

CASE NO.:
Appeal (crl.) 1040 of 2004

PETITIONER:
State of U.P. and Anr.

RESPONDENT:
Sanjai Pratap Gupta @ Pappu and Ors.

DATE OF JUDGMENT: 20/09/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T
(Arising out of SLP(Crl.)No. 4267/2003)

ARIJIT PASAYAT, J.

Leave granted.

Respondent No.1-Sanjai Pratap Gupta@Pappu (hereinafter referred to as the 'detenu') was detained pursuant to an order of detention passed under Section 3(2) of the National Security Act, 1980 (in short the 'Act'). The order dated 23.12.2002 was served on the detenu on that day itself. According to the order and grounds of detention, the activities of the detenu were considered to be prejudicial to public order. Specific reference was made to an incident dated 13.10.2002. One Anand Kumar Jain lost his life because of the firing done by the detenu and his associates. Attempt to take away the life of one Ajay Kumar Jain, son of aforesaid Anand Kumar Jain was made, but luckily he had escaped. Case was registered for commission of offences punishable under Sections 302 and 307 of the Indian Penal Code, 1860 (in short the 'IPC'). Reference was also made to several earlier incidents which according to the detaining authority highlighted the criminal antecedents of the detenu and as to how he was creating a sense of terror in the minds of the general public. With a view to prevent him from committing similar prejudicial acts and to maintain public order the order of detention was purportedly passed.

A habeas corpus petition was filed under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') by the detenu questioning validity of the order of detention. By the impugned judgment the High Court accepted the prayer and quashed the order of detention. Before the High Court stand of the detenu was that the two aspects highlighted in the grounds of detention were not separable and were intimately linked with one another. As necessary documents to substantiate the allegations relating to earlier incidents were not supplied to the detenu that rendered the order of detention invalid.

Stand of the State on the other hand was that the two aspects were separable. Even if for the sake of arguments one part was held to be not supportable that really was of no consequence in view of Section 5-A of the Act. The High Court proceeded on the basis that the two aspects highlighted were inter-dependent and there was no question of separately considering the two aspects. Accordingly, the order of detention was passed.

In support of the appeal, learned counsel for the appellant-State

submitted that the scope and ambit of Section 5-A of the Act has been completely lost sight of by the High Court. One aspect which was highlighted related to the criminal antecedents of the detenu and as to how there were many cases registered against him in the past for being treated him as a history sheeter. The second aspect related to a particular incident. The effect of the act was highlighted in the grounds of detention which was clearly spelt out as to how even tempo of life got disturbed by the act. Though, the detenu was in custody, taking into account the likelihood of his release on bail the order of detention was passed. Necessary documents like the bail application etc. were also supplied to the detenu. Learned counsel for the Union of India supported the stand of the State.

In response, learned counsel for the detenu submitted that the two aspects indicated in the grounds of detention cannot be separated, one has its effects on the other and the High Court has rightly held them to be inseparable. In view of the factual position, Section 5-A of the Act has no application. Additionally, the incident which formed the foundation for the order of detention was at the most law and order situation and not a public order situation. Finally, it was submitted that even if it is held that the judgment of the High Court is bad yet direction should not have been given for taking him back to detention because of long passage of time and in the absence of any live link between the alleged incident and the requirement for his continued detention. A single act could not have been considered as sufficient to affect public order warranting detention. Strong reliance is placed on Sunil Fulchand Shah v. Union of India and Ors. (2000 (3) SCC 409)

The crucial issue 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.

"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 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)).

"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 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 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)

'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. 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. [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).

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).

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". [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)].

The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance.

It is not the number of acts that matters. What has to be seen is the effect of the act on even tempo of life, the extent of its reach upon society and its impact.

From the grounds of detention it is apparent that the same was not a law and order situation but a public order situation as rightly contended by learned counsel for the State. Relevant portion of the grounds of detention reads as follows:

"From the letter of the Superintendent of Police Mainpuri and the report of Incharge of the Police Station Kotwali Mainpuri annexed with report of the Additional Superintendent of Police, Mainpuri and from the records annexed therewith, this is evident that you are a person of criminal tendency and in collaboration with your associates, and by creating fear and terror on the force of illegal arms, realize forcibly and illegally money from the traders and property-dealers, you by use of criminal force, by indulging in mar-peat (physical assault) and by resorting to other criminal acts are habitual to commit crime by terrorizing that person whoever opposes these increasing criminal activities, fear and terror psychosis has gripped the minds of the common public. In this very backdrop you for establishing your hegemony, while going on a scooter, along with your other associates on 13.10.2002 at 11.00 a.m. in the busiest market of town Mainpuri, near the Bada Chauraha (crossing) in front of the Shafi Hotel on the road itself and in the day time, stopped Shri Anand Kumar Jain, property dealer and by firing bullets indiscriminately committed his heinous murder in a planned manner. When, at the time of the commission of this criminal act deceased's son Ajai Kumar Jain wanted to save his father, you fired aiming at him who any how or other saved himself by fleeing away.

Nobody dared, in the said busy market who could save the deceased from you and your associates. Consequent on the resorting by you and your associates to the firing publicly and the show of your criminal force, the atmosphere of fear and terror was created in the entire market. On account of the firing resorted to in busy market and the show of your criminal force therein, pandemonium prevailed among the visiting people who fled away and hid themselves in safe places. The entire market became empty and the public order was totally breached. The dead body of the deceased remained lying on the road and bleeding continued profusely. A very awful scene was created. Nobody dared to approach the dead body of the deceased. The deceased's son Ajai Kumar Jain by saving his life anyhow or other, fled away and informed the Kotwali Mainpuri about this murder case and the occurrence and lodged a written report with Police Station, whereupon the first information report was recorded at 11.45 a.m. on the basis of which Crime No.1475/2002 was registered under Section 307/302 of the Indian Penal Code. The particulars of this crime were recorded in brief in the General Diary at Report No.22 at 11.45 a.m. True copies of the FIR and report of the G.D. are annexed herewith as Annexures 1 and 2."

A bare perusal of the quoted portion from the grounds of detention makes it clear that two aspects i.e. one relating to criminal background of antecedents and other relating to a particular incident were treated separately. This becomes apparently clear because the detaining authority in the backdrop of the criminal antecedents referred to the particular act. Therefore, one was the general background, and the other was the particular incident. They are clearly separable.

Section 5-A of the Act was introduced to take care of the situations when one or more of the grounds can be separated from the other grounds for justifying detention.

In Attorney General for India and Ors. v. Amratlal Prajivandas and Ors. (1994 (5) SCC 54) it was observed that where the detention order is based on more than one ground, by a legal fiction it would be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent one. In that case the Constitution Bench was considering scope of Section 5-A of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short 'COFEPOSA Act') which is in pari materia with Section 5-A of the Act. In view of the factual position analysed, the inevitable conclusion is that Section 5-A is applicable to the case and the High Court was not justified in holding to the contrary. The High Court's judgment is therefore clearly indefensible.

The residual question to be considered is whether the detenu has to go back to detention, after it is held that the judgment of the High Court is not sustainable. There cannot be any straight-jacket formula for dealing with such cases. It would depend upon circumstances of each case. For determining the question as to whether the detenu has to go back to detention, the factual position has to be analysed. It has to be seen whether the effect of the previous acts was continuing or likely to recur. When background facts of present case are considered it is evident that the time gap is not very wide and for considerable length of time the matter is pending in this Court and the detenu had taken nearly three months to file his counter to the special leave petition filed. Judged from these angles it is clear that the live link is not snapped and the apprehension of the detaining authority about the detenu's prejudicial activities cannot be faulted. The impugned judgment of the High Court is set aside. The detenu shall surrender forthwith for serving the remainder of the period of detention. The appeal is allowed to the aforesaid extent.