1952

Dec. 10.

MAKHAN SINGH TARSIKKA

v.

THE STATE OF PUNJAB

[PATANJALI SASTRI C. J., MEHR CHAND MAHAJAN, MUKERJEA, DAS and CHANDRASEKHARA AIYAR JJ.]

Preventive Detention Act (IV of 1950 as amended in 1951), ss. 3(i), 9, 11, 12—Order of detention fixing period of detention in initial order itself before reference to Advisory Board—Legality—Deprivation of personal liberty—Duty to follow procedure strictly.

Whatever might be the position under the Preventive Detention Act of 1950 before it was amended in 1951, under the Act as amended in 1951, the Government should determine what the period of detention should be only after the Advisory Board to which the case is referred reports that the detention is justified. Fixing of the period of detention in the initial order itself is contrary to the scheme of the Act and cannot be supported. It cannot be treated as a mere surplusage as it would tend to prejudice a fair consideration of the detenu's case by the Advisory Board, though he would have to be released forthwith if the Advisory Board reports that there is no sufficient cause for detention.

Before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected.

ORIGINAL JURISDICTION. Petition No. 308 of 1951. Application under article 32 of the Constitution for a writ in the nature of habeas corpus praying for the release of the petitioner from detention.

H. J. Umrigar (amicus curiae), for the petitioner.

S. M. Sikri, Advocate-General of the Punjab, (Jindra Lal, with him) for the respondent.

1951. December 10. The Judgment of the Court was delivered by

PATANJALI SASTRI C. J.—This is a petition under article 32 of the Constitution praying for the release of the petitioner from his alleged unlawful detention. We accepted the petition and, at the conclusion of the hearing, ordered the petitioner to be released. We now proceed to give the reasons for our order.

1951

Makhan Singh Tarsikka v. *The State of Punjab.*

Patanjali Sastri C. J.

The petitioner was arrested and detained under an order dated 1st March, 1950, made by the District Magistrate, Amritsar, under section 3(1) of the Preventive Detention Act, 1950 (hereinafter referred to as "the Act") and the grounds of detention were communicated to the petitioner as required by section 7 of the Act on 15th March, 1950. The petitioner challenged the validity of the order on various grounds, but, while the petition was pending after this Court issued a *rule nisi* to the respondent, the petitioner was served on 6th August with another detention order dated 30th July, 1951, purporting to be made by the Governor of Punjab under sub-section (1) of section 3 and section 4 of the Act as amended by the Preventive Detention (Amendment) Act, 1951, and he was served with fresh grounds of detention on 16th August, 1951. Thereupon the petitioner filed a supplementary petition impugning the validity of the said order on the ground, *inter alia,* that it directed the detention of the petitioner up to 31st March, 1952, the date on which the Act itself was to expire and that this was contrary to the provisions of the Act as amended. On behalf of the respondent, the Advocate-General of Punjab urged that the said order was not intended to be a fresh order of detention but was passed only with a view to limiting the period of detention till 31st March, 1952, as it had been held in some cases that an order of detention for an indefinite period was bad. The order runs as follows:—

WHEREAS the Governor of Punjab is statisfied with respect to the person known as Makhan Singh Tarsikka, son of Gujjar Singh, Jat, of Tarsikka, Police Station Jandiala, Amritsar District, that with a view to preventing him from acting in a manner prejudicial to the security of the State, it is necessarry to make the following order :

Now, THEREFORE, in exercise of the powers conferred by sub-section (1) of section 3 and section 4 of the Preventive Detention Act, 1950 (Act IV of 1950), as amended by the Preventive Detention (Amendment) Act, 1951 (Act IV of 1951), the Governor

1951

Makhan Singh Tarsikka
v.
The State of Punjab.

Patanjali Sastri C. J.

of Punjab hereby directs that the said Makhan Singh Tarsikka be committed to the custody of the Inspector-General of Prisons, Punjab, and detained in any jail of the State till 31st March, 1952, subject to such conditions as to maintenance, discipline and punishment for breaches of discipline as have been specified by a general order or as contained in the Punjab Communist Detenu Rules, 1950.

It will be seen that the terms of the order make it clear that is was intended to operate as a fresh order for the detention of the petitioner and this view is strengthened by the fact that the order was followed by the service of a fresh set of grounds on the petitioner as required by section 7 of the Act; a proceeding which would be wholly unnecessary if no fresh order of detention was intended. Indeed, it was suggested on behalf of the petitioner that the said order followed by service of fresh grounds only four days before the date fixed for the hearing of the petition by this Court was a deliberate move by the respondent to circumvent the objections raised by the petitioner to the validity of the earlier order of 1st March, 1950, and thus render the proceeding infructuous. However that may be, we are clearly of opinion that the order dated 30th July, 1951, must be regarded as a fresh order made for the petitioner's detention in supersession of the earlier order and the question is whether it was illegal in that it straightaway directed that the petitioner be detained till 31st March, 1952, which was the date of the expiry of the Act.

Whatever might be the position under the Act before its amendment in February, 1951, it is clear that the Act as amended requires that every case of detention should be placed before an Advisory Board constituted under the Act (section 9) and provides that if the Board reports that there is sufficient cause for the detention "the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit" (section 11). It is, therefore, plain that it is only after the Advisory Board, to which the case

1951

Makhan Singh Tarsikka v. *The State of Punjab.*

Patanjali Sastri C. J.

has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported. The learned Advocate-General, however, urged that in view of the provision in section 11(2) that if the Advisory Board reports that there is no sufficient cause for the detention, the person concerned would be released forthwith, the direction in the order dated 30th July, 1951, that the petitioner should be detained till 31st March, 1952, could be ignored as mere surplusage. We cannot accept that view. It is obvious that such a direction would tend to prejudice a fair consideration of the petitioner's case when it is placed before the Advisory Board. It cannot be too often emphasised that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected.

Petition allowed.

Agent for the respondent: *P. A. Mehta.*

1951

Dec. 19.

BHAGAT SINGH

v.

THE STATE

GURDEV SINGH—*Caveator.*

[SAIYED FAZL ALI, MEHR CHAND MAHAJAN and CHANDRASEKHARA AIYAR JJ.]

Criminal Procedure Code (V of 1898), s. 234(1)—Misjoinder of charges—Firing single shot at two persons to kill them—Whether one offence or two offences.

The appellant was tried in respect of the following charges: (i) causing the death of A and thereby committing an offence punishable under s. 302, Penal Code, (ii) firing a short at B and