

Cherukuri Mani Vs. Chief Sec.,govt.of A.P.and ors.

Cherukuri Mani Vs. Chief Sec.,govt.of A.P.and ors.

SooperKanoon Citation : sooperkanoon.com/1139372

Court : Supreme Court of India

Decided On : May-08-2014

Judge : Ranjana Prakash Desai and N.V. Ramana

Appellant : Cherukuri Mani

Respondent : Chief Sec.,govt.of A.P.and ors.

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO.1133 OF 2014 ARISING OUT OF SPECIAL LEAVE PETITION (CRL) No.2531 OF 2014 CHERUKURI MANI APPELLANT W/O NARENDRA CHOWDARI VERSUS THE CHIEF SECRETARY, GOVERNMENT OF RESPONDENTS ANDHRA PRADESH & ORS.

JUDGMENT

N.V. RAMANA, J.

Leave granted.

2. The appellant, who is the wife of one Cherukuri Narendra Chowdari-detenu, filed a writ petition under Article 226 of the Constitution before the High Court of Andhra Pradesh alleging that her husband has been unauthorisedly detained and the detention order passed was illegal and sought his release. The writ petition was dismissed by the High Court by the impugned order dated 28th October, 2013

stating that until and unless the competent Court of law decides the order of detention as illegal and invalid, it cannot be said that it is unauthorized detention. Aggrieved by the said order, the appellant has filed this appeal by special leave.

3. The facts which are necessary for the disposal of this appeal are that the Collector & District Magistrate, East Godavari District, Andhra Pradesh (Respondent No.2) issued a preventive detention order on 30th September, 2013, under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short the Act) stating that the husband of the appellant (detenu) has got all the attributes to be called as a goonda as envisaged under Section 2(g) of the Act. It is also mentioned that he was involved in several cases of theft of Government and private properties as well as cases of destruction of public properties and his antisocial activities are harmful to the society and general public and referred 11 cases registered against him.

4. It is significant to note that while passing the detention order, the Collector made it clear that the detenu has a right to make a representation to the Government under Section 8(1) of the Act and the case will be referred to the Advisory Board for review and opinion under Section 10 of the Act and the detenu can be heard personally by the Advisory Board. The Collector also indicated that the Government, on the basis of opinion of the Advisory Board, may confirm and continue the detention for a period not exceeding 12 months from the date of detention.

5. After having served with a copy of the detention order along with the grounds of detention, the husband of the appellant was taken into custody by Respondent No.3 and from 5th October, 2013 he was detained in the Central Prison, Rajahmundry till date.

6. It appears that on the basis of the recommendation of the Collector and after obtaining a report from the Advisory Board, the Government of Andhra Pradesh issued G.O.Rt. No.4803, dated 6th November, 2013 and directed detention of the detenu for a period of twelve months from the date on which he was detained i.e. 5th October, 2013.

7. When the appellant challenged the detention of her husband before the High Court in a habeas corpus Writ Petition, the High Court dismissed the same with a cryptic order. In our considered view, when habeas corpus writ petition is filed, even though the petitioner has not properly framed the petition and not sought appropriate relief, it is expected from the Court to at least go into the issue and decide on merits. Normally, in such matters where liberty of a person is at stake, the Courts would take a liberal approach in the procedural aspects. But unfortunately in the instant case, the High Court has dismissed the writ petition at the threshold itself.

8. Before us, learned counsel for the appellant mainly contended that as per the provisions of the Act, the period of detention in the first instance shall not exceed more than three months and a person cannot be put under detention without facing trial for a long period. When the husband of the appellant-detenu is already facing charges under various provisions of the Indian Penal Code in around 11 cases, the invocation of detention laws against him and not permitting him to face the trial is bad in law and it is also contrary to Clause (4)(a) of Article 22 of the Constitution of India. He further contended that the Government Order directing detention of the detenu for a period of 12 months is contrary to the proviso to sub-Section (2) of Section 3 of the Act, and on this ground alone, the order of detention is liable to be set aside. To support his arguments, he strongly relied on decisions of this Court in *Rekha Vs. State of Tamil Nadu* (2011) 5 SCC244 and *Munagala Yadamma Vs. State of Andhra Pradesh & Ors.* (2012) 2 SCC386 9. On behalf of the State, Mr. A.T.M. Rangaramanujam, learned senior counsel supported the detention order and sought time till after summer vacation.

10. Now the issue for consideration before us is whether the State Government has the power to pass a detention order to detain a person at a stretch for a period of 12 months under the provisions of the Act.

11. To answer the above issue, it is necessary to examine the relevant provisions of the Act. Section 3 of the Act empowers the detention of certain category of persons, as defined under the Act. Apart from conferring of power, the section regulates the manner of passing the orders of detention as well as their duration. It

reads thus: Section 3: Power to make orders detaining certain persons : (1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (1), exercise the powers conferred by the said sub-section: Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time. (3) When any order is made under the section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.

12. A reading of the above provisions makes it clear that the State Government, District Magistrate or Commissioner of Police are the authorities, conferred with the power to pass orders of detention. The only difference is that the order of detention passed by the Government would remain in force for a period of three months in the first Instance, whereas similar orders passed by the District Magistrate or the Commissioner of Police shall remain in force for an initial period of 12 days. The continuance of detention beyond 12 days would depend upon the approval to be accorded by the Government in this regard. Sub-section (3) makes this aspect very clear. Section 13 of the Act mandates that the maximum period of detention under the Act is 12 months.

13. Proviso to Sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, not exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression ".extend such period from time to time by any period not exceeding three months at any one time". assumes significance in this regard.

14. The requirement to pass order of detention from time to time in the manner referred to above, has got its own significance. It must be remembered that restriction of initial period of detention to three months, is nothing but implementation of the mandate contained in Clause (4)(a) of Article 22 of the Constitution of India. It reads as under: Clause 4 : No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless - (a) an Advisory Board consisting of persons who are or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub-clause (b) of Clause (7); or (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of Clause (7).

15. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the Government Order in the present case, directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and

contrary to the provisions of law. The Government cannot direct or extend the period of detention up to the maximum period of twelve months, in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time.

16. Normally, a person who is detained under the provisions of the Act is without facing trial which in other words amounts to curtailment of his liberties and denial of civil rights. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time. Taking into consideration these factors, the Legislature has specifically provided the mechanism Advisory Board to review the detention of a person. Passing a detention order for a period of twelve months at a stretch, without proper review, is deterrent to the rights of the detenu. Hence, the impugned Government Order directing detention for the maximum period of twelve months straightaway cannot be sustained in law.

17. Even though, learned senior counsel appearing for the State sought for an adjournment beyond summer vacation, we are unable to accept his prayer for the simple reason that maximum part of the period of detention of the detenu is going to complete by the end of summer vacation. Undisputedly, the detenu was detained on 5th October, 2013 which means that he remained under detention for about seven months at a stretch without any periodical review as envisaged by law. We are, therefore, of the considered opinion that the detention order passed by the Government of Andhra Pradesh in this case is in contravention to the provisions of law. On this ground alone, without going into other issues, we thought this appeal has to be allowed and the order of detention has to be quashed.

18. We accordingly allow the appeal quashing the detention order issued by the Government of Andhra Pradesh and setting aside the impugned judgment of the High Court. The detenu shall be set at liberty forthwith. .J.

(RANJANA PRAKASH DESAI) J.

(N.V. RAMANA) NEW DELHI, MAY08 2014.-.----- 10

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com