Notified Area Committee, Buria, Tehsil Jagadhri through its President v. Gobind Ram and others

Gosain, J.

account of a *bona fide* and honest mistake on the part of the appellant, the appellate Court has ample powers under Order XLI rule 20, Civil Procedure Code, to allow the mistake to be rectified and the party to be added;

(2) that section 107(2) read with Order I rule 10, Civil Procedure Code, enables the appellate Court to add parties in appeals in suitable cases, but this power must be exercised within the period of limitation; and

(3) that apart from the provisions or Order XLI rule 20, Civil Procedure Code, the appellate Court has inherent powers to permit parties to be added to appeals in suitable cases and the language or rule 20 of Order XLI is not exclusive or exhaustive so as to deprive the appellate Court of the inherent powers in this respect."

DULAT, J.—I agree. Dulat, J.

GROVER, J.—I agree. Grover, J.

B. R. T.

CRIMINAL MISCELLANEOUS

Before R. P. Khosla, J.

SHRI MADHU LIMAYA, CHAIRMAN, SOCIALIST PARTY OF INDIA, BOMBAY,—*Detenue-Petitioner*

versus

THE STATE,—*Respondent*

Criminal Miscellaneous No. 19 of 1959.

1959

Feb., 2nd

Constitution of India (1950)—Article 22—Grounds of arrest not communicated to the accused—Effect of, on

legality of arrest—Enumeration of Sections of penal enactments—Whether proper compliance with Article 22—Code of Criminal Procedure (V of 1898)—Section 344—Order of remanding the accused to custody not proper—Detention in consequence thereof—Legality of detention—Time to determine—Whether time of arrest.

Held, that it is well known and, in fact, often laid down in England and in this country that the person arrested has not only to be given grounds for arrest but those grounds should be intelligible and detailed with all particularity. Mere mention of the sections of any penal provision does not amount to giving information to the arrested person of the grounds for which his liberty is curtailed and his consequent arrest and detention is illegal.

Held, that it is well recognised that at common law a man is not to be deprived of his liberty except in due course and process of law and that if a man is to be deprived of his freedom, he is entitled to know the reason why. Telling a person, he is arrested under some sections of some enactment is not providing him with any information, much less grounds of arrest.

Held, that section 7 of the Criminal Law Amendment Act, 1932, deals with a number of offences. Mere informing a person that he is being arrested under section 7 of the Criminal Law Amendment Act, 1932, would not be giving him informatiin as to which of the many offences as covered by section 7, is he being arrested for. Similarly, merely stating that the person is being arrested under section 143 read with section 117 of the Indian Penal Code gives no information either.

Held, that section 344 of the Code of Criminal Procedue requires that in the event of postponement of the commencement of, or adjournment of any enquiry or trial, the Court had to give reason in writing and accused had to be remanded to custody by a warrant in that behalf. Mere direction, threfore, that the case may come up on the next date fixed is not proper compliance of section 344 of the Code of Criminal Procedure, and if there is no legal order remanding the accused to police custody, the detention obviously would be questionable.

Held, that in point of time, the question has to be settled whether at the time of arrrest of the detenue, the detention was legal or not.

Petition under Article 226 of Constitution of India praying that a writ of Habeas Corpus, or a similar direction or order be issued to the Respondent for producing the petitioner in the High Court and for setting him at liberty. (Petition filed on 13th January, 1950).

RAJINDER SACHAR, for Petitioner.

K. S. CHAWLA, for Respondent.

JUDGMENT

R. P. KHOSLA, J.—This is a petition under Article 226 of the Constitution of India for a writ of habeas corpus. R. P. Khosla, J.

The petitioner is stated to be the chairman of All-India Socialist Party. The Socialist Party (Punjab Branch) has lodged *satyagraha* against the rising food prices and the burden of oppressive taxation. It is alleged that the petitioner with a view to acquaint himself with the situation was on a round to different districts of Punjab. On 7th January, 1959, according to programme, the petitioner came to Hissar and while he was in the office of the local Socialist Party, Hissar, he was arrested at about 2-30 p.m. It is alleged that the petitioner was arrested without any warrant of arrest shown or having been informed about the cause of the arrest. The detention of the petitioner is claimed to be *ultra vires* of the Constitution and otherwise illegal.

The contention of the learned counsel for the petitioner, Mr. Rajinder Sachar, was that the provisions of Article 22 of the Constitution of India were violated, for no grounds of arrest had been

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given to the petitioner at the time of the arrest as envisaged by the said Article. Elaborating the point, the learned counsel submitted that if the arrest is under any warrant of arrest, the reading of the warrant which normally gives the grounds of the arrest is enough compliance, but in cases of cognizable offences where the arrest can be effected without warrant it is imperative that the grounds of arrest are given to the petitioner before he is taken into custody. To appreciate the argument, it is necessary to set down the terms of Article 22(1) of the Constitution which reads:—

> "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 he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

On the construction of the above provision, it was suggested that the detention of the petitioner was repugnant to the Article, for grounds of arrest had not been given to him. The detention accordingly was claimed to be patently illegal.

For the State on the opposite side, on the basis of an affidavit filed in opposition that of the investigation officer, it was contended that the petitioner was at the time of arrest informed of the offences for which he was being arrested. The relevant paragraph 5 of the said affidavit is worded as follows:—

> "That it is correct that he was arrested from the office of the Socialist Party at about 3.30 p.m. and was taken to the police station, and at the time of arrest he was told that he is being arrested in

the abetment of section 7, Criminal Law Amendment Act, and 143 read with 117, Indian Penal Code."

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The submission was that informing the petitioner of the sections of the Criminal Law Amendment Act, 1932, and of the Indian Penal Code for which he was being proceeded with was enough compliance of Article 22(1) of the Constitution of India. It might be noted here that there is no other material on the record to show that any specific grounds for his arrest were supplied to the petitioner before he was taken into custody. Paragraph 9(b) of the said affidavit in opposition, to the effect that the petitioner was arrested for committing cognizable offences and that the petitioner at the time of arrest was informed by him (deponent) that he was being arrested for abetment of committing offences mentioned above, does not advance the matter. On facts, therefore, it will have to be taken that at the time of the arrest, the petitioner was informed only of the particular sections of the Criminal Law Amendment Act and the Indian Penal Code for which he was being arrested.

Question, therefore, arises whether enumeration of sections of Criminal Law Amendment Act or of Indian Penal Code was proper compliance of the constitutional requirements as envisaged by Article 22(1) of the Constitution of India. It is well known and, in fact, often laid in England and in this country that the person arrested has not only to be given grounds for arrest but those grounds should be intelligible and detailed with all particularity. Similar matter came up for decision before a Division Bench of Allahabad

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in *Vimal Kishore Mehratra* v. *State of Uttar Pradesh and another* (1). The petitioner in the Allahabad case was informed that he had been arrested under section 7 of the Criminal Law Amendment Act, 1932. The learned Judges deciding the case observed:—

> "Section 7, Criminal Law Amendment Act prohibits several acts. It may be that prohibition of some of these acts is unconstitutional. But it does not follow that prohibition of other acts also is unconstitutional. It is possible to separate the valid part from the invalid parts. * * * * *
>
> The object underlying the provision in Article 22(1) that the ground of arrest should be communicated to the person arrested appears to be this. On learning about the ground for arrest, the man will be in a position to make an application to the appropriate Court for bail, or move the High Court for a writ of habeas corpus. Further, the information will enable the arrested person to prepare his defence in time for purposes of his trial. * * * *
>
> It is not necessary for the authorities to furnish full details of the offence. But the information should be sufficient to enable the arrested person to understand why he has been arrested. * * * * * Thus where the person is merely told that he had been arrested under section 7 of Criminal Law Amendment Act, 1932, it is not sufficient and there is contravention of

(1) A.I.R. 1956 All. 56

clause (1) of Article 22 of the Constitution."

The test laid would equally hold good to the instant case, for the only difference without distinction is that in addition to giving the section of the Criminal Law Amendment Act, 1932, the petitioner was told that he had been arrested for offences under section 143 read with section 117 of the Indian Penal Code. It is apparent that mere stating the sections of any penal provision is not giving information to the arrested of the grounds for which his liberty is curtailed. In England, the matter had been considered by the highest judicial authority as recently as 1947 in *Christie and another* v. *Leachinsky* (1). The House of Lords ruled that it is a condition of lawful arrest that the party arrested should know on what charge or on suspicion of what crime he is arrested. Lord Du Parcq at page 600 pointedly observed:—

> "Indeed, I find it difficult to believe that the appellants would have sought to defend their conduct if the fact had been that Mr. Leachinsky had been arrested and taken to prison without ever being given a reason for his arrest until he came before the Magistrate * * *. The omission to tell a person who is arrested at, or within a reasonable time of, the arrest with what offence he is charged cannot be regarded as a mere irregularity. Arrest and imprisonment, without a warrant, on a charge which does not justify arrest, are unlawful and, therefore, constitute false imprisonment, whether the person making the arrest is a policeman or a private individual."

(1) 1947 A.C. 573

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It is well recognised that at common law a man is not to be deprived of his liberty except in due course and process of law and that if a man is to be deprived of his freedom, he is entitled to know the reason why. Telling a person, he is arrested under some sections of some enactment is not providing him with any information, much less grounds of arrest.

It may be noticed that section 7 of the Criminal Law Amendment Act, 1932, deals with a number of offences. Mere informing a person that he is being arrested under section 7 of the Criminal Law Amendment Act, 1932, would not be giving him information as to which of the many offences as covered by section 7, is he being arrested for. Section 7, Criminal Law Amendment Act (XXIII of 1932), *reads*—

"7(1) Whoever—

(a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interfers with any property owned or used by him or deprives him of or hinders him in the use thereof, or

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and

with intent that any person may thereby be deterred from entering or approaching or dealing at such place,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

* * * *

* * * *."

Similarly, merely stating that the person is being arrested under section 143 read with section 117 of the Indian Penal Code gives no information either. Section 143 is a punishment section for being a member of an unlawful assembly. "Unlawful assembly" is defined in section 141 of the Indian Penal Code and covers a number of different subject-matters. It reads:—

"141. An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

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Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."

Section 117, Indian Penal Code, is abetment section. Therefore, merely telling that the person was being arrested under section 143 read with section 117, Indian Penal Code, did not provide him with information as to which of the many unlawful acts covered by section 141, Indian Penal Code, he was abetting.

For all these considerations, I have no hesitation in concluding that the arrest of the petitioner in the instant case was wholly repugnant to the constitutional guarantee as contemplated by Article 22(1) of the Constitution of Iudia.

Another point urged on behalf of the petitioner was that the detenue had not been produced before the Magistrate within 24 hours of his arrest

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as contemplated by the provisions of Article 22(2) of the Constitution of India, and, therefore, the detention was claimed to be illegal. In the alternative, it was submitted that even if it be found that the detenue had been produced before the Magistrate as required by Article 22(2) of the Constitution, his present detention was unsustainable, for there had been no direction remanding him to legal custody.

As regards this aspect, Assistant Advocate-General appearing for the State by reference to the police and lower Court's records brought to my notice that the detenue was arrested at about 3 p.m. on 7th January, 1959, and it was at about 5 or 6 p.m. that he was produced before the Magistrate and remanded to police custody with the direction that he along with other accused be produced on 16th. The matter appears to have come up again before the learned Magistrate meanwhile on 14th when some of the accused tendered apology and were allowed to go, whereas the detenue appeared on 16th January, 1959. The Magistrate's order of 16th January, 1959, is merely to the effect that the case should come up on some future date indicated, but there is no order or direction remanding the accused to custody. Though, therefore, I am satisfied that the provisions of Article 22(2) of the Constitution of India had been complied with, the custody of the detenue after 16th January, 1959, was not in pursuance of any legal order remanding the accused to police custody. It may be pointed out here that section 344 of the Code of Criminal Procedure requires that in the event of postponement of the commencement of, or adjournment of any enquiry or trial, the Court had to give reason in writing and the accused had to be remanded to custody by a warrant in that behalf. Mere direction, therefore, that the case may

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come up on the next date fixed is not proper compliance of section 344 of the Code of Criminal Procedure, and if there is, as is apparent, no legal order remanding the accused to police custody, the detention obviously would be questionable.

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The learned Assistant Advocate-General for the State had no real answer to the contentions raised but suggested that in any event today (at the time of the hearing of the petition) the detenue was in proper legal custody, for the challan for those offences had meanwhile been put in Court. The submission is wholly untenable. In point of time, the question has to be settled whether at the time of arrest of the detenue, the detention was legal or not.

For all these reasons and considerations, I have no manner of doubt that the detention of the petitioner on the day he was taken into custody, e.g., 7th January, 1959, was wholly illegal. In this view, this petition must succeed and the petitioner detenue must regain his liberty forthwith.

R.S.

APPELLATE CIVIL

Before I. D. Dua, J.

SHRIMATI DAYAL KAUR,—*Appellant.*

versus

BALWANT SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 429 of 1954.

1959

Feb., 6th

Customary Law—Ambala District—Sainis of Kharar Tehsil—Widow remarrying her deceased husband's brother—Whether forfeits her rights over her deceased husband's property—Widow's unchastity—Whether entails