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SAHIB SINGH DUGAL

v.

UNION OF INDIA

July 30, 1965

B

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

*Defence of India Rules, r. 30(1)(b)—Detention of person immediately after his discharge from a criminal case—Legality—Such detention whether mala fide.*

C

The petitioner was arrested on December 6, 1964 for an offence under s. 3 of the Official Secrets Act. On March 11 the investigating officer made a report to the Magistrate that there was insufficient evidence to charge the accused, and thereupon the Magistrate discharged the petitioner. Immediately after the petitioner came out of the jail he was served with an order under r. 30(1)(b) of the Defence of India Rules under which he was to be detained in order to prevent him from acting in a manner prejudicial to the defence of India, public safety, and India's relations with foreign powers. He was then arrested and sent to jail in accordance with the further orders of the Government of India under r. 30(4) of the Rules. In a petition under Art. 32 it was contended on behalf of the petitioner that in view of this Court's decision in *Rameshwar Shaw's* case the detention order was illegal; it was also illegal for the reason that in the circumstances of the case it was *mala fide*.

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HELD : (i) What was decided in *Rameshwar Shaw's* case was that when a person was already in jail and would continue in jail custody for an indefinite length of time it could not be postulated about him that if he was not detained he would act in a prejudicial manner. In the present case the petitioner was not to continue in jail indefinitely but on the other hand stood discharged in the criminal case. [316 G]

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It was further held in *Rameshwar Shaw's* case that the past activities on the basis of which detention order is passed against a person should ordinarily be proximate in time. In the present case the petitioner had been in jail only for three months and it could be said that the conduct of the petitioner before this period of three months was not proximate enough to justify an order of detention based on that conduct. [317 D]

*Rameshwar Shaw v. District Magistrate, Burdwan* [1964] 4 S.C.R. 921 distinguished.

G

*Smt. Godavari Shamrao v. State of Maharashtra*, A.I.R. 1964 S.C. 1128, referred to.

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(ii) It may very well be that the executive authorities felt that it was not possible to obtain a conviction for a particular offence under the Official Secrets Act; at the same time they might reasonably have come to the conclusion that the activities of the petitioner which had been watched for over two years before the order of detention was passed were of such a nature as to justify the order of detention. From the mere fact that the authorities decided to drop the case under the Official Secrets Act and thereafter to order the detention of the petitioner, it cannot be inferred that the order of detention was *mala fide*. [317 G-H]

ORIGINAL JURISDICTION : Writ Petitions Nos. 55 and 56 of 1965. A

Petitions under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

*R. Gopalakrishnan*, for the petitioners (in both the petitions). B

*R. Ganapathy Iyer* and *R. N. Sachthey*, for the respondent (in both the petitions).

The Judgment of the Court was delivered by

**Wanchoo, J.** These two writ petitions under Art. 32 of the Constitution for a writ of *habeas corpus* raise common questions and will be dealt with together. We may set out the facts in one of the petitions (namely Petition 55) in order to highlight the points raised on behalf of the petitioners. It is unnecessary to refer to the facts in the other petition as they are similar except that in the other case the original arrest took place on December 6 instead of December 8. C D

Sahib Singh Dugal, petitioner, was employed in the Posts and Telegraph Directorate of the Central Government. He was arrested on December 8, 1964 and put in jail as an under trial prisoner for an offence under s. 3 of the Official Secrets Act. Various remands were taken up to March 11, 1965 in connection with the criminal case against the petitioner. It appears that besides Dugal, eight other persons were also involved in the case under s. 3 of the Official Secrets Act, including Jagdev Kumar Gupta petitioner in petition No. 56 of 1965. On March 11, 1965, the Deputy Superintendent of Police who was apparently in-charge of the investigation made a report to the court to the effect that all the nine persons involved in that criminal case might be discharged as sufficient evidence for their conviction could not be discovered during the investigation. Consequently, the magistrate discharged all the nine persons including Sahib Singh Dugal and Jagdev Kumar Gupta petitioners and they were released from jail that very evening. Immediately after Sahib Singh Dugal came out of the jail, he was served with an order under 30(1)(b) of the Defence of India Rules (hereinafter referred to as the Rules) This order was passed by the Government of India and provided that Dugal be detained in order to prevent him from acting in a manner prejudicial to the defence of India, public safety and India's relations with foreign powers. Dugal was then arrested and detained in the Central Jail, Tehar, New Delhi in accordance E F G H

- A with the further order of the Government of India under r. 30(4) of the Rules.

B The case of the petitioners before us is two-fold. In the first place they rely on the decision of this Court in *Rameshwar Shaw v. District Magistrate, Burdwan*<sup>(1)</sup> and their case is that in view of that decision the order of their detention and the service of that order are illegal and they are therefore entitled to release. In the second place, it is urged that the order of detention is *mala fide* in the circumstances of the case and therefore should be set aside. The Union contests the petitions and urges that *Rameshwar Shaw's* case<sup>(1)</sup> has no application to the present cases and that there was C no *mala fide* intention in making the orders of detention.

We shall first consider whether the orders in the present cases are covered by the decision of this Court in *Rameshwar Shaw's* case<sup>(1)</sup> and should therefore be set aside. It is necessary in this connection to refer to the facts in that case. *Rameshwar Shaw* D was ordered to be detained by an order passed on February 9, 1963. This order was served on him on February 15, 1963. At that time he was in Burdwan jail. He had been in that jail for sometime past in connection with a criminal complaint pending against him. Therefore, both when the order was passed and when it was served on *Rameshwar Shaw*, he was already in jail in connection with the criminal case pending against him and it was not E known how long he would remain in jail in that connection. It was also impossible to say at that stage whether he would be convicted in the criminal case or acquitted. It may be mentioned that that was a case of detention under the Preventive Detention Act where grounds and particulars are supplied to the detenu. F But the main question that was decided therein was that where a person was already in jail for an indefinite length of time in connection with a criminal case pending against him it would not be possible for the authority to come to the conclusion that such a person's detention is necessary in order to prevent him from acting in a manner prejudicial to the public safety etc. It was G pointed out that the scheme of the section postulates that if an order of detention is not passed against a person he would be free and able to act in a prejudicial manner; but when the person against whom an order is passed is already in jail for an indefinite length of time or for a long time to come (say when he is undergoing sentence of imprisonment for a number of years) it could H hardly be said that such a person would act in a manner prejudicial to the public safety etc. unless he is detained. In such a case preven-

(1) [1964] 4 S. C. R. 921.

tive detention would be unnecessary for the person concerned is already in jail for an indefinite length of time or for a long time. In *Rameshwar Shaw's* case<sup>(1)</sup>, he was in jail in connection with the criminal case pending against him for an indefinite length of time. It was in those circumstances that this Court held that the authority ordering detention could not legitimately come to the conclusion that the detention of the person was necessary to prevent him from acting in a manner prejudicial to the public safety etc. for in coming to that conclusion the authority had to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If such a person was already in jail custody for an indefinite length of time it could not be postulated about him that if he was not detained he would act in a prejudicial manner.

This matter was again considered by this Court in *Smt. Godavari Shamrao v. The State of Maharashtra*.<sup>(2)</sup> That was a case where a certain person had been detained under the Defence of India Rules. Later, this order was revoked and another order was passed to remove some technical defects. The latter order was challenged as illegal as it was passed at the time when the person concerned was in detention and it was also served on her in jail. This Court held that the second order of the State Government after it had decided to revoke the earlier order was perfectly valid so far as the time of making the order was concerned and its service on the detenu who was detained not as an undertrial or as a convicted person could not be assailed, and the case of *Rameshwar Shaw*<sup>(1)</sup> was distinguished.

It will be noticed that the facts of the present two cases differ from the facts of *Rameshwar Shaw's* case<sup>(1)</sup> in one material particular. Rameshwar Shaw was in jail in connection with the criminal case pending against him for an indefinite duration. The order of detention as well as the service of that order was made on Rameshwar Shaw when he was in jail for an indefinite period in connection with the criminal case pending against him. In the present cases it is true that the petitioners had been in jail for about three months before the order of detention was made against them. But there is a significant difference in the present cases, namely, that the executive authorities had decided that the criminal case against the petitioners could not succeed for want of sufficient evidence and applied for the discharge of the petitioners. It was in these circumstances that the executive authorities decided to

(1) [1964] 4 S. C. R. 921.

(2) A. I. R. (1964) S. C. 1128.

A pass an order of detention. So on March 11 a report was made to the magistrate that the petitioners should be discharged as there was not sufficient evidence for their conviction and on the same date the order for their detention was passed under the Rules. Further it was served on the petitioners immediately after their release from jail. In these circumstances, the *ratio decidendi* of B *Rameshwar Shaw's case*<sup>(1)</sup> will not apply, for the authorities had decided to drop the criminal case and ask for the discharge of the accused. Then they considered whether there was justification for the detention of the petitioners under the Rules and decided to detain them. As was pointed out by this Court in *Rameshwar Shaw's case*<sup>(1)</sup> detention is made generally in the light of the C evidence about the past activities of the person concerned. But these past activities should ordinarily be proximate in point of time in order to justify the order of detention. In the present cases the petitioners had been in jail for only three months before the order of detention was passed. It cannot be said that the D conduct of the petitioners before this period of three months is not proximate enough to justify an order of detention based on that conduct. As a matter of fact, the affidavit on behalf of the Government of India is that the material in respect of the activities of the petitioners ranged over a period of two years before the date of detention and that was taken into account to come to the E conclusion whether the detention under the Rules was justified or not. We are therefore of opinion that the petitioners cannot get advantage of the decision of this Court in *Rameshwar Shaw's case*<sup>(1)</sup> on the facts in the present cases.

The next contention on behalf of the petitioners is that the order is *mala fide*. The reason for this contention is that it was F originally intended to prosecute the petitioners under s. 3 of the Official Secrets Act and when the authorities were unable to get sufficient evidence to obtain a conviction they decided to drop the criminal proceedings and to order the detention of the petitioners. This by itself is not sufficient to lead to the inference G that the action of the detaining authority was *mala fide*. It may very well be that the executive authorities felt that it was not possible to obtain a conviction for a particular offence under the Official Secrets Act; at the same time they might reasonably come to the conclusion that the activities of the petitioners which had been watched for over two years before the order of detention was H passed were of such a nature as to justify the order of detention. We cannot infer merely from the fact that the authorities decided

(1) [1964] 4 S. C. R. 921.

to drop the case under the Official Secrets Act and thereafter to order the detention of the petitioners under the Rules that the order of detention was *mala fide*. As we have already said, it may not be possible to obtain a conviction for a particular offence; but the authorities may still be justified in ordering detention of a person in view of his past activities which will be of a wider range than the mere proof of a particular offence in a court of law. We are not therefore prepared to hold that the orders of detention in these cases were *mala fide*.

The petitions therefore fail and are hereby dismissed.

*Petitions dismissed.*