

Saba B Vs. the State of Telangana, Rep. by Its Chie

Saba B Vs. the State of Telangana, Rep. by Its Chie

SooperKanoon Citation : sooperkanoon.com/1171642

Court : Andhra Pradesh

Decided On : Nov-21-2014

Judge : The Hon'Ble Sri Justice Vilas V. Afzulpurkar

Appellant : Saba B

Respondent : The State of Telangana, Rep. by Its Chie

Advocate for Def. : M/s. BHARADWAJ ASSOCIATES Counsel

Judgement :

THE HONBLE SRI JUSTICE VILAS V. AFZULPURKAR WRIT PETITION No.30683 of 2014 21-11-2014 Saba Begum PETITIONER The State of Telangana, Rep. by its Chief Secretary, General Administration (Law & Order) Department, Secretariat, Hyderabad and others.RESPONDENTS Counsel for Petitioner: MR. VEDULA VENKATARAMANA For M/s. BHARADWAJ ASSOCIATES Counsel for Respondents: GP FOR HOME (TG) GIST : HEAD NOTE: ?. Cases referred :

1. AIR 2014 SC2090= 2014 (6) SCALE5242. (2011) 5 SCC2443. (2012) 2 SCC1764. (2012) 2 SCC3865. (2012) 13 SCC5856. AIR 1958 SC1637. (1972) 1 SCC1998. (2011) 10 SCC2159. (2004) 7 SCC46710. (2012) 4 SCC69911. (2002) 2 SCC42012. (1992) 2 SCC17713. (2009) 15 SCC45814. (2011) 10 SCC215THE HONBLE SRI JUSTICE VILAS V. AFZULPURKAR WRIT PETITION No.30683 of 2014 21-11-2014 The Court made the following:

ORDER

: Petitioner, who is wife of the detenu, seeks a relief against the order of detention, as confirmed by the first respondent, under G.O.Rt.No.720 General Administration (Law and Order) Department dated 29.09.2014 and to consequently, release the detenu from preventive detention.

2. The crucial dates and events may first be noted and they are as follows: Under Order of the Commissioner of Police, Hyderabad dated 06.08.2014, while exercising powers under Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short the Act), it was ordered that the detenu be detained and lodged in Central Prison, Chanchalguda. The said order was also accompanied by grounds of detention of even date. The detenu was arrested accordingly on 07.08.2014 from the jurisdiction of Habeeb Nagar Police Station, Hyderabad and detained accordingly. The said order of detention was approved by the Government under G.O.Rt.No.388 General Administration (Law & Order) Department dated 18.08.2014 and the State Advisory Board approved the detention as justified. In pursuance of the recommendation of the State Advisory Board, the first respondent has issued G.O.Rt.No.720 dated 29.09.2014 directing detention of the detenu for a period of 12 months from the date of detention. The last of the said orders is questioned in the writ petition, as mentioned above.

3. Mr. Vedula Venkataramana, learned senior counsel for the petitioner, who appeared in support of the writ petition, submitted that the order impugned is not sustainable, as it violates the Constitutional guarantee under Article 22 (4) of the Constitution of India apart from the same being in violation of proviso to Section 3(2) of the Act. Learned senior counsel placed strong reliance upon a decision of the Supreme Court in *CHERUKURI MANI v. CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH* in support of the aforesaid contention. Based on the ratio of the aforesaid decision, learned senior counsel would submit that the detention order passed by the first respondent directing detention for 12 months at a stretch is violative of Constitutional mandate as well as violates

proviso to Section 3(2) of the Act.

4. Learned senior counsel also submitted, on the other hand, that the order of detention suffers from procedural violations and also from non-application of mind and in order to demonstrate the same, learned senior counsel has pointed that the grounds of detention refer to as many as 26 crimes registered against the detenu. Learned senior counsel further points out that all the said offences are penal offences and out of 26 crimes, bonds for maintenance of peace under Section 107 of the Criminal Procedure Code were executed by the detenu in 7 crimes and another 11 crimes ended in acquittal/compromise before the Lok Adalat. Learned senior counsel further points out that only in Cr.No.122 of 2006 the detenu was convicted for six months and an appeal against the said conviction is pending. Learned senior counsel submits that the balance 5 crimes are pending trial and dates of incidents with regard to the said pending trial relate to the period 09.01.2013 to 29.09.2013. Learned senior counsel, therefore, submits that the grounds of detention itself record that out of the said 26 crimes only in 5 cases the trial is pending and all the rest of the cases are already disposed of as above and keeping in view the fact that the incidents, which are subject matter of trial in those 5 cases, are not proximate to the date of order of detention, the same are required to be referred to as stale criminal cases, which were relied upon by the detaining authority.

5. Learned senior counsel also placed strong reliance upon following decisions in support of his contentions: REKHA v. STATE OF TAMIL NADU ; YUMMAN ONGBI LEMBI LEIMA v. STATE OF MANIPUR ; MUNAGALA YADAMMA v. STATE OF ANDHRA PRADESH and K. NAGESWARA NAIDU v. COLLECTOR & DIST. MAGISTRATE, KADAPA .

6. Learned Government Pleader for Home appearing for the respondents, on the contrary, submits that the detention order itself mentions at more than once place that the criminal activities of the detenu were found to be prejudicial to the maintenance of public order and he was found to create panic in the minds of public by involving in gangwars. It was also found that the detenu has committed violent crimes and was declared as Goonda under Section 2(g) of the Act. On

finding that the detenu acted in a manner prejudicial to the maintenance of public order by creating a sense of perpetual fear in the minds of common members of the public in the area of his operation, thereby disturbing the public order and tranquility and the detenu is habitually engaging in grave and gruesome unlawful acts, the detaining authority has passed the order of detention, which has since been approved by the State Advisory Board and confirmed by the first respondent. Learned Government Pleader, therefore, submits that it is not as if the detenu was involved only in crimes against the individuals but in order to maintain public order, the detention order was passed.

7. So far as the first contention of the learned senior counsel is concerned, learned Government Pleader submits that Article 22(4) of the Constitution of India has to be read with sub-clause (7) of the said Article and contends that the order of detention for a period of 12 months passed by the first respondent cannot be held to be illegal in view of Article 22(7) of the Constitution of India. Learned Government Pleader supports the aforesaid contention by placing reliance upon a Constitution Bench decision of the Supreme Court in PURANLAL LAKHANPAL V. UNION OF INDIA . Learned Government Pleader also submits that Section 13 of the Act itself provides for maximum period of 12 months and as such, the order of the first respondent is valid and in conformity with Section 13 of the Act.

8. To the extent of decision of the Supreme Court in CHERUKURI MANIS case (1 supra), relied upon by the learned senior counsel, learned Government Pleader submits Article 22(7) of the Constitution of India as well as the decision in PURANLAL LAKHANPALs case (6 supra) was not brought to the notice of the Supreme Court. Learned Government Pleader also brought to the notice of this Court that a learned single Judge of this Court has considered the decision of the Supreme Court in CHERUKURI MANIS case (1 supra) in WP.No.22820 of 2014 and batch dated 13.10.2014 and after giving detailed reasons therein has distinguished the said judgment and upheld the order of detention. Learned Government Pleader also relied upon the following decisions of the Supreme Court in addition to PURANLAL LAKHANPALs case (6 supra): STATE OF WEST BENGAL v. ASHOK DEY ; D.M. NAGARAJA v. GOVERNMENT OF KARNATAKA ; COMMISSIONER OF POLICE v. C. ANITA and SUBRAMANIAN v. STATE OF

TAMIL NADU .

9. Learned senior counsel for the petitioner, in reply, submits that that the decision of the Supreme Court in CHERUKURI MANIs case is directly on point and it is not open for the High Court to disagree with the said view as under Article 141 of the Constitution of India the said judgment is binding. Learned senior counsel submits that the said decision, being the latest decision, on the question of law, any other earlier view cannot be preferred over the said decision and placed reliance upon the decision of the Supreme Court in SUGANTHI SURESH KUMAR v. JAGDEESHAN in support of the above proposition.

10. In view of the above rival contention, the following questions arise for consideration:

1. Whether the impugned order passed by the first respondent is violative of Article 22(4) of the Constitutions of India read with proviso to Section 3(2) of the Act?.

2. Whether the order of detention passed by the detaining authority, as confirmed by the first respondent, suffers from non-application of mind and is arbitrary and based on irrelevant grounds?. QUESTION No.1:

11. Before considering the rival contentions, it is appropriate to notice Articles 22(4) and 22(7) of the Constitution of India to the extent relevant for our purpose, as under:

22. Protection against arrest and detention in certain cases. - (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 authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause 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).

7. Parliament may by law prescribe - (a) circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub- clause (a) of clause (4); (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and (c) the procedure to be followed by an Advisory Board in an inquiry under sub- clause (a) of clause (4).

12. It is evident that the mandate under Article 22(4) of the Constitution of India is provided with an exception under Article 22(7) where Parliament by law may prescribe a period of detention longer than three months. Learned Government Pleader placed reliance upon Section 13 of the Act, which specifically provides that the maximum period of detention under the Act shall be 12 months from the date of detention and according to the learned Government Pleader, the order of detention cannot be invalidated on the first contention raised by the learned senior counsel. Learned Government Pleader has placed reliance upon a Constitution Bench decision of the Supreme Court in PURANLAL LAKHANPALs case (6 supra) where the Supreme Court considered and interpreted Article 22(4) as well as 22(7) of the Constitution of India by describing that Article 22(7) is an exception to Article 22(4). The Supreme Court also held that the jurisdiction of the Advisory Board is only to examine whether the detention is justified so as to enable that there is no arbitrary detention. The Advisory Board, however, is not concerned as to how long the detenu should be detained.

13. The decision of the Supreme Court in ASHOK DEYs case (7 supra) where another contention as to whether only the Parliament is empowered to make law under Article 22(7) of the Constitution of India was considered and it was specifically held that the Parliament has exclusive power to make law in respect of preventive detention for reasons connected with defence, foreign affairs or security of India vide Entry 9, List I, Seventh Schedule and the State Legislatures have concurrent power to make laws in respect of preventive detention for reasons connected with security of State, the maintenance of public order, maintenance of supplies and services essential to the community vide Entry 3 of List III of Seventh

Schedule. It was, further, held that there is no provision in the Constitution, which would justify limitation on power of the State Legislature. Hence, Article 22 of the Constitution of India covers the subject of preventive detention both under the law made by the Parliament and that under the State Legislature.

14. Question No.1 has, therefore, to be considered in the light of the ratio aforesaid. It is true that the decisions in PURANLAL LAKHANPALs case (6 supra) as well as ASHOK DEYs case (7 supra) were not cited before the Supreme Court in CHERUKURI MANIs case. In my view, the decision in CHERUKURI MANIs case really proceeds on interpretation of proviso to Section 3(2) of the Act. For the purpose of convenience Section 3(1) and (2) of the Act with proviso is extracted hereunder:

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.

15. It is evident that under Section 3(1) of the Act, the Government is empowered to pass an order of detention whereas under Section 3(2) of the Act the Government may authorize the District Magistrate or a Commissioner of Police to exercise powers under Section 3(1) of the Act, as prescribed. Further, under the proviso, the limitation on power under Section 3(2) of the Act prescribes maximum

period of three months. In my view, it is necessary to notice another decision of the Supreme Court in *HARPREET KAUR HARVINDER SINGH BEDI v. STATE OF MAHARASHTRA* which is directly on point, which also was not brought to the notice of the Supreme Court in *CHERUKURI MANI's* case (1supra). The aforesaid decision had considered identical provisions arising under similar enactment from Maharashtra State. One of the specific contentions therein was noticed in para 5, which is extracted hereunder for convenience:

5. Two basic arguments have been raised by Dr. Chitale before us to question the order of detention. The second argument of the learned counsel is based on the proviso to Section 3(2) of the Act, which according to the learned counsel, prohibited the State Government to make an order of detention, in the first instance exceeding three months and since the order of detention in the instant case was for a period exceeding three months, it was categorised as bad in law and invalid. No other contention was pressed. The said contention was answered by the Supreme Court in para 22 as under: Sub-section (2) of Section 3 deals with the delegation of power by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by Sub-Section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in Sub-section (1), exercise the powers of the State Government as conferred by Sub-Section (1). The provision to Sub-section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under Sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under Sub-section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the

order of detention is the instance case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails. (emphasis supplied) 16. It would, thus, be clear from the above that the proviso to Section 3(2) of the Act has to be read in harmony with sub-clause (2) to Section 3. The limitation of three months imposed under the proviso, therefore, is applicable only where the Government delegates its power to the District Magistrate or the Commissioner of Police, as the case may be and so far as Governments power under Section 3(1) of the Act is concerned, that obviously is controlled by the maximum period, as prescribed under Section 13 of the Act. In my humble opinion, therefore, since the decision in HARPREET KAUR HARVINDER SINGH BEDIs case (12 supra) also was not brought to the notice of the Supreme Court in CHERUKURI MANIs case, the said earlier decision of the Constitution Bench in PURANLAL LAKHANPALs case (6 supra) cited by the learned Government Pleader and the decision in HARPREET KAUR HARVINDER SINGH BEDIs case (12 supra) is required to be followed.

17. Learned senior counsel for the petitioner had placed reliance upon another decision of the Supreme Court in SUGANTHI SURESH KUMARs case (11 supra) and placed reliance upon para 9, which are as under:

9. It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by this Court in Anil Kumar Neotia v. Union of India, AIR 1988 SC1353 that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court.

18. However, to the contrary, learned Government Pleader had placed reliance upon a decision of the Supreme Court in SUBHASH CHANDRA v. DELHI SUBORDINATE SERVICE SELECTION BOARD wherein in paras 96 and 110 it was considered and held that the decision of the Constitution Bench of the

Supreme Court is binding of a Division Bench. For the sake of convenience, paras 96 and 110 are extracted hereunder:

96. A decision, as is well known, is an authority for what it decides and not what can logically be deduced therefrom. In *S. Pushpa* [(2005) 3 SCC1, decisions of the Constitution Benches of this Court in *Milind* [(2001) 1 SCC4 had not been taken into consideration. Although the case of *Chinnaiah* [(2005) 1 SCC394 was decided later on, we are bound by the same. It is now a well settled principle of law that a division bench, in case of conflict between a decision of a Division Bench of two Judges and a decision of a larger Bench and in particular Constitution Bench, would be bound by the latter. [See *M/s Sardar Associates v. Punjab & Sind Bank* [(2009) 8 SCC257 110. Should we consider *Pushpa* [(2005) 3 SCC1 to be an obiter following the said decision is the question which arises herein. We think we should. The decisions referred to hereinbefore clearly suggest that we are bound by a Constitution Bench decision. We have referred to two Constitution Bench decisions, namely *Marri Chandra Shekhar Rao* [(1990) 3 SCC130 and *E.V. Chinnaiah* [(2005) 1 SCC394. *Marri Chandra Shekhar Rao* had been followed by this Court in a large number of decisions including Three Judge Bench decisions. *Pushpa*, therefore, could not have ignored either *Marri Chandra Shekhar Rao* or other decisions following the same only on the basis of an administrative circular issued or otherwise and more so when the Constitutional scheme as contained in clause (1) of Articles 341 and 342 of the Constitution of India putting the State and Union Territory in the same bracket. Following *Dayanand* [(2008) 10 SCC1, therefore, we are of the opinion that the dicta in *Pushpa* is an obiter and does not lay down any binding ratio.

19. In due consideration of the ratio of the decisions aforesaid, question No.1 is required to be answered against the petitioner. QUESTION No.2:

20. Learned senior counsel for the petitioner also substantiated his contentions by placing reliance upon the decision in *REKHAs* case (2 supra) and relied upon paras 23 and 29 thereof wherein the Supreme Court considered generally the preventive detention legislation in India and described the jurisdiction thereunder, as a suspicion jurisdiction with reference to the particular detention order, which

was challenged in that case. The next decision relied upon is YUMMAN ONGBI LEMBI LEIMAs case (3 supra) wherein it was held that the power of detention must be exercised with due caution and on proper appreciation of evidence regarding prejudicial activities as personal liberty of an individual is the most precious fundamental right and mere apprehension that detenu is likely to be released on bail, in the absence of any other ground, is not sufficient to justify the detention order. In a further decision, relied upon by the learned senior counsel, in MUNAGALA YADAMMAS case (4 supra) the Supreme Court held that when ordinary law is sufficient to deal with offences recourse to preventive detention cannot be taken as substitute to ordinary law. In this decision, the decision of the Supreme Court in REKHAs case (2 supra) was considered. Another decision, relied upon, is K. NAGESWARA NAIDUs case (5 supra), which also considered the detention order passed under the AP Act, which in question in this writ petition. The said decision also considered the earlier referred to decisions in REKHAs case (2 supra) and YUMMAN ONGBI LEMBI LEIMAs case (3 supra).

21. Learned Government Pleader, however, relied upon a decision of the Supreme Court in D.M. NAGARAJA v. GOVT. OF KARNATAKA , particularly, paras 20 and 21. The said decision had also noticed REKHAs case (2 supra). For the sake of convenience paras 20 and 21 are extracted hereunder:

20. In the case on hand, we have already extracted criminality, criminal activities starting from the age of 30 and details relating to eleven cases mentioned in the grounds of detention. It is not in dispute that in one case he has been convicted and sentenced to undergo rigorous imprisonment for a term of nine years. He had been acquitted in two cases and four cases are pending against him wherein he was granted bail by the courts. It is the subjective satisfaction of the Detaining Authority that in spite of his continuous activities causing threat to maintenance of public order, he was getting bail one after another and indulging in the same activities. In such circumstances, based on the relevant materials and satisfying itself, namely, that it would not be possible to control his habituality in continuing the criminal activities by resorting to normal procedure, the Detaining Authority passed an order detaining him under the Act No.12 of 1985.

21. In view of enormous materials which are available in the grounds of detention, such habituality has not been cited in the above referred Rekha [(2011) 5 SCC244, we are satisfied that the said decision is distinguishable on facts with reference to the case on hand and contention based on the same is liable to be rejected.

22. Though the learned senior counsel submits that all the crimes are against individuals, as such, the conclusion of the detaining authority that public order is being affected, suffers from total non-application of mind, I find it difficult to accept the said submission. The criminal activities indulged in by the detenu clearly show his habitual nature and the series of incidents involving the detenu over the years and that those criminal activities of the detenu continued year after year and the last incident is noted as of 08.03.2014. Though 7 of the crimes are said to have been compromised/acquitted, keeping in view the terror and fear created in the minds of public on account of his activities, it is but natural that no witnesses are coming forward resulting in the detenu getting acquitted and continuing his activities unabated. Moreover, the subjective satisfaction of the detaining authority cannot be said to be perverse or arbitrary as it is based upon sufficient material as disclosed in the order of detention in the grounds.

23. It is also evident from the order of detention that a large number of criminal cases filed against the detenu ended in acquittal/compromise, which itself indicate that neither the complainants nor the witnesses are coming forwards to depose against the petitioner. The detention order, therefore, mentions that out of terror and fear created by the detenu in the minds of public, the detenu gets acquitted in majority of the criminal cases and thereby, continues his habitual criminal activities. It is also evident that the ordinary process of law for penal offences is not yielding any results in checking the series of incidents involving the detenu and thereby, the detaining authority was satisfied that the detention order is required to be passed against the detenu, as ordinary criminal proceedings have proved ineffective. In the circumstances, therefore, I do not find any non-application of mind while passing the detention order as contended by the learned senior counsel for the petitioner. Hence, question No2, is also answered against the petitioner. In the result, therefore, the writ petition is dismissed. As a sequel, the

miscellaneous applications, if any, shall stand closed. There shall be no order as to costs. _____ VILAS V. AFZULPURKAR, J November 21, 2014

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