

Amjadulla Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jul-17-2015

Judge : Mohan M. Shantanagoudar & R.B. Budiha

Appeal No. : Writ Petition (Habeas Corpus) No. 94 of 2015

Appellant : Amjadulla

Respondent : State of Karnataka and Others

Judgement :

1. The detention order passed by the Commissioner of Police, Bangalore dated 18-3-2015 under Section 3(2) read with Section 3(1) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (~Goonda Act for short) and the order of confirmation passed under Sections 12(1) and 13 of the Goonda Act, are called in question in this writ petition.

2. Sri Lakshmikanth Rao, learned Advocate appearing on behalf of the petitioner taking us through the grounds of detention and the order of detention submits that the crimes noted in the grounds of detention, based on which the detention order is passed are not having proximity to the detention order, inasmuch as the crimes as noted in the grounds of detention are committed either in the year 2014 or prior thereto. He further submits that the last crime committed by the detenu is on 19-5-2014 and therefore the order of detention is liable to be quashed since the

crimes noted in the order of detention suffer from remoteness.

The said submissions are opposed by the learned Government Advocate bringing to the notice of the Court that the detinue is involved in serious offences punishable under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (~NDPS Act for short) and other offences. He further submits that in none of the matters, the police were able to arrest the detinue, inasmuch as she was absconding. The detention order and the grounds of detention clearly disclose that the detinue is facing ten crimes. Out of them, nine crimes arise out of NDPS Act.

3. As could be seen from the facts alleged in all the aforementioned nine cases, it is clear that the detinue is involved in possessing and distribution of a narcotic drug ganja, i.e., cannabis (hemp). In all the matters she has absconded for avoiding arrest. Till passing of the order under the Goonda Act, the presence of the detinue could not be secured by the police. The detinue remained hiding and consequently, she avoided arrest. In view of the same, it is not open for the detinue to contend that the cases which are registered against her suffer from remoteness. Since the detinue could not be arrested in any of the criminal cases arising out of NDPS Act or under Indian Penal Code, 1860 because of her abscondance and hiding, she cannot take advantage of the same. Looking to the facts found in the grounds of detention, we are satisfied that the detinue purposely avoided arrest and she has absconded.

Sri Lakshmikanth Rao, learned Advocate for the petitioner further submitted that the detinue does not come under the definition of drug-offender as defined under the provisions of the Goonda Act.

4. In order to appreciate the said contention, it is beneficial to note the definition of drug-offender as defined under Section 2(e) of the Goonda Act, which reads thus:

2. (e) Drug-offender means a person, who manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant of the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940), or the Dangerous Drugs Act, 1930 (Central Act II of 1930) and the rules, notifications and orders made under either Act, or in

contravention of any other law for the time being in force, or who knowingly expends or applies any money in furtherance or support of the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such things ?.

A bare perusal of the definition of drug-offender makes it clear that a person who stocks, sales or distributes any drug, in contravention of any law for the time being in force comes within the definition of drug-offender ?. Hence, it is not open for the petitioner to contend that only if the detainee commits any offence under the provisions of Drugs and Cosmetics Act, or the Dangerous Drugs Act, he comes under the definition of drug-offender ?.

The Legislature has consciously used the word or in the definition of drug-offender ?. Therefore, the words who manufactures, stocks, imports, exports, sells or distributes any drug . will have to be read disjunctively from other portion of the very definition. Consequently, the only conclusion that can be reached is that if a person manufactures, stocks, sells or distributes any drug, he comes under the definition of drug-offender particularly when such manufacturing, stocking, selling or distributing the drug is in contravention of any law for the time being in force.

Section 2(xiv) of the NDPS Act, defines narcotic drug as under:

2. (xiv) Narcotic drug means coca leaf, cannabis, (hemp), opium, poppy straw and includes all manufactured goods ?.

From the above definition of narcotic drug', it is clear that cannabis (hemp) is also a narcotic drug. The detainee was involved in stocking and selling the ganja leaves, i.e., cannabis (hemp) and such act of the detainee in stocking and selling narcotic drug is prohibited under the provisions of the NDPS Act. In view of the same, we conclude that the detainee comes under the definition of drug-offender as defined under Section 2(e) of the Goonda Act.

5. We are satisfied from the records that the Commissioner of Police and the State Government are justified in passing the impugned orders with a view to prevent the detainee from acting in any manner prejudicial to the maintenance of public

order. There cannot be any dispute that in case if the narcotic drug/ganja/cannabis (hemp) is stored and sold to the public, then the same would lead to health deterioration and consequently will create law and order problem in the society. Since the detinue has acted in the manner which is prejudicial to the maintenance of public order, the Commissioner of Police and the State Government are justified in passing the impugned orders.

Hence, no interference is called for. Accordingly, writ petition fails and the same stands dismissed.

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