

Jayalekshmi Vs. State of Kerala represented by The Chief Secretary to Government (Home Department) and Others

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Court : Kerala

Decided On : Sep-29-2015

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

Appeal No. : WP(Crl.) No. 280 of 2015 (S)

Appellant : Jayalekshmi

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

Judgement :

K.T. Sankaran, J.

1. Naveen Suresh, son of the petitioner, was detained in execution of Ext.P1 order of detention dated 21.3.2015 issued by the District Magistrate, Thiruvananthapuram under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'KAAPA'), on the ground that he is a 'known rowdy' as defined in the KAAPA. The order of detention was executed on 2.4.2015. Naveen Suresh is undergoing detention. In the Writ Petition, the order of detention as well as the continued detention are under challenge.

2. The learned counsel for the petitioner submitted that the order of detention is vitiated on several grounds. We shall discuss hereunder the points raised by the learned counsel for the petitioner.

3. It is stated in the order of detention that proceedings under Section 107 of the Code of Criminal Procedure were initiated against the detenu in the year 2014. Even thereafter, the detenu indulged in criminal activities which resulted in the registration of Crime No.1068 of 2014 of Kanjiramkulam Police Station and Crime No.1511 of 2014 of Kattakada Police Station. In the order of detention, the satisfaction of the detaining authority is recorded to the effect that initiation of the proceedings under Section 107 Cr.P.C. would not deter the detenu from indulging in criminal activities. The contention of the petitioner is that in the nature of the crimes registered against the detenu, the appropriate proceedings would have been under Section 110 Cr.P.C instead of Section 107 Cr.P.C. Had proceedings under Section 110 Cr.P.C. been taken against the detenu, that would have been sufficient deterrent against the detenu. The detaining authority did not advert to this aspect at all and, therefore, the subjective satisfaction is vitiated.

4. It is apposite to refer to the crimes registered against the detenu while dealing with the above contention. Ten crimes were registered against the detenu during the period 2013-2014, the details of which are shown below:

Sl.No.	Crime No.	Police Station	Sections of offence
1	914/2013	Thampanoor	S.379 read with S.34 IPC
2	908/2013	Vanchiyoore	Ss.379, 411 read with S.34 IPC
3	601/2013	Poojappura	Ss.379, 411 read with S.34 IPC
4	1247/2013	Thampanoor	Ss.379 and 201 IPC
5	480/2014	Vanchiyoore	S.379 read with S.34 IPC

6	295/2014	Museum	S.379 read with S.34 IPC
7	328/2014	Vattiyoorkkavu	Ss.379, 201 read with S.34 IPC
8	448/2014	Nemom	S.394 IPC
9	1511/2014	Kattakada	S.379 read with S.34 IPC
10	1068/2014	Kanjiramkulam	S.379 read with S.34 IPC

5. The details of the crimes mentioned in the grounds of detention would show that, in many cases, the detenu was indulging mainly in snatching gold chains particularly from women in public road, shop etc. It is also alleged that the detenu and his associates used to travel on motor bike for commission of the crime. It was also found that even the motor bike was a stolen one.

6. It may be true that proceedings under Section 110 Cr.P.C. could be initiated against the detenu for keeping good behaviour, since the allegation would show that he is by habit a thief. At the same time, it cannot be said that proceedings could not be initiated against the detenu under Section 107 Cr.P.C., in the facts and circumstances of the case. The narration of the events in the crimes registered against the petitioner would indicate that there are sufficient materials to arrive at a conclusion that the detenu is a person likely to commit any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. It is for the authority initiating proceedings under Section 107 or Section 110 Cr.P.C. to decide whether proceedings should be initiated against the person concerned either under Section 107 or Section 110 Cr.P.C. It is not a matter for the detaining authority to sit in judgment over the power exercised by the authority initiating proceedings under Section 107 Cr.P.C. and say that he should have initiated proceedings under Section 110 Cr.P.C. It is not within the domain of the detaining authority to consider the legality or otherwise of the proceedings taken against the person concerned under Chapter VIII of the Code of Criminal Procedure. What is relevant to be considered by the detaining authority is whether the proceedings initiated against the person concerned under Chapter VIII of the Code of Criminal Procedure would be a relevant factor in arriving at the subjective

satisfaction under Section 3(1) of the KAAPA. The detenu is also not entitled to contend that the appropriate proceedings to be taken against him would be under Section 110 and not under Section 107 Cr.P.C. and, on that ground, the subjective satisfaction arrived at by the detaining authority is vitiated. The detenu is not entitled to dictate to the detaining authority on what grounds he should arrive at the subjective satisfaction or contend that the subjective satisfaction that would have been arrived at by the detaining authority would have been otherwise if proceedings under Section 110 Cr.P.C. were taken against the detenu. An order of detention cannot be quashed on the ground that the authority acting under Chapter VIII of the Code of Criminal Procedure could have taken proceedings under Section 110 Cr.P.C. instead of Section 107 Cr.P.C. against the person concerned and the detaining authority having not adverted to that aspect, the detention order is bad.

7. The learned counsel for the petitioner submitted that a less drastic step should have been taken against the detenu before passing an order of detention under Section 3(1) of the KAAPA. The sum and substance of the submission is that proceedings under Section 110 Cr.P.C. could be taken against the detenu instead of passing an order of detention under Section 3(1) of the KAAPA. It is submitted that if the bond is executed by the person concerned in a proceeding under Section 110 Cr.P.C., good behaviour of the person concerned could be ensured for a period of three years. It is submitted that the detaining authority should not have exercised its subjective satisfaction, since the appropriate proceedings, namely, proceedings under Section 110 Cr.P.C., were not initiated against the detenu. It is difficult to accept the contention put forward by the learned counsel for the petitioner in the scheme of things under the KAAPA. The authority acting under the KAAPA has the discretion either to pass an order of detention under Section 3 or to pass an order of externment under Section 15(1) of the KAAPA. It was held by a Division Bench of this Court (in which one of us was a member) in *Hidayath K. v. State of Kerala and others* [2014 (1) KHC 718 (DB)] that it is not necessary to pass an order under Section 15(1) of the KAAPA before deciding to issue an order of detention under Section 3(1) of the KAAPA. However, it is not within the domain of the detaining authority to consider whether the authority acting under Chapter VIII of the Code of Criminal Procedure in his wisdom could

have initiated an appropriate proceeding, which would be of lesser magnitude than an order of detention under Section 3(1) of the KAAPA.

8. In *D.M.Nagaraja v. Government of Karnataka and others* [AIR 2012 SC 295], while dealing with a case under the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act (12 of 1985), the Supreme Court relied on the Constitution Bench decision in *Haradhan Saha v. State of West Bengal and others* [(1975) 3 SCC 198 = AIR 1974 SC 2154], wherein the Constitution Bench laid down various principles. In *Haradhan Saha's* case, it was held that merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act.

9. The learned counsel for the petitioner submitted that Ext.P1 order of detention would show that the detaining authority relied upon the statements of witnesses which could only be the statements of witnesses recorded under Section 161 Cr.P.C. The contention is that a statement recorded under Section 161 Cr.P.C. is not substantive evidence and, therefore, it should not have been relied upon to arrive at the subjective satisfaction. The learned counsel relied on the decision of the Supreme Court in *Pebam Ningol Mikoi Devi v. State of Manipur and others* [(2010) 9 SCC 618] to substantiate his contention. The learned Additional Director General of Prosecution submitted that the statements of witnesses under Section 161 Cr.P.C. were perused by the detaining authority, among several other documents like the First Information Reports, final report under Section 173 Cr.P.C., rowdy history sheet and bail orders. It is also submitted that the statement under Section 161 Cr.P.C. is not a relied upon document. It is also submitted that in the light of the definition of 'known rowdy' under Section 2(p)(iii) of the KAAPA, it is within the jurisdiction of the detaining authority to peruse the statements of witnesses under Section 161 Cr.P.C. as well. The learned Additional Director General of Prosecution submitted that the decision of the Supreme Court in *Pebam Ningol Mikoi Devi v. State of Manipur and others* [(2010) 9 SCC 618] relates to an order of detention under the National Security Act where there is no

corresponding provision like Section 2(p)(iii) of the KAAPA.

10. 'Known rowdy' is defined under Section 2(p) of the KAAPA. A person can be classified as 'known rowdy' if any of the three requirements in sub-clauses (i), (ii) or (iii) is satisfied. Subclause (iii) would be attracted if the person concerned is found, on investigation or enquiry by a competent police officer or other authority, on complaints initiated by persons other than police officers, in three separate instances not forming part of the same transaction to have committed any offence mentioned in clause (t) of Section 2. Even cases where final reports were not filed could be taken note of for the purpose of considering the applicability of subclause (iii) of clause (p) of Section 2. If so, the documents available for consideration would be the First Information Statement, First Information Report and the statements recorded under Section 161 Cr.P.C. In arriving at the subjective satisfaction, the detaining authority is expected to consider whether the person concerned had indulged in an activity which attracts sub-clause (iii) of clause (p) of Section 2. For that purpose, there is no impediment in perusing the statements of witnesses recorded under Section 161 Cr.P.C. The statements recorded under Section 161 Cr.P.C. could be perused to find out whether the person concerned was found, on investigation or enquiry by a competent police officer, to have committed any offence mentioned in sub-clause (iii) of clause (p) of Section 2 of KAAPA. In other words, the statement under Section 161 Cr.P.C. can be perused by the detaining authority to ensure that the ingredients of the definition of 'known rowdy' under clause (p) of Section 2 are available on record. Section 7(2) of the KAAPA provides what all documents should be furnished to the detenu after his arrest. Section 7(2) reads as follows:

7. Grounds of order of detention to be disclosed:- (1)

(2) The grounds of detention, specifying the instances of offences, with copies of relevant documents, as far as practicable, on the basis of which he is considered as a known goonda or known rowdy and giving such materials-relating to his activities on the basis of which his detention has been found necessary, shall be furnished to him as soon as possible, nevertheless, in any case, within five days of detention and he shall also be informed in writing, under acknowledgment, of his

right to represent to the Government and before the Advisory Board against his detention:

Provided that nothing in this section shall require any authority to disclose to the detained person any fact, the disclosure of which will reveal the identity of any confidential source or the disclosure of which will be against the interests of internal security or national security.

11. Copies of the relevant documents, on the basis of which the detenu is considered as a 'known goonda' or 'known rowdy', should be supplied to the detenu. As stated above, to attract the definition of 'known rowdy' under sub-clause (iii) of clause (p) of Section 2, it must be found, on investigation or enquiry by a competent police officer, that the person concerned has committed any offence mentioned in clause (t) of Section 2. To verify the same, the detaining authority may peruse the statements recorded under Section 161 as well, as otherwise the consideration of the materials for arriving at the subjective satisfaction would be incomplete, taking into account the facts and circumstances of each case.

12. In *Pebam Ningol Mikoi Devi v. State of Manipur and others* [(2010) 9 SCC 618], the detenu was detained under the National Security Act. The detaining authority relied upon several documents which included statements recorded under Section 161 Cr.P.C. The Supreme Court perused the grounds of detention and the documents relied on by the detaining authority while passing the order of detention and it was held that in our considered view, the grounds on which detention order is passed has no probative value and were extraneous to the scope, purpose and the object of the National Security Act. While arriving at the conclusion, the Supreme Court held that statements under Section 161 Cr.P.C. cannot be taken as sufficient ground in the absence of any supporting or corroborating ground, as 161 statements are not considered as substantive evidence. The Supreme Court further held thus:

20. What emerges from these rulings is that, there must be a reasonable basis for the detention order, and there must be material to support the same. The Court is entitled to scrutinize the material relied upon by the Authority in coming to its

conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. The subjective satisfaction must be two fold. The detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting.

13. In Smt.K. Aruna Kumari v. Government of Andhra Pradesh and others [AIR 1988 SC 227], the detenu was detained under Section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The detenu was a contractor under South Central Railways. It was alleged that he diverted 600 bags of levy cement and transported the same to his work site. The cement was seized, the detenu was arrested and he made a confession before the Inspector of Police. The confession statement was relied on by the detaining authority as one of the materials to arrive at the subjective satisfaction. Dealing with that aspect, the Supreme Court held thus:

8. Besides, the detenu accepted the allegations against himself in his statement recorded under S.161 of the Cr.P.C. It is true that it may not be a legally recorded confession which can be used as substantive evidence against the accused in the criminal case, but it cannot be completely brushed aside on that ground for the purpose of his preventive detention. The records further show that the oral evidence of the watchman and the labourer engaged in the house construction proved that it was the levy cement issued to the detenu which was being diverted at his instance. Before closing this chapter it may be re-stated that the sufficiency of the materials available to the detaining authority is not to be examined by the Court.

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11. It appears from the grounds, i.e., the facts set out that the detenu had made a statement admitting that he had diverted 600 bags of levy cement issued

to him for use in the masonry ballast wall along the railway track and therefore the District Magistrate was justified in coming to the conclusion that he (the detenu) was acting in a manner prejudicial to the maintenance of supplies of the commodity essential to the community. ...

14. In *State of Punjab v. Sukhpal Singh* [AIR 1990 SC 231], the Supreme Court held that in actual practice the grounds supplied operate as an objective test for determining the question whether a nexus reasonably exists between grounds of detention and the detention order or whether some infirmities had crept in. It is largely from prior events showing tendencies or inclinations of a man that inference can be drawn whether he is likely in future to act in a prejudicial manner. But such conduct should be reasonably proximate and should have a rational connection with the conclusion that the detention of the person is necessary. The question of relation of the activities to the detention order must be carefully considered.

15. For a careful consideration of the materials in order to arrive at a conclusion as to whether the ingredients of sub-clause (iii) of clause (p) of Section 2 are attracted, it would be necessary for the detaining authority to peruse the statements under Section 161 Cr.P.C. as well. That would be a protection to the person against whom detention order is sought to be issued, since the detaining authority can make sure that the proposal to detain the person concerned is well founded. On the other hand, if only the First Information Reports are supplied by the sponsoring authority to the detaining authority, the latter would not be in a position to correctly assess the situation and arrive at a conclusion as to whether there are sufficient materials to satisfy the objective test as well as the subjective test with respect to the activities of the person concerned, whether he is a 'known goonda' or 'known rowdy' and whether his detention is necessary in the facts and circumstances of the case. Therefore, we are of the view that perusal of the statements recorded under Section 161 Cr.P.C. was legal and valid. The detention order cannot be said to be vitiated and the subjective satisfaction arrived at by the detaining authority characterised as unjustified only on the ground that the detaining authority perused the statements of witnesses recorded under Section 161 Cr.P.C.

16. In *Subramanian v. State of Tamil Nadu and another* [(2012) 4 SCC 699], the Supreme Court while dealing with a challenge against an order of detention under the Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 (T.N.), held as follows:

11. It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.

17. The learned counsel for the petitioner submitted that case No.4 referred to in the order of detention, namely, Crime No.1247 of 2013 was registered suo motu by the police and, therefore, it was liable to be excluded from the purview of consideration of the case under Section 2(p)(iii) of the KAAPA. The contention with respect to this aspect is that the grounds of detention in the present case constitute the sole basis that the detenu is involved in ten criminal cases and if one case is found to be not within that ground, the whole of the grounds fail. The learned Additional Director General of Prosecution submitted that the above submission made by the learned counsel for the petitioner is without any substance. The legal requirement is that the detenu must be a person who was found, on investigation or enquiry by a competent police officer, in three separate instances to have committed any offence mentioned in clause (t) of Section 2.

Even if one among the ten cases is found to be out of the purview of sub-clause (iii) of clause (p) of Section 2, the ground for detention does not fail.

18. To classify a person as 'known rowdy', the legal requirement is that the person concerned was found to have committed the offence mentioned in clause (t) of Section 2 in three separate instances. The objective test for classifying a person as 'known rowdy' is the availability of any one of the sub-clauses of clause (p) of Section 2. Even if the person concerned is involved in several crimes and it is found that some of the crimes do not come within the category of clause (p) of Section 2 and the cases satisfying the sub-clauses are sufficient to pass the objective test, the order of detention can be sustained. It cannot be said that all the cases in which the detenu is involved would constitute a single ground and if one of the cases fails, the whole grounds fail. Section 7(4) of the KAAPA provides thus:

7. Grounds of order of detention to be disclosed.--

(4) The order of detention shall not be deemed to be invalid merely because one or more of the facts or circumstances cited among the grounds are vague, nonexistent, irrelevant or invalid for any reason whatsoever and such order shall be deemed to have been made by the Government or the Authorised Officer after having been satisfied about the need for detention with reference to the remaining facts and circumstances, provided that the minimum conditions for being classified as a known goonda or known rowdy are satisfied.

19. Under the KAAPA, even if one or more of the facts or circumstances cited among the grounds are vague, non-existent, irrelevant or invalid for any reason whatsoever, that would not make the order of detention invalid and it shall be deemed that the detaining authority made the order of detention after having been satisfied about the need for detention with reference to the remaining facts and circumstances. The only restriction placed under Section 7(4) of the KAAPA is that the minimum conditions for classifying the person concerned as a 'known goonda' or 'known rowdy' should exist. Even if it is found that one or more of the cases on the basis of which the detenu is classified as a 'known goonda' or 'known rowdy' are found to be not within the purview of cases coming under clauses (o) or (p), the order of detention would not lapse or become irrelevant or stale or improper,

provided sufficient number of cases to satisfy the definition of 'known goonda' or 'known rowdy', as the case may be, are still available against the detenu concerned. We are not inclined to accept the contention put forward by the learned counsel for the petitioner in this regard.

20. The learned counsel for the petitioner submitted that copies of all the relied upon documents were not supplied to the detenu. It is submitted that the statements of witnesses recorded under Section 161 Cr.P.C. and the bail orders were not supplied to the detenu. We perused the original records. It is seen that those documents were supplied and acknowledged by the detenu.

21. Lastly, the learned counsel for the petitioner submitted that the detaining authority should have considered whether the conditions imposed while granting bail to the detenu would be sufficient deterrent against the detenu from indulging in anti-social activities. From the order of detention, it is clear that the detenu was involved in ten criminal cases where common offence is under Section 379 of the Indian Penal Code. The victims in several cases are women. The sponsoring authority reported that due to the activities of the detenu, a sense of insecurity prevails among the public. The detaining authority arrived at the subjective satisfaction as disclosed in the order of detention that except by issuing the order of detention under Section 3(1), the detenu cannot be prevented from indulging in anti-social activities, the detenu having been released on bail on 13.2.2015. It cannot be held that the subjective satisfaction arrived at by the detaining authority is illegal or unsustainable.

No grounds are made out to hold that the order of detention or the continued detention is illegal. The Writ Petition fails and it is, accordingly, dismissed.

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