

Sabeena U. Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/3530

Court : Kerala

Decided On : Nov-21-2014

Judge : Honourable Mr.Justice Thottathil B.Radhakrishnan

Appellant : Sabeena U.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH FRIDAY, THE 21ST DAY OF NOVEMBER 2014 30TH KARTHIKA, 1936 WP(Crl.).No. 415 of 2014 (S)

----- PETITIONER(S)/PETITIONER:
----- SABEENA U., AGED 30 YEARS, W/O
UBAIDULLA, KOTTURTHARA HOUSE, KALLEPULLY P.O., MARUTHA ROAD,
PALAKKAD DISTRICT - 678 005. BY ADVS.SRI.O.V.MANIPRASAD SRI.JOLLY
GEORGE

RESPONDENT(S)/RESPONDENTS:
----- 1. STATE OF KERALA REPRESENTED
BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT HOME
DEPARTMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN - 695 001.

2. THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE PALAKKAD, PIN
- 678 001.

3. THE DISTRICT POLICE CHEIF PALAKKAD, PIN - 678 001.

4. THE SUB INSPECTOR OF POLICE PALAKKAD TOWN NORTH POLICE STATION PALAKKAD DISTRICT, PIN - 678 001.

5. THE SUPERINTENDENT OF CENTRAL PRISON KANNUR, PIN - 670 001. R1 TO R5 BY ADV.TOM JOSE PADINJAREKKARA, ADDL.DIRECTOR GENERAL OF PROSECUTION THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 21.11.2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(Crl.).No. 415 of 2014 (S) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1 : COPY OF THE DETENTION

ORDER

DATED 05.07.2014 OF THE 2D RESPONDENT EXHIBIT P2 : COPY OF THE GROUNDS OF DETENTION SERVED ON THE DETENU EXHIBIT P3 : COPY OF THE REPORT DATED 29.04.2014 OF THE 3D RESPONDENT EXHIBIT P4 : COPY OF THE REPORT DATED 21.06.2014 OF THE 3D RESPONDENT EXHIBIT P5 : COPY OF THE

JUDGMENT

DATED 16.12.2013 IN CC NO.3951/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PALAKKAD EXHIBIT P6 : COPY OF THE

JUDGMENT

DATED 18.01.2014 IN CC NO.638/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, PALAKKAD EXHIBIT P7 : COPY OF THE

ORDER

DATED 30.08.2014 EXHIBIT P8 : COPY OF THE REPRESENTATION DATED 30.09.2014 EXHIBIT P9 : COPY OF THE COVERING LETTER DATED 29.09.2014 FORWARDING EXTS.P8. RESPONDENT(S)' EXHIBITS ----- NIL //TRUE COPY// PA TO JUDGE. jg THOTTATHIL B.RADHAKRISHNAN & BABU MATHEW P. JOSEPH, JJ.

..... WP(Crl.) No.415 of 2014
..... Dated this the 21st day of November,
2014.

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. This application seeking issuance of a writ in the nature of habeas corpus is one challenging preventive detention under the provisions of Kerala Anti-social Activities (Prevention) Act, 2007, "KAAPA", for short. We have heard the learned counsel for the petitioner, who says that she is the wife of the detenu, and the learned public prosecutor. 2.Learned counsel for the petitioner argued that the fact that the detenu stood acquitted in two criminal cases against him has not been taken note of by the detaining authority and that without having noticed such fact, it was inappropriate to conclude that the detenu is a 'Known Goonda' as defined under Section 2(o) of KAAPA. So much so, it is argued that further subjective WP(Crl.)415/14 -2- satisfaction as to the requirement of him being subjected to preventive detention will not stand even in terms of Section 13(2) of KAAPA, though the admitted situation is that he was covered by an earlier detention order under KAAPA and was detained from 27.11.2012 to 26.05.2013. Per contra, the learned public prosecutor argued that the number of offences, which were counted against the detenu, are those which would fall within the instances that could be counted for the purpose of determining as to whether he is a 'Known Goonda' in terms of Section 2(o) of KAAPA, and so much so, it makes no difference whether the factum of acquittal in two of those cases was actually taken note of, or not. This is all the more so because, even if those cases are to be assumed applying the doctrine of severability, the detenu still falls within the definition of the term 'Known Goonda' in terms of Section 2(o) of KAAPA. Notwithstanding this, it is further pointed out that in terms of Section 13(2) of KAAPA, the subjective satisfaction could be arrived at solely on the basis of WP(Crl.)415/14 -3- the last prejudicial activity, which was committed after the release following the detention in terms of the earlier preventive detention order under KAAPA. 3.The fact remains that the detenu was earlier covered under a preventive detention order under

KAAPA. He was detained in terms of that order from 27.11.2012 to 26.05.2013. Thereafter, on 23.03.2014, he was found to have committed yet another activity, which would fall within those offences enumerated under the definition of 'Known Goonda' under Section 2(o) of KAAPA. The detenu had to his credit five instances, when he was earlier detained under KAAPA. Even assuming that in two of those cases, he had been acquitted by the competent criminal court, there were three remaining instances, which were within the time span of seven years, which were sufficient to make him fall within the definition of the term 'Known Goonda' under Section 2(o) of KAAPA. That is the objective satisfaction to be arrived at by the WP(Crl.)415/14 -4- detaining authority. That is a statutory count. Once that is arrived at, the subjective satisfaction would then revolve on the fact that after release following the earlier detention, he is found to have again involved in an offence of the nature described under Section 2(o) of KAAPA, at least in one instance. Once that is shown, he becomes liable to be proceeded against under KAAPA, having regard to the clear terms of Section 13(2)(i) thereof. This position notwithstanding, we have also gone through the orders of acquittal relied on by the petitioner. They do not free the detenu of all blemish. They are orders of acquittal passed extending the benefit of doubt. This does not really a matter in the case in hand, because even excluding those two instances, the prejudicial activities taken into account for the purpose of detention being objective satisfaction to treat the detenu as a 'Known Goonda' for the purpose of Section 2(o) of KAAPA and the subjective satisfaction arrived at to result in his preventive detention stand. We see no ground to hold that the impugned WP(Crl.)415/14 -5- order of detention is vitiated on any ground of infraction of the constitutional provisions or the statutory provisions as contained in KAAPA. This writ petition, therefore, fails. In the result, this writ petition is dismissed. (THOTTATHIL B.RADHAKRISHNAN, JUDGE) (BABU MATHEW P. JOSEPH, JUDGE) jg