

Rajan Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1095450

Court : Kerala

Decided On : Sep-30-2013

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : Rajan

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. 385 of 2013 (S) -----

PETITIONER(S): ----- MARIYAMMA ANTONY, W/O.ANTONY AGED55YEARS KORATTYIL VEEDU, NADUBHAGOM CHAMPAKULAM PO NEDUMUDY VILLAGE, KUTTANAD TALUK ALAPPUZHA DISTRICT BY ADV. SRI.K.JAISHANKAR RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY THROUGH THE PUBLIC PROSECUTOR HIGH COURT, ERNAKULAM.

2. GOVERNMENT SECRETARY HOME DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

3. DISTRICT COLLECTOR ALAPPUZHA DISTRICT.

4. DISTRICT POLICE CHIEF ALAPPUZHA DISTRICT. R1-R4 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION SRI.TOM JOSE PADINJAREKARA THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 30-09-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(Crl.).No. 385 of 2013 (S) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P1 - TRUE PHOTOCOPY OF THE REPORT NO.D-1-45379/2012 A DATED 31-10-2012 REFERRED BY THE DISTRICT SUPERINTENDENT OF POLICE, ALAPPUZHA DISTRICT. EXT.P2 - TRUE PHOTOCOPY OF THE

ORDER

OF DETENTION NO.SC-6/59529/2012 DATED 01-12-2012 BY THE DISTRICT MAGISTRATE, ALAPPUZHA. EXT.P3 - TRUE PHOTOCOPY OF THE

ORDER

DATED 15-2-2013 IN BA.NO.701/2013 BY THE HON'BLE HIGH COURT OF KERALA. EXT.P4 - TRUE PHOTOCOPY OF THE RECEIPT DATED 30-03-2013 ISSUED BY THE OFFICE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, RAMANKARY FOR DEPOSITING AN AMOUNT OF RS.25,000/- AS SECURITY IN CRIME NUMBER 335/2012 OF NEDUMUDY POLICE STATION EXT.P5 - TRUE PHOTOCOPY OF THE GOVERNMENT

ORDER

G.O(RT) NO.1522/2013/HOME DATED 4-6-2013 EXT.P6 - TRUE PHOTOCOPY OF THE ACKNOWLEDGEMENT RECEIPT ISSUED FROM THE OFFICE OF THE CHIEF MINISTER EXT.P7 - TRUE PHOTOCOPY OF THE GOVERNMENT

ORDER

NO.36272/S.S.A.5/13/HOME DATED 6-5-2013 EXT.P8 - TRUE PHOTOCOPY OF THE SUBMISSION MADE BY THE DETENUE BEFORE THE ADVISORY BOARD. RESPONDENT(S)' EXHIBITS NIL ----- //True Copy// PA TO JUDGE Rp ANTONY DOMINIC & P.D.RAJAN, JJ.

===== W.P.(Crl.) No. 385
OF 2013 ===== Dated this the 30th day of September,

2013

JUDGMENT

Antony Dominic, J.

Petitioner, the mother of one Biju Antony @ Monayi, has filed this writ petition challenging Ext.P2 order issued by the 3rd respondent detaining his son under Section 3 of the Kerala Anti- Social Activities (Prevention) Act, 2007 (hereinafter referred to as 'the act' for short).

2. Briefly stated, the facts of the case are that the petitioner's son, the detenu herein, is accused in CC No.1421/10, CC No.137/11, CC No.30/12, CC No.1237/12 and CP No.33/13, on the file of the Judicial First Class Magistrate Court, Ramankari and SC18212 on the file of the Sessions Court, Alleppey. On the basis of the above, the 4th respondent, the sponsoring authority made Ext.P1 report to the 3rd respondent furnishing the details of the offences and requesting that he be declared as a known rowdy and to order his detention as provided under Section 3 of the Act in order to prevent him from continuing his illegal activities. Based on the above report, the 3rd respondent, the W.P.(Crl.) No.385/13 :

2. : detaining authority passed Ext.P2 order declaring the detenu to be a known rowdy and ordering his detention under Section 3 of the Act. As provided under Section 3(3) of the Act, the detaining authority reported the matter to the Government on 5/12/12 and the Government approved the detention on 15/4/13. In the meanwhile, the detenu was arrested on 01/4/13. Subsequently, the matter was referred to the Advisory Board and the Board submitted its report dated 23/5/13 and thereafter the Government confirmed the order of detention by Ext.P5 order dated 4/6/13.

3. Learned counsel for the petitioner contended that there is long and unexplained delay in the execution of the order and he also contended that there is non compliance of the provisions of Section 3(3) of the Act. In so far as his first contention regarding the alleged delay in the execution of the order is concerned,

admittedly, the order of detention was issued on 1/12/12 and the detenu was arrested only on 01/4/13. Learned counsel contended that the last prejudicial activity relied on is the subject matter of Crime No.335/12 of Nedumudy Police Station and that the detenu applied before this Court for anticipatory bail W.P.(Crl.) No.385/13 :

3. : by filing BA No.701/13 and that following Ext.P3 order dated 15th of February, 2013, he surrendered before the investigating officer on 6/3/13. He was produced before the jurisdictional Magistrate and as he could not comply with the conditions of bail, he was remanded to judicial custody. He was thereafter released on 01/4/13 and on release from the judicial custody, he was arrested in implementation of Ext.P2 order. It was his case that there was absolutely no justification for the belated execution of Ext.P2 order.

4. However, in the counter affidavits filed by respondents 1 and 2, the 3rd respondent and the 4th respondent, they have contended that it was because of the detenu was absconding that the delay has occurred. In para 13 of the counter affidavit filed by respondents 1 and 2, it is stated thus; "It is true that the order of detention in this case was issued on 1.12.12 and the order was executed on 1.4.13. It is humbly submitted that the execution of the detention order was delayed solely for the reason that the warrantee had been absconding and intentionally evading arrest all these time. Statutory action under section 6 of the act with regard to absconding persons was taken in this case. An order dated 19.3.13 directing the person to appear before the authorities was notified in the official Gazette. If the detenu had any respect for law, he should definitely have surrendered before the authority W.P.(Crl.) No.385/13 :

4. : concerned. Hence for a detenu, who intentionally concealed himself so that the order could not be executed, it will be legally unsustainable for him to agitate later that the order is vitiated by the delay in executing the order. The position is legally well settled in a catena of judgments of the Constitutional courts of India that when the delay is found to be the result of the recalcitrant attitude and refractory conduct of the detenu in evading the arrest, "there is warrant to consider the link not snapped but strengthened." The Hon'ble Supreme Court of India has held in Dropti

Devi v. Union of India {(2012) 7 SCC499 that when the detention order could not be executed because of the contumacious conduct on the part of the detenu, he cannot take advantage of his own wrong. Therefore it is humbly submitted that the delay in executing the detention order in this case is caused by the abscondence of the detenu.

5. This plea is reiterated by respondents 3 and 4 in their counter affidavits also. There is no affidavit in reply to these averments and no material has been made available to this Court to conclude the case of the petitioner about his availability for arrest in the locality.

6. Delay in the execution of an order of preventive detention can be fatal only if it is inordinate and unexplained. In so far as this case is concerned, though there occurred a delay of almost four months, that delay according to the respondents has occurred on account of the fact that the detenu was absconding. W.P.(Crl.) No.385/13 :

5. : If that be so, the detenu himself is responsible for the delay and consequently he cannot take advantage of his own count.

7. In so far as Ext.P3 order passed by this Court on the application filed by the detenu for anticipatory bail is concerned, it may be true that following Ext.P3 order passed on 15/2/13, the detenu would have surrendered on 6/3/13. Thereafter, he was in judicial custody and was released only on 1/4/13. In such a case, respondents could not have arrested the detenu in execution of Ext.P2 order anytime before 01/4/13. Consequently, we are unable to accept the case of the petitioner that the detention is vitiated on ground of delay.

8. The second ground urged by the learned counsel is regarding the non compliance of Section 3(3) of the Act. Section 3 (3) of the Act provides that when any order of detention is made by an authorised officer under Section 3(2), he shall forthwith report the matter to the Government and the Director General of Police, Kerala together with a copy of the order and supporting records and no such order shall remain in force for more than 12 days, excluding public holidays, from the date of detention, unless, in the meantime, the order has been approved

by the W.P.(Crl.) No.385/13 :

6. : Government or by the Secretary, Home Department if generally so authorised in this regard by the Government. Reading of this provision shows that once an order of detention has been passed by the authorised officer, he shall forthwith report that fact to the Government and the Director General of Police and no such order shall remain in force for more than 12 days from the date of detention, unless, in the meantime, the same has been approved by the Government or by the Secretary, as the case may be. This order therefore mandates that the authorised officer shall forthwith report the fact to the Government and the Director General of Police. The word 'forthwith' does not mean instantly, but it means "as soon as possible: without any delay". The expression 'forthwith' also has been held to mean that act which is required forthwith to be performed with all reasonable dispatch and without avoidable delay.

9. In so far as this case is concerned, learned Additional Director General of Prosecution has made available a copy of the letter signed by the Additional District Magistrate on 5/12/12 reporting Ext.P2 order to the Director General of Police and to the Principal Secretary to the Government, Home Department W.P.(Crl.) No.385/13 :

7. : enclosing other relevant materials. He also produced the relevant extract of the local delivery tapal book of the Collectorate, KAA(P) A Section, Alappuzha which also shows that the letter dated 5/12/12 was delivered at the office of the Principal Secretary to the Government and the Director General of Police on 7/12/12. It is true that there occurred a delay of 5 days in reporting the matter. But then, in the facts of this case, we are unable to give a conclusion that this delay amounts to non compliance of Section 3 (3) rendering the detention of the petitioner's son illegal. As far as the approval that is granted is concerned, Government have approved the order of detention on 15/4/13 which evidently is within 12 days, excluding public holidays from the date of detention. Therefore, we are unable to accept both the grounds urged by the learned counsel for the petitioner and in the result, the writ petition will stand dismissed. Sd/- ANTONY DOMINIC, Judge Sd/- P.D.RAJAN, Judge Rp //True Copy// PA TO JUDGE

