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Court : Kerala

Decided On : Sep-30-2015

Judge : K.T. Sankaran & V. Raja Vijayaraghavan

Appeal No. : WP (Crl.) No. 355 of 2015 (S)

Appellant : Kumar

Respondent : State of Kerala represented by The Chief Secretary Government of Kerala (Home Department) and Others

Judgement :

K.T. Sankaran, J.

1. The Writ Petition is filed by the father of Sarath @ Kunjumon, who was detained as per the order passed under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act. The order of detention is dated 28.5.2015 issued by the District Magistrate, Thiruvananthapuram. The order was executed on 5.6.2015 and the detenu was detained. The detenu challenges the order of detention as well as the continued detention.

2. As per Exhibit P1 order of detention, the detenu was classified as a known rowdy. It is stated in Exhibit P1 that the detenu is involved in ten crimes registered

in the years 2013, 2014 and 2015, nine crimes at Chirayinkeezhu Police Station and the last crime at Attingal Police Station. The crime registered at Attingal Police Station was registered suo-motu by the police and therefore, it was excluded from the purview of consideration.

3. Exhibit P1 order of detention dated 28.5.2015 refers to two reports dated 7.5.2015 and 25.5.2015 submitted by the District Police Chief. The contention of the petitioner is that the report dated 25.5.2015 was not served on the detenu. On verification of the original records, we could not find copy of the report dated 25.5.2015. Instead, we could find a report dated 23.5.2015 submitted by the Sub Inspector of Police, Chirayinkeezh Police Station to the District Police Chief, Thiruvananthapuram, in which reference to three crimes committed after the date of submission of the first report is made. The copy of this letter sent by the Sub Inspector of Police to the District Police Chief was supplied to the detenu. However, the report dated 25.5.2015 submitted by the District Police Chief to the District Magistrate and which is referred to in the first paragraph in the order of detention was not supplied to the detenu.

4. Another glaring illegality pointed out by the learned counsel for the petitioner that though Exhibit P1 order of detention is dated 28.5.2015, Exhibit P4 memo for executing the order of detention was issued by the District Collector and the District Magistrate on 26.5.2015. The date put on Exhibit P4 order at the end of it is 26.6.2015. On noticing the difference in dates in the order of detention as well as in the memo for executing the order of detention (Exhibit P4), we carefully perused the original files and we could notice still graver mistakes and illegalities, which are the following :

(i) In the counter affidavit of the second respondent (District Magistrate, Thiruvananthapuram), it is stated in paragraph 1 as follows:

1. I am the District Collector and District Magistrate, Thiruvananthapuram, the second respondent in the above writ petition. The order was passed by me on 24.05.2015. I know the facts of the case as disclosed by the relevant files.

Exhibit P1 order on the basis of which the detenu was arrested and detained is dated 28.5.2015. In paragraph 6 of the counter affidavit of the second respondent, it is stated thus:

6. On being satisfied that Sri.Sarath @ Kunjumon is a known rowdy , as defined in Section 2(p)(iii) of KAA(P) Act, 2007 and that if he remains at large after release from earlier detentions, he would indulge in antisocial activities with regard to public peace and order which would directly or indirectly cause harm, danger or cause threat to public life and property among the general public of Thiruvananthapuram District, as reported by the District Police Chief, Thiruvananthapuram Rural, Detention Order No.CC56/S13/Camp/15 dated : 24.05.2015 was issued.

The contention is that on the basis of the subjective satisfaction arrived at, an order of detention dated 24.5.2015 was passed. But the order of detention which was served on the detenu and on the basis of which he was arrested and detained was as per Exhibit P1 order dated 28.5.2015.

(ii). Though the detenu was arrested on the basis of the order of detention dated 28.5.2015, Exhibit P4 memo for executing order of detention signed by the District Collector and District Magistrate was issued on 26.5.2015. However, it is also relevant to note that at the end of Exhibit P4, the date noted is 26.6.2015 while on the top it is 26.5.2015. At page 21 of the original files, the letter dated 9.6.2015 signed by the District Police Chief, Thiruvananthapuram Rural and addressed to the District Collector, Thiruvananthapuram, is placed, in which copy of the order of detention No.CC 56/S13/Camp/15 dated 26.5.2015 is acknowledged. It is stated in that letter that the said order of detention dated 26.5.2015 was executed on 5.6.2015 and the detenu was arrested. Page 17 of the original files consists of the jail admission authorisation addressed to the Superintendent of Central Jail, Thiruvananthapuram. The date put therein is 26.6.2015 while the endorsement by the Superintendent of Central Prison, Thiruvananthapuram shows admitted on 6.6.2015 at 4.35 p.m. In the jail admission authorisation, the reference shown is the order of detention No.CC56/S.13/Camp/15 dated 26.5.2015.

(iii). Page 233 of the original files consists of the order of approval issued by the Additional Chief Secretary to Government (Home and Vigilance), dated 12.6.2015. In the order of approval, the order of detention is described as No.56/S.13/Camp/15 dated 28.5.2015.

(iv). Pages 259 to 277 of the original files contain the report, opinion and proceedings of the Advisory Board in which the date of passing the order of preventive detention is mentioned as 28.5.2015. In column 14 of c of the report of the Advisory Board, it is stated as follows : The date and mode of reporting to the Government, the fact of passing the detention order etc. under Section 3(3) - by the letter dated 26.5.2015.

(v). The order dated 27.7.2015 passed by the Additional Chief Secretary to Government is placed in the original files which refers to the order of detention dated 28.5.2015.

5. The details mentioned above reveals that as per the jail admission authorisation, the order of detention to be executed was dated 26.5.2015. The Jail Admission Authorisation was signed by the District Magistrate on 26.6.2015. The detenu was arrested on 5.6.2015 and he was admitted in jail on 6.6.2015. The confidential letter dated 9.6.2015 issued by the District Police Chief, Thiruvananthapuram, shows that the order of detention dated 26.5.2015 was executed on 5.6.2015 and the detenu was produced before the Central Prison on 6.6.2015. The order of approval dated 12.6.2015 was with respect to the order of detention dated 28.5.2015. The order of confirmation dated 27.7.2015 shows that the order of detention dated 28.5.2015 was confirmed. The order of detention with reference to which the Advisory Board gave opinion and report is with respect to the order dated 28.5.2015.

6. All these matters would disclose total non application of mind on the part of the detaining authority, the authority which executed the order of detention, the jail authorities, and the Government who confirmed the order of detention. The detenu cannot be told that at any rate you are under detention and the court cannot examine whether there are illegalities in the whole procedure and total non application of mind. Non application of mind is evident from the records, which

would vitiate the order of detention as well as the continued detention. Copy of document which was relied upon by the detaining authority was not supplied to the detenu which would also vitiate the order of detention. There is no authority to detain the detenu further and he is liable to be released forthwith.

7. Accordingly, the order of detention is quashed and we hold that the continued detention of the detenu is illegal. The detenu, namely, Sarath @ Kunjumon, Son of Kumar, Valiya Elavayalil Veedu, Koonthallur Village, Chirayinkeezh, Thiruvananthapuram District, shall be released forthwith, if his detention is not required in connection with any other case.

The Writ Petition (Crl.) is allowed as above.

Gist of the Order

W.P.(Crl.) No.355 of 2015 filed by Kumar challenging the order of detention of Sarath @ Kunjumon, Son of Kumar, Valiya Elavayalil Veedu, Koonthallur Village, Chirayinkeezhu, Thiruvananthapuram District, is allowed by the order dated 30.9.2015 and the order of detention is quashed and the continued detention is held illegal. Accordingly, there will be a direction to release Sarath @ Kunjumon from detention forthwith, if his detention is not required in connection with any other case.

The Registry will communicate the gist of the order to the Superintendent of Jail, Viyyur, immediately.

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