

Thanesh Vs. State of Kerala

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Court : Kerala

Decided On : Sep-08-2015

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Thanesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TUESDAY,THE8H DAY OF SEPTEMBER201517TH BHADRA, 1937 WP(C).No. 27010 of 2015 (A)
----- PETITIONER(S): ----- THANESH, AGED40YEARS, S/O.LAKSHMANAN, SUKRITHI, THALAP HOUSING COLONY KANNUR DISTRICT. BY ADVS.SRI.P.N.SUKUMARAN SRI.K.A.ANAS
RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY THE HOME SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM - 695 001 2. DEPUTY INSPECTOR GENERAL OF POLICE, KANNUR RANGE, KANNUR DISTRICT - 670 001 3. SUPERINTENDENT OF POLICE, KANNUR DISTRICT - 670 001 4. CIRCLE INSPECTOR OF POLICE, KANNUR TOWN NORTH POLICE STATION - 670 001 5. SUB INSPECTOR OF POLICE, KANNUR TOWN NORTH POLICE STATION - 670 001 BY GOVERNMENT PLEADER SMT.KOCHUMOL KODUVATH (SR) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON0809-2015, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: WP(C).No. 27010 of 2015 (A)
----- APPENDIX PETITIONER(S)' EXHIBITS
----- EXT.P1 : TRUE COPY OF THE LICENSE
NO.32120366951 ISSUED FROM COMMERCIAL TAXES DEPARTMENT.
EXT.P2 : TRUE COPY OF THE REPORT NO.1273/SB/TDR/15C (WITHOUT
ANNEXURES) DATED107.2015 ISSUED BY THE DISTRICT POLICE
CHIEF,KANNUR. EXT.P3 : TRUE COPY OF THE EXPLANATION
DATED78.2015, FILED BEFORE THE DIG, KANNUR RANGE EXT.P4 : TRUE
COPY OF THE STATEMENT DATED228.2015 SUBMITTED BY THE
PETITIONER BEFORE THE DIG OF POLICE, KANNUR. EXT.P5 : TRUE COPY
OF THE

ORDER

PASSED IN CRL.MC NO.3416/2014 EXT.P6 : TRUE COPY OF THE

ORDER

PASSED IN CRL.MC NO.3410/2014 EXT.P7 : TRUE COPY OF THE

ORDER

PASSED IN CRL.MC NO.3146/2014 EXT.P8 : TRUE COPY OF THE

ORDER

NO.A3/10489/2015 KR, DTD298.2015 PASSED BY THE DIG OF POLICE,
KANNUR. EXT.P9 : TRUE COPY OF THE INTERIM

ORDER

PASSED IN CRL.MCS NOS.3416/2014, 3410/2014 AND31462014
RESPONDENT(S)' EXHIBITS ----- NIL //True Copy//
P.A. To Judge Bb K.T.SANKARAN & RAJAVIJAYARAGHAVAN V, JJ.

----- W.P.(C).No.27010 of 2015
----- Dated this the 08th day of September,
2015

JUDGMENT

K.T.SANKARAN, J.

In this writ petition, the petitioner challenges Ext.P8 order (No.A3/10489/2015 KR dated 29.08.2015) passed by the Deputy Inspector General of Police, Kannur under section 15(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'KAAPA') 2. On a reading of Ext.P8 order, it is seen that though several cases are referred to therein, the authority passing the order under section 15(1) arrived at the subjective satisfaction on the basis of Crime Nos.685/14, 686/14 and 755/14 of Kannur Town Police Station. As per the order impugned, it was found that the petitioner is a 'known goonda' as defined in section 2(o) of the KAAPA. W.P.(C).No.27010 of 2015 :

2. : Before passing Ext.P8 order, a show cause notice was issued to the petitioner under section 15(1) of the KAAPA. He submitted Exts.P3 & P4 objections dated 07.08.2015 and 22.08.2015 respectively. In the objections dated 22.08.2015, the petitioner stated that he filed Criminal Miscellaneous Cases before the High Court to quash the proceedings in Crime Nos.685/14, 686/14 and 755/14 and the High Court allowed those cases and the proceedings were quashed. It is also stated in the objections that the petitioner would produce certified copies of those orders as and when the copies are received from the High Court.

3. The petitioner has produced copy of the orders in Crl.M.C.No.3416/14 (with respect to Crime No.755/14), Crl.M.C.No.3410/14 (with respect to Crime No.685/14) and Crl.M.C.No.3146/14 (with respect to Crime No.686/14), as Exts. P5 to P7. A perusal of Exts.P5 to P7 would show that the High Court allowed those Criminal Miscellaneous Cases as per the orders dated 19.08.2015 and the FIRs in respect of the aforesaid 3 crimes were quashed. It is submitted by the W.P.(C).No.27010 of 2015 :

3. : learned counsel for the petitioner that the petitioner received certified copy of Exts.P5 to P7 orders only after re-opening of courts after Onam holidays. The High Court was closed for Onam holidays on 22.08.2015 and the Courts were re-opened only on 31.08.2015.

4. It is submitted by the learned counsel for the petitioner that in Ext.P8 order, though it is stated that a contention was put forward by the petitioner that he had filed Criminal Miscellaneous Cases to quash the 3 FIRs, the authority stated that the proceedings before the High Court were not completed and no information was received with respect to the cases. At the same time, it is noticed in Ext.P8 order that a counter affidavit was filed by the Station House Officer in the Criminal Miscellaneous Cases. We are of the view that the Deputy Inspector General of Police who passed Ext.P8 order should have verified the outcome of CrI.M.C.Nos.3416/14, 3410/14 and 3146/14 before passing Ext.P8 order. W.P.(C).No.27010 of 2015 :

4. :

5. It is true that in *Vijayamma and Another v. State of Kerala and Others* [2014 (4) KHC368 = 2014 (4) KLT563 a Division Bench of this Court held that subsequent quashing of a criminal case under section 482 of the Code of Criminal Procedure would not affect an order of preventive detention which was passed before the quashing of the complaint or FIR. In *Vijayamma's* case (*Supra*), an order of detention under section 3(1) of the KAAPA was passed. That order was challenged before its execution. After the order of detention was passed, some of the cases on the basis of which the order of detention was passed were quashed. In that context, the Division Bench took the view that subsequent quashing of a complaint or FIR is not a relevant factor to interfere with the subjective satisfaction arrived at by the detaining authority.

6. In the present case, there is no order of detention under section 3(1). But, the order is under section 15(1) of the KAAPA. On the date on which Ext.P8 order was passed, the 3 crimes, which was the basis for passing the order, were W.P.(C).No.27010 of 2015 :

5. : quashed by the High Court. What impact it would make on the subjective satisfaction is for the authority to consider. But, that authority did not consider the same and therefore, we are of the view that the subjective satisfaction arrived at by the authority is vitiated. Ext.P8 order is therefore liable to be quashed.

7. It is true that the petitioner could have filed a representation before the Advisory Board under section 15(2) of the KAAPA. He failed to do so. Instead, he filed a writ petition.

8. A Division Bench of this Court in Biju Aduppukallingal v. Advisory Board, KAAPA, Kochi and Others [2014 (3) KLT69 = 2014 KHC378] held that even if the person aggrieved does not make a representation before the Advisory Board within time or his representation is rejected on the ground that it is belated, that does not preclude the person aggrieved from filing a Writ Petition under Art.226 of the Constitution of India challenging the W.P.(C).No.27010 of 2015 :

6. : order under S.15(1). For the reasons stated above, we are of the view that Ext.P8 order is liable to be quashed and we do so. The authority who passed Ext.P8 order shall consider the matter afresh, after affording a reasonable and meaningful opportunity to the petitioner to put forward his case. Accordingly, the matter is remitted to the second respondent (The Deputy Inspector General of Police, Kannur) to consider the whole matter afresh after affording an opportunity of being heard to the petitioner. The second respondent would be free to pass fresh appropriate orders after considering all relevant aspects in accordance with law. Sd/- K.T.SANKARAN, JUDGE. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE.
Bb [True copy] P.A to Judge

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