suffers from non-application of mind.

A perusal of the order, dated 08.10.2018, passed by the respondent No.1 also reveals that the said order has been

passed in a most mechanical manner. For neither the facts, nor the circumstances have been discussed to any extent. Therefore, neither of the two orders are legally sustainable.

For the reasons stated above, this Writ Petition is hereby allowed. The impugned orders, dated 29.09.2018 and 08.10.2018, are set aside. The respondents are directed to set the detenu at liberty forthwith, if the detenu is not being detained in judicial custody for any alleged offence(s) committed by him.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Dr. SHAMEEM AKTHER, J

13.06.2019
vs