CRIMINAL MISCELLANEOUS

Before H. R. Khanna, J.

DARSHAN SINGH JHABAL,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Miscellaneous No. 101 of 1963.

1963

Feb., 21st.

Defence of India Rules (1962)—Rule 30—Detention order—Whether can be challenged on the ground of veracity or sufficiency of material—Copy of the detention order not supplied to the detenue at the time of arrest—Whether makes detention illegal—Vagueness of a ground of detention—Effect of—Defence of India Act (LI of 1962)—S. 3(2) (15)(i)—Whether ultra vires *on the ground of excessive delegation of rule making power—Satisfaction of the Governor—Whether necessary*—Mala fide *of order—Onus to prove—On whom lies.*

Held, that the law has vested the Government with the power to decide about the need of detention and so long as the grounds of detention are related to the objects mentioned in rule 30 of the Defence of India Rules, 1962, and the order is not *mala fide*, it is not open to the petitioners to ask the Court to go into the veracity or sufficiency of the material on the basis of which the order for detention was made and to hold that even though the Government was satisfied about the need of detention on the basis of that material it should not have been so satisfied.

Held, that the detention of a person under rule 30(1)(b) of the Defence of India Rules, 1962, cannot be held to be illegal because a copy of the detention order was supplied to him not at the time of his arrest but after the lapse of some hours. There is no provision in the Defence of India Rules corresponding to clause (5) of Article 22 and as such a delay of some hours in the supply of the copy of the order of detention cannot invalidate the detention.

Held, that since the Defence of India Rules do not provide for a right of representation to the detenue, the question of vagueness of a ground of detention is of no effect.

Held, that sub-section (1) of section 3 of the Defence of India Act, 1962, gives the Central Government power to make such rules as appear to it to be necessary or expedient for the purposes mentioned therein. The matters to which the rules should relate and the objects to be achieved have thus been specified. Sub-section (2) specifies without affecting the generality of the powers conferred by sub-section (1) the matters to which the rules may relate. Sub-clause (i) of clause (15) of sub-section (2) deals with the apprehension and detention in custody of any person under the circumstances which have been enumerated and specified therein. The principles which should guide the rule-making authority have been laid down and the circumstances under which the detention order can be made have been specified and no uncontrolled and unfettered discretion has been given to the rule-making authority. Section 3(2)(15)(i) cannot, therefore, be struck down on the ground of excessive delegation of rule-making power.

Held, that Rule 30(1)(b) of the Defence of India Rules contemplates the satisfaction of the Government and not the personal satisfaction of the Governor. The Governor need not, therefore, be personally satisfied as to the matters set out in rule 30.

Held, that the onus is on the detenue to show that the order is *mala fide* and it cannot be held on the basis of a mere assertion of the petitioners that the orders are *mala fide*.

Petition under rule 30(1)(b) of the Defence of India Rules praying that a writ in the nature of habeas corpus be issued directing the Government to produce the petitioner before this Court at the time of hearing of petition.

B. S. BINDRA, A. S. BAINS AND U. S. SAHNI, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, DEPUTY ADVOCATE-GENERAL, AND R. C. DOGRA AND MUNESHWAR PURI, ADVOCATES, *for the* Respondent.

ORDER

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KHANNA, J.—This judgment would dispose of ten habeas corpus petitions, Criminal Miscellaneous petition Nos. 101 to 109 and 155 of 1963, filed respectively by Sarvshri Darshan Singh Jhabal, Gurbax Singh Atta, Raghbir Singh, Mota Singh, Dalip Singh Johal, Ghuman Singh, Karnail Singh, Dhanpat Rai, Jarnail Singh and Shamsher Singh Josh against the State of Punjab challenging the orders of the Punjab Government for their detention under rule 30(1)(b) of the Defence of India Rules.

The petitioners are members of the Punjab State Council of Communist Party of India. Eight of them expressly stated this fact in the petitions filed by them while the remaining two, namely, Shri Mota Singh and Shri Shamsher Singh Josh, have stated so at the hearing of the petitions. The orders for the detention of the petitioners are dated 20th November, 1962 and, but for the name and description of the detenu, are in identical terms and read as under—

> "Whereas Shri (name of the detenu) son of (faher's name) district * * is reported to be indulging in activities prejudicial to the defence of India and Civil defence by making propaganda against joining the Armed and Civil Defence Forces and by urging the people not to contribute towards the National Defence Fund;
>
> And whereas, the Governor of Punjab is satisfied in respect of the said * * that with a view to prevent him from acting in a manner prejudicial to the

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defence of India and civil defence it is necessary that the said * * be detained;

No, therefore, in pursuance of the provisions of rule 30(1)(b) of the Defence of India Rules, the Governor of Punjab hereby direct that the said * * be detained at Rohtak in the Rohtak Jail and in matters relating to maintenance, discipline and the punishment of offences "and breaches of discipline the said * * shall be governed by the Punjab Detenus Rules, 1950, as amended up-to-date.

Dated 20th November, 1962.

J. D. KHANNA,

Deputy Secretary to Government,
Punjab.

In pursuance of the above orders, the petitioners in petitions Nos. 101, 103, 104, 105, 106, 108 and 155 were arrested on 21st November, 1962. Shri Karnail Singh petitioner in petition No. 107/1963 was arrested on 22nd November, 1962. Shri Gurbax Singh petitioner in petition No. 102 was arrested on 28th November, 1962 (in the petition it was stated that he had been arrested on 27th November, 1962 but at the hearing of the petition he stated that he had been arrested on 28th November, 1962), and Shri Jarnail Singh petitioner in petition No. 109 was arrested on 4th December, 1962. Since then the petitioners are under detention. According to the petitioners, the charges levelled against them in the detention orders are false and baseless and calculated to slander and malign them before the people. It is stated that the petitioners are bound to stand by the decision

of the Communist Party of India. The petitioners also claimed to have given support to the defence efforts of the country. The order for the detention of the petitioners is stated to be *mala fide* and illegal. It is also stated that detention orders were served on the petitioners not at the time of their arrests but after the expiry of many hours. In the petition filed by Shri Shamsher Singh Josh, a ground has also been taken that an election petition challenging his election as a member of the Legislative Assembly had been filed by the defeated Congress candidate and as a result of his detention he could not give instructions to his counsel in respect of the witnesses who were examined before the Election Tribunal. His detention order has been made, according to Shri Josh, with a view to prevent him from safeguarding his interests in the election petition and also with a view to victimise him for his severe criticism of the Congress Party.

All these petitions were heard together at the prayer of the counsel for the parties because it was stated that the same arguments are to be advanced in them.

The State of Punjab in its reply has filed the affidavits of Shri J. D. Khanna, Deputy Secretary to Government, Punab, Home Department, in which it is stated that it was reported to the State Government that the petitioners were indulging in activities prejudicial to the defence of India and civil defence by making propaganda against joining the Armed and civil defence forces and by urging the people not to contribute towards the National Defence Fund. The State Government after considering all the material bearing on the point was satisfied in respect of the petitioners that with a view to preventing them from acting in a

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manner prejudicial to the defence of India and civil defence it was necessary that they be detained. The State Government accordingly made orders on 20th November, 1962, under rule 30(1) (b) of the Defence of India Rules that the petitioners be detained. The allegation that the detention of the petitioners was *mala fide* and illegal has been denied. The petitioners, according to the reply of the State Government, were shown and explained the detention orders at the time of their arrests and soon thereafter copies of the detention orders were furnished to them. So far as the allegation of Shri Josh is concerned it is stated that the State Government was not motivated or influenced in the least by the factum of the election petition pending against him. Shri Josh who was originally ordered to be detained in Rohtak Jail was subsequently directed to be detained in Ambala Jail with a view, it is stated, to give him facility of imparting instructions to his counsel regarding the election petition for which purpose interviews were allowed with his legal advisers. The other allegation, that Shri Josh was detained because of his severe criticism of the Congress Party, has been denied and it is stated that only those members or M.L.A.s of the Communist Party have been detained in respect of whom the State Government was fully satisfied that they were indulging in prejudicial activities.

I have heard Mr. B. S. Bindra and Mr. Chawla on behalf of the petitioners and Mr. L. D. Kaushal, Deputy Advocate-General on behalf of the State. I have also heard Shri Shamsher Singh Josh, Shri Gurbax Singh Atta, Shri Dalip Singh and Shri Raghbir Singh petitioners who prayed for personal hearing, and am of the view that no case has been made for interference with the detention orders of the petitioners. Rule 30(1)(b) under which the

petitioners have been ordered to be detained reads as under—

"30. *Restriction of movements of suspected persons restriction orders and detention orders.* (1) The Central Government or the State Government, if it is satisfied with respect to any particular person 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, India's relations with foreign powers, the maintenance of peaceful conditions in any part of India or the efficient conduct of military operations, it is necessary so to do, may make an order—

* * * * *

(b) directing that he be detained;

* * * *".

A bare perusal of the above provision of law goes to show that it is the Central or the State Government, as the case may be, which has to be satisfied about the need of detention provided the grounds of detention are related to the objects mentioned in the rule. In the present case, I find that it is stated in the detention orders that on the basis of reports that the petitioners were indulging in activities prejudicial to the defence of India and Civil defence by making propaganda against joining the Armed and civil defence forces and urging the people not to contribute towards the National Defence Fund, the Governor of the Punjab was satisfied that with a view to preventing them from acting in a manner prejudicial to the defence of India and civil defence it was necessary that they

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be detained. Further, it is stated in the affidavits of Shri J. D. Khanna, on behalf of the State of Punjab, that it was reported that the petitioners were indulging in activities prejudicial to the defence of India and civil defence by making propaganda against joining the Armed and civil defence forces and by urging the people not to contribute towards the National Defence Fund. The State Government after considering all the material on the point was satisfied that with a view to preventing the petitioners from acting in a manner prejudicial to the defence of India and civil defence it was necessary that they be detained, and thereupon the State Government made the orders for the detention of the petitioners. I thus find that all the conditions which were necessary for the detention of the petitioners are satisfied in the case of the petitioners.

It has been urged on behalf of the petitioners that they have been supporting the war efforts and exhorting the people to give all support for the defence of the motherland and that consequently it is highly improbable that the petitioners would try to act in a manner prejudicial to the defence of the country. Stress has been laid on the fact that Shri Shamsher Singh Josh participated in the working of various defence organisations and gave his entire compensatory allowance as member of the Legislative Assembly to the National Defence Fund. Reference has also been made to some of the speeches and other activities in support of the defence efforts of Shri Josh which were reported in the press. Shri Josh in this context has also filed copies of the representations which, according to him, were made by him to the Chief Minister and the Home Minister in which there was reference to the work done by Shri Josh in connection with the working of the defence Organisations. A picture of Shri Josh about his

presence at an All-Party Joint Anti-China Aggression Rally has been produced by him at the hearing of the petition wherein he is shown to be present with the leaders of the other parties. Receipts have also been shown according to which Shri Darshan Singh and Shri Mota Singh petitioners contributed Rs. 5 and Rs. 25 respectively on 10th November, 1962, towards the defence fund. The stand of the State Government in this connection is that though Shri Josh donated his compensatory allowance towards the National Defence Fund and made a speech in praise of the Indian Army, it might have been to hoodwink the public and the Government. It is further stated that in secret meetings Shri Josh was reported to be indulging in activities prejudicial to the defence of India and civil defence by making propaganda against joining the Armed and Civil defence forces and by urging the people not to contribute towards the National Defence Fund. According to Shri Kaushal, the other petitioners might have also made some contributions towards the National Defence Fund with a view to hoodwink the Government and the people. In this respect I am of the view that the law has vested the Government with the power to decide about the need of detention and so long as the grounds of detention are related to the objects mentioned in rule 30 and the order is not *mala fide*, it is not open to the petitioners to ask the Court to go into the veracity or sufficiency of the material on the basis of which the order for detention was made and to hold that even though the Government was satisfied about the need of detention on the basis of that material it should not have been so satisfied. I may in this context refer to the observations of this Court in *Sohan Singh Josh* v. *State of Punjab*, Cr. M. 45/1963 decided on 24th January, 1963, wherein I reproduced the dictum laid down by the Supreme Court

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in *State of Bombay* v. *Atma Ram Sridhar Vaidya*, (1), and made the following observations—

> "Be that as it may, this Court cannot, in my view, go into the sufficiency of the material on the basis of which the State Government is satisfied that it is necessary to detain him with a view to prevent him from acting in a manner prejudicial to the defence of India and civil defence. The Court cannot substitute its own judgment for that of the Government and hold that even though the Government was satisfied about the necessity of the detention, it (the Government) should not have been so satisfied on the material before it. According to the law as it exists, it is the Government which has to be satisfied about the need of the detention provided the grounds of detention are related to the objects mentioned in rule 30 and in case the Government is satisfied about the existence of those grounds the Court, in a petition for *habeas corpus*, cannot interfere unless it is shown that the order of the Government is *mala fide* of which there is no proof in the present case. The grounds on which the detention of the petitioner has been ordered have a rational connection with the objects mentioned in rule 30 and as such his detention cannot be challenged."

It has been argued on behalf of the petitioners that at the time the petitioners were arrested, the orders for their detention did not exist. No such ground was, however, taken in any of the petitions. Apart from that, I find that the petitioners

(1) 1951 S.C.R. 167.

were arrested on 21st November, 1962, or thereafter and the detention orders are all dated 20th November, 1962. All the detention orders thus bear a date which was anterior to the arrests of the detenus and on the basis of a bare assertion at the time of arguments it cannot be held that the detention orders did not exist at the time of the arrests of the petitioners.

A ground was taken on behalf of the petitioners that they were not served with the detention orders at the time of their arrests and that it was done on the expiry of many hours after their arrests. In this respect I find that the stand of the Punjab Government as taken in the affidavits of Shri J. D. Khanna is that the detention orders were shown and explained to the petitioners at the time of their arrests and copies of the same were supplied to them after they were lodged in the Jail wherein they had been ordered to be detained. At the hearing of the petitions, Shri Kaushal has shown original detention orders which bear an endorsement about their having been shown and explained to the petitioners. Be that as it may, the detention of the petitioners under rule 30(1)(b) cannot be held to be illegal because a copy of the detention order was supplied to them not at the time of their arrests but after the lapse of some hours. Clause (5) of Article 22 of the Constitution provides for the communication to the detenu of the grounds of his detention as soon as may be and reads as under—

> "22. (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be communicated to such person the grounds on which the order

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has been made and shall afford him the earliest opportunity of making a representation against the order."

The right to move any Court for the enforcement of the rights conferred under Article 22 of the Constitution has been suspended for the period of emergency by the President in accordance with the powers vested in him under Article 352 of the Constitution. There is no provision in the Defence of India Rules corresponding to clause (5) of Article 22 and as such a delay of some hours in the supply of the copy of the order of detention cannot invalidate the detention.

Mr. Bindra has argued that the grounds of detention of the petitioners are vague. In this respect I find that the grounds of detention which have been incorporated in the detention orders of the petitioners are the same as those which were mentioned in the detention order made against the detenu in *Sohan Singh Josh's case* referred to earlier. Dealing with that order I held that it did not suffer from the infirmity of vagueness. Apart from that I find that the question of vagueness would only arise if there were provisions analogous to clause (5) of Article 22 of the Constitution reproduced above which provides for the communication of the grounds of detention to a detenu and affords a right of representation to him against the order for detention. The view was taken that the grounds of detention should not be vague and the particulars should be supplied to the detenu to enable him to make a representation for consideration and relief to him. Although rule 30-A has now been added which provides, *inter alia*, for the review by the State Government of the cases of detenus ordered to be detained by it, there is still no provision corresponding to clause (5) of the

Article 22 for right of representation. As such the question of vagueness as a ground against detention loses much of its importance. Further I am of the view that the petitioners are the persons who could have complained about the vagueness of the grounds but they did not take the plea of vagueness of the petitions sent by them through jail.

Mr. Bindra has then argued that sub-clause (i) of clause (15) of sub-section (2) of section 3 of the Defence of India Act should be struck down on the ground that it gives unfettered and uncontrolled discretion to the Central Government to make rules for detention. Vires of rule 30(1)(b) framed under the above provision of the Act has also been challenged on that ground. In this respect I find that sub-section (1) of section 3, as also the relevant clause of sub-section (2) read as under—

> "3. Power to make rules. (1) The Central Government may, by notification in the official gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community.
>
> (2) Without prejudice to the generality of the powers conferred by sub-section (1) the rules may provide for, and may empower any authority to make orders providing for all or any of the following matters, namely.—
>
> * * * * *
>
> (15) Notwithstanding anything in any other law for the time being in force (i) the

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apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate) suspects, on grounds appearing to that authority to be reasonable of being of hostile origin or of having acted, acting, being about to act or being likely to act in a manner prejudicial to the defence of India and civil defence, the security of the State, the public safety or interest, the maintenance of public order, India's relations with foreign States, the maintenance of peaceful conditions in any part or area of India or the efficient conduct of military operations, or with respect to whom that authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner".

Perusal of sub-section (1) goes to show that the Central Government may make such rules as appear to it to be necessary or expedient for the following purposes:

(i) for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or
(ii) for maintaining supplies and services essential to the life of community.

The matters to which the rules should relate and the objects to be achieved have thus been specified. Sub-section (2) specifies without affecting the generality of the powers conferred by sub-section (1) the matters to which the rules may relate.

Sub-clause (i) of clause (15) of sub-section (2) deals with the apprehension and detention in custody of any person under the circumstances which have been enumerated and specified and are to the following effect:—

(a) the authority empowered to detain should not be lower in rank than that of a district Magistrate,

(b) the order for detention can be made if that authority suspects the person ordered to be detained of being of hostile origin or of having acted, acting being about to act or being likely to act in a manner prejudicial to the defence of India and civil defence, the security of the State, the public safety or interest, the maintenance of public order, India's relations with foreign States, the maintenance of peaceful conditions in any party or area of India or the efficient conduct of military operations.

(c) such suspicion should be based on grounds appearing to that authority to be reasonable, and

(d) the order of detention can also be made about a person with respect to whom the above-mentioned authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner.

It would thus appear that the principles which should guide the rule-making authority have been laid down and the circumstances under which the detention order can be made have been specified.

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Mr. Bindra urges that the acting in prejudicial manner which is sought to be prevented in cases covered by clause (d) above has not been specified and as such there is unfettered and uncontrolled discretion vested in the rule-making body. In my opinion, this contention is devoid of force, for it is clearly stated in the Act that the detention should be necessary "for the purpose of preventing him from acting in any such prejudicial manner." The word, "such" goes to show that the prejudicial acts are those referred to earlier and which for the sake of convenience and elucidation have been reproduced by me above in separate clause (b) above. The word "prejudicial" was held to be not too vague by Harries, C.J., in a Full Bench case, *Harkishan Dass* v. *Emperor* (2), while dealing with section 2(2)(x) of the Defence of India Act, 1939. Section 2(2)(x) was in the following terms:—

> "The apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or being about to act, in a manner prejudicial to the public safety or interest or to the defence of British India, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do, or abstain from doing, anything."

Harries, C.J., observed as under:—

> "It is clear that section 2(2)(x) states in considerable details who can be apprehended and detained and in what circumstances. The sub-section does not leave

(2) A.I.R. 1944 Lahore 33.

it to the rule-making authority to apprehend and detain any one at its discretion or for any reason which it thinks fit. The power to make rules on this matter is circumscribed and strictly limited. In short, the Legislature has laid down principles to guide and direct the rule-making authority and to limit its powers and the scope of the rules which it may make."

The observations of the Supreme Court in *Virendera* v. *State of Punjab* (3), while dealing with sections 2 and 3 of Punjab Special Powers (Press) Act, 1956, have a bearing in the matter, and the relevant head-note, which incorporates the view of the Court, reads as under:—

"Sections 2 and 3 of the Punjab Special Powers (Press) Act, 1956, lay down the principle that the State Government or the delegated authority can exercise the power only if it is satisfied that its exercise is necessary for the purposes mentioned in the sections. It cannot be exercised for any other purpose. In this view of the matter neither of these sections can be questioned on the ground that they give unfettered and uncontrolled discretion to the State Government or one executive officer in the exercise of discretionary powers given by the section."

I would, therefore, hold that no uncontrolled and unfettered discretion has been given to the rule-making power and that section 3(2)(15)(i) cannot be struck down on ground of excessive delegation of rule-making power.

(3) A.I.R. 1957 S.C. 896.

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It has next been urged by Mr. Bindra that though the detention order purports to have been made in the name of the Governor, there is nothing to show that the Governor was personally satisfied about the need of the detention of the petitioners. No such ground was, however, taken in any of the writ petitions and as such there is no affidavit on the point and we do not know the exact factual position. Be that as it may, the above argument is not legally tenable and need not be dilated upon apart from reproducing the observations made by me in *Chanan Singh Dhut* v. *The State of Punjab*, Cr. M. No. 99 of 1963, decided on 11th February, 1963, which are to the following effect:—

> "Lastly it was argued on behalf of the petitioner that the Governor was not personally satisfied about the necessity for the detention of the petitioner and as such the detention order is bad. In this respect I find that in normal course of administration, though the decisions are arrived at by the State Government, the orders are made in the name of the Governor. Rule 30(1)(b) contemplates the satisfaction of the Government and not the personal satisfaction of the Governor. The question as to whether the Governor should or should not be personally satisfied was considered by the Privy Council while dealing with a case under rule 26 of the Defence of India Rules, 1939, in *Emperor* v. *Sibnath Banerji* (4), and it was observed that the Governor need not be personally satisfied as to the matters set out in rule 26."

(4) A.I.R. 1945 P.C. 156.

So far as the ground taken by the petitioners is concerned, that the detention orders are *mala fide*, I find that apart from the bare assertion and apart from the case of Shri Shamsher Singh Josh, there is nothing else to show that the orders are *male fide*. The onus as observed by the Federal Court in *Basant Chandra Ghose* v. *Emperor* (5), is on the detenu to show that the order is *mala fide* and it cannot be held on the basis of a mere assertion of the petitioners that the orders are *mala fide*. So far as Shri Josh is concerned, it is contended on his behalf that the detention has been motivated by the consideration of preventing him from safeguarding his interests in the election petition pending against him at the instance of the defeated Congress candidate and as a kind of punishment for his severe criticism of the Congress party. The State Government through the affidavit of Shri J. D. Khanna has denied this allegation and has stated that with a view to afford facility to Shri Josh to give instructions to his counsel, order in respect of the place of his detention has been modified and he has been transferred to the Jail at Ambala where the election petition is pending so that Shri Josh might give instructions to his counsel. Mr. Kaushal has stated at the hearing that every reasonable and legitimate facility is being given and would be given to Shri Josh for giving instructions to his counsel for the election petition. Be that as it may, I am of the view that the order for detention of Shri Josh cannot be held to be *mala fide* because of the pendency of the election petition and his criticism of the Congress Party as the facts brought out at the hearing indicate that Shri Josh alone has not been singled out of the members of the State Council of the Communist

(5) A.I.R. 1945 F.C. 18.

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Party of India for being detained and that a number of other members of the aforesaid State Council along with him have also been ordered to be detained. The affidavit of Shri J. D. Khanna is to the effect that only those Members of the Legislative Assembly or members of the Comunist Party have been detained in respect of whom the State Government was fully satisfied that they were indulging in prejudicial activities. I would, therefore, hold that the order for the detention of the petitioners cannot be held to be *mala fide*.

Shri Dalip Singh Johal petitioner has filed an affidavit at the hearing of his petition that the order for his detention does not relate to him because it mentions his place of residence as Sirhali, district Amritsar, while in fact he belongs to village Johal Dhabewala, which village is admittedly within the jurisdiction of Police Station Sirhali and at a distance of a few miles from that place. In this respect I find that Shri Dalip Singh Johal was arrested on 21st November, 1962 and his petition is dated 23rd January, 1963. No such ground was taken in the petition that the order of detention in the case of Shri Dalip Singh Johal did not relate to him. The person ordered to be detained in the order is Shri Dalip Singh Johal, son of Inder Singh. There is nothing to show that there exists another person of such description. In the circumstances, I am not prepared to entertain an argument on a ground which was not taken in the petition.

Lastly it is argued that the petitioners are being treated in jail in a manner inferior even to 'C' class prisoners. No such ground was, however, taken in any of the petitions and it is outside the scope of these proceedings to go into this matter. In case the petitioners are aggrieved on

that account they can make proper representation to the authorities concerned who might look into the matter.

The petitions accordingly fail and are dismissed.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

GULAB KAUR *alias* PARSINO,—*Appellant.*

versus

GURDEV SINGH,—*Respondent.*

First Appeal from the Order No. 3(M) of 1962.

1963

Feb., 27th.

Hindu Marriage Act (XXV of 1955)—S. 13(1)(viii) and (ix)—Decree for restitution of conjugal rights obtained by husband—Non-compliance of the decree by the wife for more than two years—Whether entitles the husband to a decree for divorce.

Held, that where a decree for restitution of conjugal rights is obtained by the husband, it is for the wife to comply with that decree within a period of two years as she is the judgment-debtor. The decree-holder does not come in the picture at all and it is not necessary for him to execute the decree or otherwise seek its compliance by making a demand, etc. Non-compliance of the decree by the wife for a period of two years or more entitles the husband to a decree for divorce under section 13(i)(ix) of the Hindu Marriage Act, 1955.

First Appeal from the order of Shri A. P. Chowdhry, Subordinate Judge, 1st Class, Bhatinda, dated the 30th November, 1961 granting a decree of divorce on ground provided in S. 13(ix) of the Hindu Marriage Act, 1955 that is dissolving the marriage between Gurdev Singh and Gulab Kaur.

H. R. AGGARWAL, ADVOCATE, for the Petitioner.

S. L. AHLUWALIA, ADVOCATE, for the Respondent.