Atma Parkash v. Harbans Lal

Shamsher Bahadur, J.

certificate was granted as late as 16th of August, 1961 and the amending legislation came into force on 12th of March, 1963.

These appeals, therefore, fail and are dismissed. In the circumstances, I would make no order as to costs.

B.R.T.

FULL BENCH

Before Mehar Singh, A. N. Grover, D. K. Mahajan, H. R. Khanna and S. K. Kapur, JJ.

Khacheru Ram,—Petitioner

versus

DISTRICT MAGISTRATE AND ANOTHER,—*Respondents.*

Criminal Writ No. 7-D of 1965.

1965

August, 8th.

Defence of India Rules (1962)—*Rule* 30—*Activities of a person for which he was tried in courts of law and was either acquitted or convicted—Whether can furnish the basis for an order of detention under rule* 30—*Grounds on which detention order can be challenged stated.*

Held, that although a person had been acquitted of a certain offence, he could still be detained with regard to that very offence. There may not be evidence which would justify a conviction and yet there may be materials placed before the detaining authority which might satisfy it as to the prejudicial conduct of the detenu. The past conduct or antecedent history of a person can be taken into account by the detaining authority as it is largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. Such past conduct or antecedent history on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of that person is necessary.

Held, further that a detention order made under rule 30 of the Defence of India Rules can be challenged either under section 491(1) (b) of the Code of Criminal Procedure or Article 226(1) of the Constitution on all such grounds on which its validity or legality could always be challenged except for the enforcement of such rights as are conferred by Part III of the Constitution which may be mentioned in the Presidential order declaring an emergency under Article 359 of the Constitution. It is inexpedient

and unreasonable to lay down any inflexible test about the validity of the satisfaction of the detaining authority as that will have to be considered on the facts of each case in the light of the principles laid down in the various decisions of the Supreme Court.

Held, also, that although ordinarily there is no justiciable right of a detenu to question either his order of detention or the terms or restrictions imposed under the Defence of India Rules by virtue of any alleged violation of section 44 of the Defence of India Act which is directory but the validity of the detention can be canvassed on two main bases or grounds. The first of these is that the authority concerned has exceeded the ambit of its power conferred by the legislature, i.e., where the particular authority has no such power or the power is not given in respect of certain classes of persons or categories of property and it is purported to be exercised. Secondly, there is always the saving clause of a colourable exercise of the power or an exercise of it lacking *bona fides,* and animated by some ulterior object, shown to the satisfaction of the Court.

Petition under Article 226 of the Constitution of India read with Section 491 Cr. P.C. praying for the issue of a writ in the nature of habeas corpus for the production of petitioner now detained in the Central Jail, New Delhi.

SHER NARAIN, ADVOCATE, for the Petitioner.

B. DAYAL, M. K. CHAWLA, D. R. SETHI AND KASHAV DAYAL, ADVOCATES, for the Respondents.

ORDER OF THE HIGH COURT

GROVER, J.—This is a petition under Article 226 of the Constitution and section 491, Criminal Procedure Code, for a writ in the nature of habeas corpus for the production of the petitioner and for his release from detention. Grover, J.

By an order, dated 23rd September, 1964, which appears to be on the usual cyclostyled form, the District Magistrate of Delhi directed the detention of the petitioner in the Central Jail, Tehar, New Delhi, under rule 30 of the Defence of India Rules, 1962. In the order it was stated that the District Magistrate was satisfied from information received that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. In the petition as originally filed in January, 1965, all that was stated by the petitioner was that he was being

Khacheru Ram
v.
District
Magistrate
and another

Grover, J.

detained by the District Magistrate without any reasons having been given for his detention and that the usual procedure for the trial and punishment of offences had not been followed. This petition was admitted on 27th January, 1965 by Falshaw, C.J., and Mehar Singh, J. and the detenu was ordered to be produced on 8th February, 1965. The District Magistrate filed an affidavit, dated 6th February, 1965, saying that the petitioner had figured in as many as 24 cases since 1946 and had been convicted in a number of them. In paragraph 2 of that affidavit, it was stated:—

> "Although there is usual procedure in law for the trial and punishment of offences committed by a man, yet the petitioner's detention is justified in view of rule 30-A of the Defence of India Rules, 1962."

It was further stated that if the petitioner remained at large, it would be hazardous to the community and his criminal activities were prejudicial to the maintenance of law and order. On 8th February, 1965, Gurdev Singh, J., in view of the denial of the petitioner that he had been prosecuted in 24 cases directed that the District Magistrate should supply details of the cases in which he had been convicted indicating the result of any appeal or revision filed in those cases. The District Magistrate supplied the detail by an affidavit, dated 15th February, 1965 without complying with the order of this Court in the matter of stating the result of any appeal or revision preferred in those cases. On 16th February, 1965, the learned Judge made another order asking for the necessary information. On 18th February, 1965, the District Magistrate gave the information about the result of the appeals and the revision petition filed in items Nos. 1, 5, 9, 10, 13 and 18 in his affidavit, dated 15th February, 1965. The petitioner also filed another affidavit, dated 3rd March, 1965, saying that out of 23 cases, he was convicted only in five and in all the remaining cases he was either acquitted or discharged. The last order convicting him was passed in 1960 in a case in which he was sentenced to three months' rigorous imprisonment under section 12 of the Madras Habitual Offenders Act. It was further alleged in this affidavit that the order of the District Magistrate was *mala fide* and based on extraneous considerations and there was

no connection between the petitioner's previous conviction and the object of rule 30 of the Defence of India Rules. The reply of the District Magistrate contained in paragraph 7 of his affidavit, dated 4th March, 1965, was as follows:—

"Paragraph 7 as stated does not give complete picture though it is correct that the petitioner was convicted in 5 cases, once under section 308 Indian Penal Code and the other under the Arms Act, and the third he was convicted under section 394 Indian Penal Code and his conviction has been upheld by this Hon'ble Court. In the fourth case, he was convicted under section 147/148/149/32, Indian Penal Code and the revision was dismissed by this Hon'ble Court on 19th April, 1963, and, in the last case, he was convicted under section 12 of the Madras Habitual Offenders Act and the appeal of the petitioner was dismissed on 29th October, 1963 by the Additional Sessions Judge, Delhi. After the last conviction, the petitioner was proceeded against under section 110 Criminal Procedure Code on 25th May, 1961. He was bound down under section 110 Criminal Procedure Code on 31st January, 1963 and was ordered to furnish a personal bond and a surety bond in the sum of Rs. 5,000 each from the Court of Shri Balbir Singh, Sub-Divisional Magistrate, Delhi (D. D. No. 5, dated 25th May, 1961 under section 110 Criminal Procedure Code, P. S. Roshanara). On 27th December, 1961, he, along with his two associates, assaulted Bishamber Nath, Traffic Constable, on duty outside Kashmere Gate, but was discharged. Thereafter, the petitioner was involved in three cases, but was acquitted."

The facts which emerged out of the various affidavits thus filed by the District Magistrate have been stated by the learned Single Judge in his order of reference to full Bench, dated 10th March, 1965, and may be reproduced in his own words:—

"* * * *The petitioner was acquitted or discharged in 19 cases, and his conviction was recorded only in five cases. His earliest conviction was on 5th July, 1946, under section 308 of

Khacheru Ram
v.
District
Magistrate
and another

Grover, J.

the Indian Penal Code when he was sentenced to three months' rigorous imprisonment. Thereafter he was convicted in two cases under the Arms Act in the years 1950 and 1953, and in the year 1954 he was further convicted under section 394 of the Indian Penal Code. On 13th November, 1960, he was convicted along with some others under sections 147/148/149 of the Indian Penal Code, and his last conviction was recorded on 18th December, 1960, under the Madras Habitual Offenders Act, 1948, when he was sentenced to three months' rigorous imprisonment by the Sub-Divisional Magistrate, Delhi. Thereafter, he was bound down on 31st January, 1963, under section 110 of the Criminal Procedure Code."

It is, however, clear from the affidavit, dated 15th February, 1965 of the District Magistrate that the petitioner had quite an impressive record of the cases in which he was tried since the year 1946, their total number up to 1964 being 24 and in most of those cases in which he had been discharged or acquitted it was stated that the petitioner appeared to have prevailed upon the witnesses either not to give evidence or not to depose against him.

Gurdev Singh, J., referred to the previous decisions of this court as also the pronouncements of the Supreme Court and considered that the points arising in this petition should be decided by a larger Bench and that is how it has been placed before us for disposal.

The main point which was argued before the learned Single Judge and which has been debated before us relates to the question whether the activities of the petitioner for which he was tried in Courts of law and was either acquitted or convicted could furnish any basis for an order of detention under rule 30 of the Defence of India Rules and whether the order of the District Magistrate was *mala fide* in law and was based on ulterior and extraneous considerations.

Now, under rule 30 of the Defence of India Rules a person can be detained if the detaining authority is satisfied that with a view to preventing him from acting in any manner prejudicial to the Defence of India and Civil Defence, the public safety, the maintenance of public

order, etc., it is necessary so to do. Since the order of the District Magistrate was made under the head "maintenance of public order" it is necessary to first discuss the meaning of the expression "public order" which now appears to have been settled by the pronouncements of the Supreme Court. In *Brij Bhushan* v. *The State of Delhi* (1), the question raised related to the validity of section 7(1)(c) of the East Punjab Public Safety Act, 1949, as extended to the province of Delhi. That section contained the words "public safety or the maintenance of public order". Fazl Ali, J., was of the view that "public order" might well be paraphrased in the context as public tranquillity and the words "public safety" and "Public order" might be read as equivalent to "security of the State and public tranquillity". Patanjali Sastri, J. (as he then was), who delivered the majority judgment, endorsed the view expressed in *Romesh Thappar* v. *The State of Madras* (2). In that case, section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949, was struck down on the ground that it was not covered by the reservation contained in clause (2) of Article 19 of the Constitution as it authorised imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order which fell outside the scope of authorised restrictions under clause (2). The following observations of Patanjali Sastri, J., at page 128 may be reproduced:—

> "The Constitution thus requires a line to be drawn in the field of public order or tranquillity marking off, more or less roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance treating for this purpose differences in degree as if they were differences in kind."

Article 19(2) of the Constitution was amended by the Constitution (First Amendment) Act, 1951, which came into force on 18th June, 1951 and the words "public order" which were not to be found in that provision before the amendment appeared therein after the amendment. In

(1) A.I.R. 1950 S.C. 129.
(2) A.I.R. 1950 S.C. 124.

Khacheru Ram
v.
District
Magistrate
and another

Grover, J.

Sodhi Shamsher Singh v. *The State of Pepsu* (3), the detenus were alleged to have published and distributed pamphlets which were couched in the most filthy and abusive language and amounted to a vitriolic attack upon the character and integrity of the then Chief Justice of Pepsu. The question arose whether the order of detention made under section 3 of the Preventive Detention Act, 1950, should be held to be illegal on the ground that those pamphlets could not have any rational connection with the maintenance of law and order in the State. B. K. Mukerjee, J. (as he then was), observed that the publication and distribution of the pamphlets in question could not have any rational connection with the maintenance of law and order in the State or prevention of acts leading to disorder or disturbance of public tranquillity. It may be mentioned that the words "maintenance of public order" occur in section 3(1) of the Preventive Detention Act also. In *The Superintendent, Central Prison* v. *Dr. Ram Manohar Lohia* (4), the main question raised was of interpretation of the words "in the interest of public order" in Article 19(2) of the Constitution. After considering the position before the amendment of Article 19(2) as also after the amendment, Subba Rao, J., speaking for the Court said that in order to get over the effect of the decisions in the cases of *Ramesh Thapper and Brij Bhushan* (*supra*) the expression "public order" was inserted in Article 19(2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offence involving breach of purely local significance within the scope of permissible restrictions under clause (2) of Article 19. In view of the history of the amendment it could be postulated that "public order" was synonymous with public peace, safety and tranquillity. In paragraph 18 while giving the summary of the discussion, Subba Rao, J., said—

> " 'Public order' is synonymous with public safety and tranquillity: 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."

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(3) A.I.R. 1954 S.C. 276.
(4) A.I.R. 1960 S.C. 633.

He, further, followed the view expressed by the Federal Court in *Rex* v. *Basudeva* (5) that limitation imposed in the interest of public order should be one which has a proximate connection or nexus with public order and that it should not be one which is far fetched, hypothetical or problematical or too remote in the chain of its relation with the public order. In the presence of the above authoritative pronouncements it is altogether unnecessary to elaborate further the content and amplitude of the expression "public order".

Before adverting to the decisions of this Court relating to preventive detention, it is essential to consider the principles laid down by the Federal Court and the Supreme Court about the scope of interference by the High Courts in such matters. In *Machinder Shivaji v. The King* (6), the detention of one Machinder Shivaji had been ordered by the Provincial Government under section 2(1)(a) of the C.P. and Berar Public Safety Act, 1948. That provision authorised the detention of any person if the Provincial Government was satisfied that he was acting or was likely to act in a manner prejudicial to the public safety or tranquillity. Patanjali Sastri, J. (as he then was) delivering the judgment of the Court observed as follows:—

> "The language clearly shows that the responsibility for making a detention order rests on the provincial executive, as they alone are entrusted with the duty of maintaining public peace, and it would be a serious derogation from that responsibility if the Court were to substitute its judgment for the satisfaction of the executive authority and, to that end, undertake an investigation of the sufficiency of the materials on which such satisfaction was grounded."

It was, however, laid down that the Court could examine the grounds disclosed by the Government to see if they were relevant to the object which the legislation had in view, namely, the prevention of Acts prejudicial to public safety and tranquillity, for satisfaction "must be grounded on material which was of rationally probative value." *In the State of Bombay* v. *Atma Ram Shridhar Vaidya* (7), the detention which had been challenged had been

(5) A.I.R. 1950 F.C. 67.
(6) A.I.R. 1950 F.C. 129.
(7) A.I.R. 1957 S.C. 157.

Khacheru Ram
v.
District
Magistrate
and another

Grover, J.

made under the Prevention Detention Act. Kania C.J. delivering the majority judgment of the Court stated the true legal position thus—

> "If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of *mala fide* cannot be challenged in a Court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the Court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a Court. But which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government."

Patanjali Sastri, J. (as he then was), who dissented from the view expressed in the majority judgment on certain other matters which were different from the question which is being discussed, said that preventive detention was a form of precautionary police action to be employed on the sole responsibility of the executive Government whose discretion was final, no recourse being permitted to a Court of Law by way of review or justification of such action except on allegations of *mala fide* or *irrational* conduct. In *Ashutosh Lohiry* v. *The State of Delhi* (8), Das, J. (as he then was) observed that the satisfaction of

(8) A.I.R. 1953 S.C. 451.

the authority making the order as to the matters specified in the Preventive Detention Act was the only condition for the exercise of its powers and that the Court could not substitute its own satisfaction for that of authority. It was, however, open to the detenu to establish, if he could, that the order was made *mala fide* and in abuse of powers. Mukerjea, J. (as he then was) said that the order of detention could be declared invalid if it could be proved to have been made by the authority concerned in *mala fide* exercise of its power. But the burden of proving the absence of good faith was upon the petitioner. The decision in *Sodhi Shamsher Singh's case* (3) has already been noticed. It was laid down in clear terms therein that the propriety or reasonableness of the satisfaction of the Central or the State Government upon which an order for detention under section 3 of the Preventive Detention Act was based, could not be raised and the Supreme Court could not be invited in a petition under Article 32 of the Constitution to undertake an investigation into sufficiency of the matters upon which such satisfaction purported to be grounded. The Supreme Court could, however, examine the grounds disclosed by the Government to see if they were relevant to the object which the legislation had in view, namely, the prevention of objects prejudicial to the defence of India or to the security of State and maintenance of law and order therein. In *Shibban Lal Saksena* v. *State of Uttar Pradesh* (9), their Lordships, while reaffirming the principles already laid down, again said that the sufficiency of the grounds upon which such satisfaction purported to be based, provided they had a rational probative value and were not extraneous to the scope or purpose of the legislative provision could not be challenged in the Court of law except on the ground of *mala fide*.

In *Dwarka Das Bhatia* v. *The State of Jammu and Kashmir* (10), an order of detention under section 3(1) of the J. & K. Preventive Detention Act, 2011, was made on the ground that the petitioner was engaged in unlawful smuggling activities relating to three commodities, cloth, *zari* and mercury. The detenu in that case had been detained with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and service essential to the community. Their Lordships while

(9) A.I.R. 1954 S.C. 179.
(10) A.I.R. 1957 S.C. 164.

Khacheru Ram
v.
District
Magistrate
and another

Grover, J.

striking down the order said that the principle which was deducted from various decisions of the Federal Court and the Supreme Court was that where power was vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction was stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them were found to be non-existent or irrelevant, the very exercise of that power was bad. In *Rameshwar Shaw* v. *District Magistrate* (11), an order of detention under section 3(1) of the Preventive Detention Act had been made by the District Magistrate of Burdwan against one Rameshwar Shaw, Gajendragadkar, J. (as he then was) delivering the judgment of the Court reiterated the following principles with regard to the scope of interference by the Courts in such matters:—

(1) The reasonableness of the satisfaction of the detaining authority cannot be questioned in a Court of law nor can the Court examine the adequacy of the material on which the said satisfaction purports to rest.

(2) If any of the grounds furnished to the detenu are found to be irrelevant and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order can be quashed.

(3) Though the satisfaction of the detaining authority contemplated by section 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of *mala fides* and in support of the said plea urge that along with other facts which show *mala fides* the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in support of the plea of *mala fides* that this question can become justiciable; otherwise the reasonableness

(11) A.I.R. 1964 S.C. 334.

or propriety of the said satisfaction contemplated by section 3(1)(a) cannot be questioned before the Courts.

(4) The past conduct or antecedent history of a person can be taken into account by the detaining authority as it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. The past conduct or antecedents history of the person on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary.

(5) It is both inexpedient and unreasonable to lay down any inflexible test. The question about the validity of the satisfaction of the authority will have to be considered on the facts of each case.

(6) The detention of a person without a trial is a very serious encroachment on his personal freedom, and so, at every stage, all questions in relation to the said detention must be carefully and solemnly considered.

Any doubt which was sought to be created during the course of arguments before us whether the aforesaid principles laid down in cases under various preventive detention enactments would or would not be applicable to cases of detention under the Defence of India Rules has been set at rest by the decision of the Supreme Court in *Makhan Singh Tariskka* v. *The State of Punjab* (12), in which Gajenderagadkar, J. (as he then was) has considered what are the pleas which are now open to the citizens to take in challenging the legality or the propriety of their detentions made under the Defence of India Rules by means of an application under section 491(1)(b) of the Criminal Procedure Code or Article 226(1) of the Constitution. This is what has been said—

"Take also a case where the detenu moves the court for a writ of habeas corpus on the ground that

(12) A.I.R. 1964 S.C. 381.

Khacheru Ram
v.
District
Magistrate
and another

Grover, J.

his detention has been ordered *mala fide*. It is hardly necessary to emphasise that the exercise of a power *mala fide* is wholly outside the scope of the Act conferring the power and can be always successfully challenged. It is true that a mere allegation that the detention is *mala fide* could not be enough, the detenu will have to prove the *mala fide*. But if the *mala fides* are alleged, the detenu cannot be precluded from substantiating his plea on the ground of the bar created by Article 359(1) and the Presidential Order. That is another kind of plea which is outside the purview of Article 359(1). Section 491(1) deals with the power of the High Court to issue directions in the nature of the Habeas Corpus, and it covers six categories of cases in which such a direction can be issued. It is only in regard to that class of cases falling under section 491(1)(b) where the legality of the detention is challenged on grounds which fell under Article 359(1) and the Presidential Order that the bar would operate. In all other cases falling under section 491(1) the bar would be inapplicable and proceedings taken on behalf of the detenu will have to be tried in accordance with law. We ought to add that these categories of pleas have been mentioned by us by way of illustration, and so, they should not be read as exhausting all the pleas which do not fall within the purview of the Presidential Order."

The net result, therefore, is that a detention order made under rule 30 of the Defence of India Rules can be challenged either under section 491(1)(b) of the Code of Criminal Procedure or Article 226(1) of the Constitution on all such grounds on which its validity or legality could always be challenged except for the enforcement of such rights as are conferred by Part III of the Constitution which may be mentioned in the Presidential Order declaring an emergency under that provision. As has been stated in *Rameshwar Shaw's case* it is inexpedient and unreasonable to lay down any inflexible test about the validity of the satisfaction of the detaining authority as that will have to be considered on the facts of each case

in the light of the principles laid down in the various decisions referred to above. It will not be out of place to mention at this stage the latest decision of the Madras Court in *K. T. K. Thangamani* v. *The Chief Secretary, Government of Madras* (13), in which the scope of interference by the High Courts in orders made under rule 30 or 30-A of the Defence of India Rules was considered at length and the view that has been expressed is that although ordinarily there is no justiciable right of a detenu to question either his order of detention or the terms or restrictions imposed under the Defence of India Rules by virtue of any alleged violation of section 44 of the Defence of India Act which is directory but the validity of the detention can be canvassed on two main bases or grounds. The first of these is that the authority concerned has exceeded the ambit of its power conferred by the legislature, i.e., where the particular authority has no such power or the power is not given in respect of certain classes of persons or categories of property and it is purported to be exercised. Secondly, there is always the saving clause of a colourable exercise of the power or an exercise of it lacking *bona fides*, and animated by some ulterior object, shown to the satisfaction of the Court.

Coming now to the decisions of this Court, in *Bakhtawar Singh* v. *The State* (14), detention orders had been made under the Preventive Detention Act and the allegations contained in the groups applied to the detenus *inter alia* were that they were engaged in the smuggling of cloth and other supplies, the maintenance of which was essential to the community and in furtherance of that object they had indulged in activities prejudicial to the security of the State and the maintenance of public order. Falshaw J. (as he then was) found it difficult to see *prima facie* any connection whatever between smuggling which was essentially a secret operation and the maintenance of "public order" in which the operative words was "public". He found a good deal of force in the allegations made in the petition that the detentions were *mala fide* not on account of any spite of any individual police office but for the reason that all the detenus had been accused of persistently committing the offence of smuggling which was one that could be and could ordinarily be expected to be

(13) A.I.R. 1965 Mad. 225.
(14) A.I.R. 1951 Simla 157.

Khacheru Ram
v.
District Magistrate and another

Grover, J.

dealt with by the ordinary Criminal Courts. The learned Judge proceeded to say that in cases where offences like smuggling were involved with which the maintenance of public order and the safety of the State were very remotely connected, recourse to preventive detention appeared to be a complete confession of inefficiency on the part of the local authorities. Soni J., while concurring in the order of release, delivered a separate judgment in which he adverted to the question whether the grounds of detention were relevant to the maintenance of public order. He examined the import of the words "maintenance of public order" and said that the breaking out of civil commotion of riots or apprehension that riots would break out to such an extent that maintenance of peace would be threatened, was the kind of thing that had to be safeguarded and that is what was meant by the legislature when the aforesaid words were used. In *Ravinder Kumar* v. *District Magistrate* (15), the grounds which were supplied to the detenu showed that he had been detained because he was indulging in activities like thieving, gambling, excessive drinking, assaulting people etc. After considering the meaning of the words "maintenance of public order", I said that merely because a person is of a dangerous character or is breaking the law in one manner or the other, it does not mean that the maintenance of public order is being threatened unless the activities are of such a nature and the situation prevailing in a particular part of the country is such that if he is not detained, public order cannot be maintained or it would be endangered. I further said that the activities such as committing thefts, indulging in gambling, excessive drinking, etc., could possibly have no relevancy so far as the maintenance of public order was concerned. It is noteworthy that in *Bakhtawar Singh's case* and in my previous decision, the real reason for striking down the detention order was that the activities alleged against the detenu were not considered rational to the object of detention, namely, the maintenance of public order, for instance, smuggling in the first case and drinking, gambling, etc. in the second case could not properly be considered as having a proximate connection or nexus with public order and, therefore, the detention orders were rightly quashed according to the law laid down in various decisions of the Supreme Court. It is true that in *Ravinder Kumar's case* I expressed my view

(15) 1960 P.L.R. 339.

about the meaning of "maintenance of public order" according to what has been said by the Rajasthan Court in *Umraomal* v. *State of Rajasthan* (16), and the Patna Court in *Lalu Gope* v. *The King* (17), but now the law has been settled by the Supreme Court in *The Superintendent, Central Prison* v. *Dr. Ram Manohar Lohia* (4), and what has been laid down there about the meaning and content of "public order" will have to be kept in the forefront while disposing of the present petition.

In *Harivansh* v. *The Superintendent, Central Jail* (Criminal Writ No. 10-D of 1963 decided on 9th December, 1963) the petitioners had been detained under rule 30 of the Defence of India Rules. It was admitted by the counsel for the petitioner that it was not necessary for the District Magistrate to say anything more in the order except that he was satisfied from information received that it was necessary to detain the particular individual with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The argument proceeded on the footing that the grounds considered by the Administrator when reviewing the detention orders were much the same as those which the District Magistrate had in mind. A sample of those grounds was like this—

> "* * * *Sham Lal has taken to crime as a career and has been living on bootlegging and extortion of money from law-abiding citizens. His criminal history dates back to the year 1951 and his activities have since then continued unabated. Through his persistent criminal acts, Sham Lal established that his remaining at large would be highly prejudicial to the maintenance of public order."

A Bench consisting of Dulat and Capoor JJ. felt that the suggestion that a person who had adopted crime as a career or went about extorting money from people was not engaged in any activity prejudicial to public order; was futile for that individual certainly "disturbs the State of internal regulations". Moreover, such activities were perfectly relevant to the question of public order. The

(16) A.I.R. 1955 Raj. 6.
(17) A.I.R. 1949 Pat. 299.

Khacheru Ram
v.
District
Magistrate
and another

Grover, J.

Bench, therefore, did not agree that in law the detention order was *mala fide*. It is apparent, however, that before the learned Judges the argument was directed more towards inadequacy of the grounds than to their irrelevancy. In *Shanti Devi* v. *The District Magistrate* (Criminal Writ No. 79-D of 1964) decided by Bedi, J. on 10th November, 1964, the allegations in the affidavits before the Court against the detenu were that he had taken to life of crime since 1961 under the garb of share-broker. He had no ostensible means of livelihood and lived on cheating alone. In 1961 he had cheated Lt. J. V. Nagareth of Indian Navy of Rs. 1,180 for which he was standing trial in a case under sections 420 and 401 of the Indian Penal Code. There were other allegations of cheating against him of various persons for which he was standing trial in some of the cases. It was, therefore, alleged that his activities were a standing menace to the society and were highly prejudicial to the maintenance of public order. The learned judge held that the allegations against the detenu were only of cheating for which he could be punished by the criminal Courts under the Penal Code and his detention under the Defence of India Rules was not justified apparently on the ground that it was *mala fide* in law.

In *Smt. Shanti Devi* v. *S. G. Bose Mullick, District Magistrate* (Criminal Writ No. 94-D of 1964) decided by Falshaw C.J. and Mehar Singh J. on 20th January, 1965, it appeared from the order of the Administrator passed on review that the detenu who was detained under the Defence of India Rules was alleged to be a person of dangerous and desperate character who had no ostensible means of subsistence and thrived on the sale of tincture and extortions and who had taken to crime as career. The details given about his criminal record dated back to 1956 when he was convicted under section 394, Indian Penal Code, for snatching away a sum of Rs. 2,570 odd from one Hazari Lal, in 1961 one *tola* of *charas* and 50 ounces of illicit liquor with a working still were recovered. In both these offences he was convicted under the Excise Act. He was suspected in a number of cases but had managed to subborn the witnesses. He was, therefore, of a dangerous character and a constant menace to the law-abiding citizens. Falshaw C.J. delivering the judgment of the Bench referred to certain orders of Bedi J. in which in similar circumstances he had directed release of the

detenus. He also referred to my decision in *Ravinder Kumar's case* and accorded approval to the view taken by me. It was considered that in the sense of the term "public order" as laid down in *Romesh Thappar's case* there was hardly any connection between the activities for which the detention had been ordered and the maintenance of public order. The detention order was struck down on the ground that rule 30 was being applied for a purpose for which it was never intended and *mala fides* had been established in that manner. Although this decision was based mainly on the narrower meaning of the words "public order" which had been laid down in *Romesh Thappar's* case but there could be little doubt, with respect, about the correctness of this decision. The only offence which could have some connection with "public order" was committed in 1956 for which the detenu had been punished and the offences from 1960 onwards which were more proximate in time were of a petty nature punishable under the Excise laws and they could not be regarded as having a rational connection with "public order". In *Mool Chand* v. *District Magistrate* (Criminal Writ No. 104-D of 1964) decided by Gurdev Singh J. on 25th January, 1965, the detention of Sher Singh had been ordered under the Defence of India Rules. The learned Judge found from the affidavit filed by the District Magistrate that apart from the allegation of his prosecution under section 392, Indian Penal Code, in the year 1959 there was no detail of any other activities which justified his detention under rule 30(1). Referring to a general averment made in the affidavit of the District Magistrate that from the report of the Superintendent of Police, C.I.D., it appeared that the detenu was not only a notorious gambler but also indulged in heinous crime like robbery etc. The learned Judge observed that since the details of the activities had not been given, his detention could not be regarded as justified on the ground of any danger to public order or tranquillity and that it was in that sense *mala fide* having been made for a purpose for which it was never intended. The Bench decision in *Smt. Shanti Devi's case* as also my decision in *Ravinder Kumar's case* were followed. This decision cannot be open to any criticism because the only specific activity which had been alleged against the detenu dated back to 1959 which was not proximate in time to the date of the order of detention and nothing else was stated against him except the general allegations of being a notorious

Khacheru Ram
v.
District Magistrate and another

Grover, J.

gambler etc. It will thus be seen that with the exception of the decision of Dulat and Capoor JJ. in *Harivansh's case* there is no difficulty in holding that all the other cases decided by this court, although they proceeded on the narrow meaning of the expression "public order" as laid down in *Romesh Thappar's case,* were, with respect, correctly decided according to the principles applicable to such cases which have been discussed before. It had been suggested by the learned counsel for the petitioner that the only ground on which the detenus had been detained in *Harivansh's case,* was that they had taken to crime as a career in bootlegging and extortion of money from law abiding citizens on intimidation. No details of their activities were given in those cases. In one of the writs (Criminal Writ No. 3-D of 1963) decided by the Bench, the allegation was that he was living on bootlegging and extortion of money from law-abiding citizens on intimidation. It is also suggested that those grounds were vague and no specific activities of the detenus with regard to bootlegging and extortion of money on intimidation were mentioned. If bootlegging meant illicit smuggling, this decision was certainly in conflict with the earlier decision in *Bakhtawar Singh's case* which does not unfortunately appear to have been brought to the notice of the learned judges in that case. As regards the extortion of money and practising intimidation, they may or may not in certain circumstances become relevant to public order. That will depend on the facts of each case and it is altogether unnecessary to express any pedantic view on the matter. Even in that case the decision in *Dr. Ram Manohar Lohia's case* does not appear to have been cited. Nothing need further be said about that case because now we can seek guidance from the law laid down by the Supreme Court in the various decisions which have already been discussed.

Adverting to another aspect of the question which is being decided, there is good authority for the view that although a person had been acquitted of a certain offence, he could still be detained with regard to that very offence. There may not be evidence which would justify a conviction and yet there may be materials placed before the detaining authority which might satisfy it as to the prejudicial conduct of the detenu (see *Gajnan Krishna valgi*

v. *Emperor* (18), Chagla C.J., while delivering the judgment of the full Bench in *Maledath Bharathan Malyani* v. *The Commissioner of Police* (19), observed at page 205:—

> "As we have already pointed out, it would be open to the detaining authority, even where an offence has been committed, to fall back upon his powers under the Security Act rather than prosecute the person for an offence under the ordinary law. It may be that, in that particular case, the legal evidence may not be sufficient and the detaining authority may not like to risk the decision of the criminal Court, and the circumstances with regard to the security of the state may be so overpowering that the detaining authority might feel that the person should be detained notwithstanding the absence of legal evidence to warrant a conviction."

In that case, however, it was held that the police did not carry on investigation of the offence under the Criminal Procedure Code after the applicant was arrested under the criminal law and a secret investigation was carried on after detaining him under the Security Act. On these facts the Full Bench consisting of Chagla C.J., Gajendragadkar, J. (as he then was) and Dixit J. said that the only irresistible inference was that the purpose of detaining the applicant was a collateral purpose and that was to deprive him of his rights and safeguards under the Criminal Procedure Code and to carry on an investigation without the supervision of the Court. It was, however, laid down that when the detaining authority had made up its mind to detain a person who was alleged to have committed an offence, then the detaining authority had made its choice and it would not be permissible to it to investigate the offence while still keeping the person under detention and not complying with the provisions of the law with regard to investigation. If an extraneous circumstance influenced the making of the orders, then that order could never be said to have been made *bona fide* and even if the detaining authority was satisfied, still, in the eye of law, it was an order which was made for a collateral purpose, it was made *mala fide*, and it could not be sustained.

(18) A.I.R. 1945 Bom. 533.

(19) A.I.R. 1950 Bom. 202.

Khacheru Ram
v.
District
Magistrate
and another

Grover, J.

Looking at the details supplied with regard to the activities of the present petitioner from 1946 onwards they cover a wide range of offences of a varied character e.g., crimes of violence, breaches of peace, dacoity, burglary, illicit possession of hand-grenades, trespass, murder and possession of unlicensed arms. From 1960 onwards the petitioner is stated to have threatened persons with dire consequences as a result of which breach of peace was apprehended and appropriate proceedings under sections 107 and 151 and section 110, Criminal Procedure Code, were taken. In 1961 it is alleged that he assaulted Bishamber Nath, a Traffic Constable, on duty for which the petitioner was challaned. In February, 1962 he is alleged to have committed an affray at Dina Ka Talab. Similarly in March, 1962 he is stated to have attacked a police party which had surprised him with an unlicensed dagger. In August, 1964 he is alleged to have caught hold of Paras Ram, a resident of Chandrawal, and threatened him not to give evidence against him. It is true that in certain cases he was acquitted and in the others he was convicted, a resume of which has already been given in the earlier part of the judgment but the question is whether these activities are rational to and have a nexus with "public order". If that test is satisfied, then it is not for this Court to go into the question of reasonableness of the satisfaction of the detaining authority or the adequacy of the material on which the said satisfaction purports to rest. The past conduct or antecedent history of a person can be taken into account by the detaining authority as it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. The past conduct or antecedent history of the person on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary (vide *Rameshwar Shaw's case*, supra).

It is abundantly clear that such activities as have been alleged against the petitioner and on which his detention has been based, are rational to public peace, safety and tranquillity in the sense of disorder of local significance. It cannot, therefore, be said that there is no proximate connection between them and "public order"

or, in other words, there is no proximate and reasonable nexus between the activities of the petitioner and "public order". The petition is, therefore, dismissed.

Grover, J.

MEHAR SINGH, J.—I agree. Mehar Singh, J.
D. K. MAHAJAN, J.—I agree. Mahajan, J.
H. R. KHANNA, J.—I agree. Khanna, J.
S. K. KAPUR, J.—I agree. Kapur, J.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, and Jindra Lal, JJ.

SUBA SINGH AND OTHERS,—*Appellants.*

versus

SADHU SINGH AND ANOTHER,—*Respondents.*

R.S.A. No. 755 of 1961.

1965

August, 17th.

Code of Civil Procedure (Act V of 1908)—S. 152 & 0.47—Judgment or decree—When can be varied or modified under S. 152 and when under Order 47—Effect of variation or modification in each case on the appeal pending against the original decree.

Held, that it will have to be seen in each case whether the procedure laid down by Order 47 of the Code of Civil Procedure for review was followed in a particular case and if it has been followed and an amendment has been ordered, as a result of the review proceedings, in the judgment or decree, an appeal would lie from the amended judgment or decree and the appeal filed from the original judgment or decree would become incompetent and cannot be heard. If, however, the correction of an error has been made under section 152 of the Code, then no fresh judgment or decree comes into existence and the appeal from the decree, as originally passed, would be perfectly competent as the correction of a mistake or an error under the provisions of section 152 does not supersede the original judgment or decree. All that the court does is to rectify a clerical error arising from an accidental slip or omission and it is the duty of the court to correct it whenever it comes to its notice or is brought to its notice by any of the parties. In case the intention of the Court is quite clear and if by some clerical error or omission that intention is left in doubt or not properly effectuated, then use can be made of the powers under section 152 and indeed the Court is bound to correct such errors or mistakes which fall within the ambit of