

Suchithra Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1095447

Court : Kerala

Decided On : Sep-30-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Suchithra

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN MONDAY,THE30H DAY OF SEPTEMBER20138TH ASWINA, 1935 WP(Crl.).No. 391 of 2013 (S) -----

PETITIONER(S): ----- SUCHITHRA W/O.SUNIL KUMAR, KURUPPUM VEETIL KIZHAKKATHIL KADAPPAKADA P.O., KOLLAM EAST VILLAGE, KOLLAM. BY ADVS.SRI.R.SURAJ KUMAR SRI.SUNIL J.CHAKKALACKAL SRI.M.KISHORKUMAR RESPONDENT(S):

----- 1. STATE OF KERALA REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT HOME DEPARTMENT, GOVERNMENT SECRETARIAT TRIVANDRUM-695001.

2. THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE KOLLAM, PIN-691001.

3. THE DISTRICT POLICE CHIEF KOLLAM, PIN-691001.

4. THE CITYL POLICE COMMISSIONER, KOLLAM, PIN-691001.

5. THE SUPERINTENDENT OF CENTRAL PRISON VIYYOOR, THRISSUR, PIN-

6. GOPA KUMAR SUB INSPECTOR OF POLICE, EAST POLICE STATION, KOLLAM PIN-691001. R1 -R6BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION R BY GOVERNMENT PLEADER THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 30-09-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(Crl.).No. 391 of 2013 (S)

----- APPENDIX PETITIONER(S)' EXHIBITS

----- EXHIBIT P1 : TRUE COPY OF THE DETENTION

ORDER

OR R2 DT.18-5-2013. EXHIBIT P2 : TRUE COPY OF THE GROUNDS OF DETENTION SERVED ON THE DETENUE DT.18-5-2013. EXHIBIT P3 : TRUE COPY OF THE REPORT OF R3 DT.29-4-2013. EXHIBIT P4 : TRUE COPY OF THE PETITIONER'S IDENTITY CARD EVIDENCING THAT SHE WAS CONTESTANT IN THE ELECTION HELD FOR KOLLAM CORPORATION IN KADAPPAKADA DIVISION NO.13 DT.11-10-2010. EXHIBIT P5 : TRUE COPY OF THE COMPLAINT FILED BY THE MOTHER OF THE DETENUE BEFORE R6 DT.4-5-2011. EXHIBIT P6 : TRUE COPY OF THE COMPLAINT FILED BY THE DETENU BEFORE THE ASSISTANT COMMISSIONER OF POLICE, KOLLAM DT.12-7-2011. EXHIBIT P7 : TRUE COPY OF THE AFFIDAVIT SWORN BY SRI.PRADEEP S., MEMBER OF 18H WARD OF KOTTARAKARA PANCHAYATH, KOLLAM DISTRICT DT.1-6-2013. EXHIBIT P8 : TRUE COPY OF THE AFFIDAVIT SWORN BY SRI.PREM USHAR, COUNCILLOR, REPRESENTING 37H WARD OF THE KOLLAM CORPORATION DT.31-5-2013. EXHIBIT P9 : TRUE COPY OF THE

ORDER

ISSUED BY R1 NO.G.O.(RT)1967/2013/HOME DT.16-7-2013. RESPONDENT(S)' EXHIBITS ----- EXT.R3(a): TRUE COPY OF THE

ORDER

NO.A2(a)2464/13 TR DATED 27-05-2013 OF THE INSPECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM RANGE. TRUE COPY PA TO JUDGE. acd

ANTONY DOMINIC & P.D. RAJAN, JJ.

----- W.P.(CrI)No.391 of 2013
----- Dated this the 30th day of September, 2013

JUDGMENT

ANTONY DOMINIC,J.

The petitioner is the wife of one Sunil @ Pitham Suni. He is the accused in C.C.Nos.381/2008, 1949/2010, 418/2011 and 991/2012 on the file of the Judicial First Class Magistrate Court-II, Kollam. He is also the accused in Crime No.576/2013 of the Kollam East Police Station, which was registered with reference to an occurrence on 18/03/2013.

2. The records show that following the alleged commission of the offence on 18/03/2013, the Sub Inspector of Police made a report to the District Police Chief on 29/04/2013 requesting for initiation of steps to declare him as a 'known rowdy' and to detain him to prevent him from continuing his anti social activities, as provided under the Kerala Anti-Social Activities (Prevention) Act, 2007 (hereinafter referred to as the 'Act' for short). On the basis of the aforesaid report, the District Police Chief submitted his report dated 07/05/2013 to the District Collector, the detaining authority and the detaining authority issued Ext.P1 order dated 18/05/2013 declaring him as 'known rowdy' W.P.(CrI)No.391/13 2 and ordering his detention as provided under Section 3 of the Act. Subsequently, the detenu was arrested on 24/05/2013 and is now undergoing detention.

3. Following the issuance of Ext.P1, the matter was referred to the Government and by order dated 03/06/2013, the detention was approved, the matter was referred to the Advisory Board and based on the report of the Board, the Government, thereafter, confirmed the order of detention by its order dated 16/07/2013. It is challenging Ext.P1 order of detention and the subsequent proceedings, the writ petition has been filed.

4. The first contention raised by the learned counsel for the petitioner is that the last prejudicial activity is alleged to have occurred on 18/03/2013 and that Ext.P1

order having been issued only on 18/05/2013, the order, according to him, suffers from unexplained and inordinate delay.

5. It is true that if there is unexplained and inordinate delay between the last prejudicial activity and the order of detention, the live link between the activity and the order is lost and consequently, the order of detention will be rendered illegal.

6. However, insofar as this case is concerned, as already stated by us, following the last prejudicial activity, the Sub Inspector of Police made his report dated 29/04/2013 and the District Police Chief made his report to the Collector on 07/05/2013. W.P.(CrI)No.391/13 3 Thereafter, the detention order was issued on 18/05/2013. In this factual background, we are not prepared to hold that any unexplained or inordinate delay has occurred in the issuance of Ext.P1 rendering the said order illegal and unconstitutional.

7. The learned counsel then contended that Ext.P1 order suffers from the vice of non-application of mind. He also relied on the judgment of this Court in Hajra v. State [1997(1) KLT597, which supports the contention. The basis on which this contention is raised is that, in all cases, where he is an accused, the detenu is on bail and that it was without adverting to the conditions of bail that Ext.P1 order has been issued. If as a matter of fact, this contention is established, there may be some substance in what is contended by the counsel. However, neither the orders of bail are made available to this Court nor has the petitioner even averred the details of the conditions that are allegedly imposed, while granting bail to her husband. Therefore, this Court is unable to examine whether the bail granted are conditional to further examine the question whether the detaining authority is guilty of non-application of mind as contended by the learned counsel for the petitioner. Therefore, for dearth of materials, we are unable to accept this contention.

8. The learned counsel further contended that the 6th respondent has falsely registered these cases against the detenu. W.P.(CrI)No.391/13 4 He made reference to the following averments in paragraph 9 of the writ petition: "9. It is further submitted that the instant proceeding was initiated against the detenu as he has rendered advice to one of his friends, Unnikrishnan to submit a complaint against the 6th respondent herein on complaints of torture and illegal detention

against the said respondent, before the Kerala State Human Rights Commission. Thereupon the 1st respondent, after examining the matter, initiated disciplinary proceedings against the said 6th respondent thereby suspending him from service. It is learnt that thereafter the 6th respondent, in exercise of undue influence over the said Unnikrishnan, persuaded to withdraw the complaint against him resulting in dropping of the said disciplinary proceedings. As it was the detenu, who was instrumental in the suspension of the 6th respondent, the said incident triggered vengeance in the mind of the said respondent, who is an errant officer. Thereafter, when the said officer took charge as the Station house Officer, Kollam East Police Station, the detenu was threatened by the 6th respondent that he would be implicated in maximum number of criminal cases and ensure his detention in prison invoking the provisions of the said Act. Apprehending such an eventuality, the detenu shifted his residence with family to Keralapuram, which is outside the jurisdiction of Kollam east Police Station. Even after that, the 6th respondent took lead in getting the detenu implicate in maximum number of cases." These allegations of the petitioner are answered by the 3rd respondent in paragraph 9 of his counter affidavit, which reads thus: "It is submitted that the allegation raised in para 9 of the Writ Petition by the petitioner is devoid of merit. The allegation against the Police Officer is baseless. No petition is filed by the Unnikrishnan against the said officer before the State Human Rights Commission. A letter vide No. G3/624/2010 SB dated 10.02.10 by the Office of the Additional Director General of Police (Intelligence) to the State Police Chief. As per the said letter the 6th respondent was suspended from the Service. The allegation against the Police Officer was that a mental person named Ravi, who was illegally taken to custody. After conducting detailed enquiry he W.P.(Crl)No.391/13 5 was reinstated and exonerated from the charges vide order A2(a)/2464/13 TR dated 27.05.13 of the Inspector General of Police, Thiruvananthapuram Range. A True copy of the said order is produced herewith and marked as Ext.R3(a). The vague allegations without details are not sustainable and are made only for the purpose of filing this writ petition." There is no affidavit in respect to the counter affidavit filed by the 3rd respondent. The petitioner also has not produced the complaint allegedly made on his advice to the State Human Rights Commission. Ext.R3(a) also does not make any reference to such a complaint. Therefore, in the light of paragraph 9 of the

counter affidavit filed by the 3rd respondent and Ext.R3(a), on materials available before us, we can only hold that the petitioner has not established her allegations contained in paragraph 9 of the writ petition.

9. Even otherwise, the Act only provides that if a person is accused of the offences specified therein, he can be declared as a 'known goonda'. Therefore, all that this Court should be concerned is whether the detenu is, infact accused of required number of offences specified in the Act, as mentioned in the order of detention and not whether there is any substance in the defence of the detenu that the cases are falsely charge sheeted against him. In our view, such a defence is a matter for the trial court to examine and not this Court, while dealing with a writ petition for Habeas Corpus.

10. The learned counsel then contended that the offences charge sheeted against the detenu are trivial in nature and that he W.P.(CrI)No.391/13 6 is a political activist whose impeccable character is certified by respectable persons of the locality by Exts.P7and P8.

11. We are unable to accept this contention and invalidate the order of detention for the simple reason that admittedly the detenu is the accused in more than three cases involving the offences which are mentioned in Section 2(t) of the Act. Therefore, even if his character has been certified by persons of the locality, and irrespective of the nature of the offences, this Court can uphold the order of detention.

12. We are unable to accept any one of the aforesaid contentions raised by the learned counsel for the petitioner. In the result, we do not find any merit in the writ petition and the writ petition is therefore dismissed. ANTONY DOMINIC, JUDGE P.D. RAJAN, JUDGE. acd W.P.(CrI)No.391/13 7 W.P.(CrI)No.391/13 8

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