Nafeesa Vs. The State of Kerala

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Court : Kerala

Decided On : Sep-14-2015

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Nafeesa

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V MONDAY, THE14H DAY OF SEPTEMBER201523RD BHADRA, 1937 WP(Crl.).No. 346 of 2015 (S) PETITIONER: NAFEESA , AGED54YEARS W/O. KUNHAMMED, RESIDING AT T.M.HOUSE, THEKKEPPURAM, ATHINHAL, AJANUR VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT. BY ADVS. SRI.T.MADHU SRI.MURUGAN P.V. RESPONDENTS:

1. THE STATEOF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT HOME DEPARTMENT, GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM - 695 001 2. THE DISTRICT COLLECTOR, KASARAGOD KASARAGOD DISTRICT - 671 121.

3. THE DISTRICT POLICE CHIEF,KASARAGOD, KASARAGOD DISTRICT - 671 121.

4. THE SUPERINTENDENT CENTRAL PRISON, KANNUR, KANNUR DISTRICT - 670 001. R1-R4 BY ADDL.DIRECTOR GENERAL OF PROSECUTION SRI.K.I.ABDUL RASHEED GOVERNMENT PLEADER SRI.M.A.ABDUL KAREEM THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON1409-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(Crl.).No. 346 of 2015 (S) APPENDIX PETITIONER'S EXHIBITS: EXT.P1: TRUE COPY OF THE REPORT DATED184.2015 SUBMITTED BY THE3D RESPONDENT TO THE2D RESPONDENT. EXT.P2: TRUE COPY OF THE PROCEEDINGS DT. 27.4.2015 OF THE2D RESPONDENT. EXT.P3: TRUE COPY OF THE

ORDER
DATED207.2015 ISSUED BY THE1T RESPONDENT. EXT.P4: TRUE COPY OF THE

JUDGMENT
DATED052.2013 IN SC NO.383/ 2010 ON THE FILES OF THE ADDITIONAL SESSION'S COURT (ADHOC -II), KASARAGOD. EXT.P5: TRUE COPY OF THE

JUDGMENT
DATED047.2015 IN SC NO. 1175/ 2012 ON THE FILES OF THE ASSISTANT SESSION'S COURT, HOSDURG. EXT.P6: TRUE COPY OF THE

JUDGMENT
DATED2606.2015 IN CRL.M.C NO. 3870/2015 ON THE FILES OF THE HIGH COURT OF KERALA. EXT.P7: TRUE COPY OF THE PRELIMINARY

ORDER
DATED053.2015 IN M.C NO. 43/2015 ON THE FILES OF THE SUB DIVISIONAL MAGISTRATE KASARAGOD AT KANHANGAD. RESPONDENTS' EXHIBITS: NIL //TRUE COPY// AHZ/ "C.R." K.T.SANKARAN & RAJA VIJAYARAGHAVAN V., JJ.

---------- W.P.(Crl) No.346 of 2015 (S) ---------- Dated this the 14th day of September, 2015

JUDGMENT

K.T.Sankaran, J.

T.M.Sameer, son of the petitioner, was detained as per Ext.P2 order of detention dated 27.4.2015 issued by the District Magistrate, Kasaragod under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as the 'KAAPA'). The order of detention was executed on 16.5.2015. On the basis of the report made by the Advisory Board, the order of detention was confirmed as per the order dated 20.7.2015. The detention order was passed on the ground that the detenu is a "known rowdy" as defined under Section 2(p) of the KAAPA and that he was regularly involving in anti-social activities.

2. In Ext.P2 order of detention, eight crimes registered against the detenu were mentioned. One of the crimes was under Section W.P.(Crl) No.346 of 2015 (S) ::

2. ::

107. of the Code of Criminal Procedure and, therefore, it cannot be taken into account for the purpose of considering the detenu as a "known rowdy". The last of the crimes was under Section 20(b)(ii)A of the Narcotic Drugs and Psychotropic Substances Act. Since it is not shown that any notification was issued by the Government making an offence under the NDPS Act as one of the offences under the definition of "known rowdy" under Section 2(p) of the KAAPA, that crime also cannot be taken into account. Out of the balance six cases, in two cases, the detenu was acquitted even before the passing of the order of detention. The third crime mentioned in the order of detention, namely, Crime No.112 of 2012 of Hosdurg Police Station was settled between the defacto complainant and the detenu and as per Ext.P6 judgment dated 26.6.2015 in Crl.M.C.No.3870 of 2015, the final report filed in that case and the proceedings therein were quashed by this Court. It is also submitted that in the fourth crime mentioned in the order of detention, namely, Crime No.394 of 2012, final report was filed and after trial, the detenu was acquitted by the trial court on 4.7.2015, after passing the order of detention. W.P.(Crl) No.346 of 2015 (S) ::

3. ::

3. On the basis of the acquittal in three cases and quashing of the final report in another case, the learned counsel for the petitioner submitted that sufficient number of cases are not there to classify the detenu as a "known rowdy".

4. It is true that in two cases, the detenu was acquitted in 2013, much before the date of passing the order of detention, but in one case, he was acquitted after passing the order of detention. If the case in which the detenu was acquitted after passing the order of detention and the case which was quashed under Section 482 of the Code of Criminal Procedure are also taken into account, there are four cases in which the detenu can be said to be involved which would certainly attract the definition of "known rowdy" under Section 2(p) of the KAAPA.

5. In Vijayamma v. State of Kerala (2014 (4) KLT563, a Division Bench of this Court held that the mere quashing of a charge, except on a ground by holding that no offence is disclosed, would not result in purging the accused of the allegations against W.P.(Crl) No.346 of 2015 (S) ::

4. :: him and the facts and factors which constitute the ingredients of the offence charged against him. The Division Bench held thus: "7. ..... Therefore, eventhough a criminal trial case would not go through its further due process in the aforenoted procedure of termination of prosecution before conclusion of trial and verdict, materials would sufficiently be available even in such cases, for the detaining authority or the sponsoring authority to act and consider such facts and materials for the purpose of formulating an opinion, as may be necessary, in relation to preventive detention laws." In view of the decision of the Division Bench in Vijayamma's case, the contention put forward by the learned counsel for the petitioner that since one of the crimes relied on in Ext.P2 order of detention is quashed subsequently, the order of detention is liable to be quashed, is unsustainable.

6. The contention of the petitioner that in one of the cases relied on by the detaining authority, the detenu was acquitted on 4.7.2015, that is, after passing the order of detention and, therefore, W.P.(Crl) No.346 of 2015 (S) ::

5. :: that case should be taken out of the purview of the cases, is liable to be rejected. Any subsequent acquittal after passing the order of detention is not a ground for holding that the subjective satisfaction arrived at by the detaining authority is vitiated. Even in a case where the person concerned is acquitted on the ground that he is entitled to the benefit of doubt or on the ground that the witnesses turned hostile, still the detaining authority could take into account that case as well for the purpose of arriving at the objective as well as subjective satisfaction against the detenu, provided there are sufficient materials to consider that the person concerned is indulging in anti-social activities.

7. In Mohd. Salim Khan v. Shri.C.C.Bose and another [(1972) 2 SCC607, the petitioner was detained under the West Bengal (Prevention of Violent Activities) Act as per the order of detention dated 18.6.1971. The allegation against the petitioner was that on April 22, 1971, he was involved in two incidents of setting fire and hurling bombs against two buses. On 18.6.1971, the date on which the order of detention was passed, the petitioner was discharged by the learned Magistrate of the charges against him on W.P.(Crl) No.346 of 2015 (S) ::

6. :: the ground that there was no adequate or satisfactory evidence against him. The contention put forward by the detenu that the order of detention is, therefore, liable to be quashed was negatived by the Supreme Court and it was held thus: "9. ..... On June 18, 1971, the Magistrate discharged the petitioner of the charges against him presumably on the ground that there was not adequate or satisfactory evidence against him. Thus, the petitioner was at large on June 18, 1971, when the impugned order detaining him was passed by the District Magistrate. The mere fact, however, that criminal proceedings in connection with the same incidents had been adopted against the petitioner and he had been discharged by the trying Magistrate does not mean that no valid order of detention could be passed against him in connection with those very incidents, or that such an order can for that reason be characterised as mala fide. It might well be that a Magistrate trying a particular person under the Code of Criminal Procedure has insufficient evidence before him, and, therefore, has to discharge such a person. But the detaining authorities might well feel that though there was not sufficient evidence admissible under the Evidence Act for a conviction, the activities of that W.P.(Crl) No.346 of

2015 (S) ::

7. :: person, which they had been watching, were of such a nature as to justify an order of detention. From the mere fact, therefore, that the Magistrate discharged the petitioner from the criminal case lodged against him it cannot be said that the impugned order was incompetent, nor can it be inferred that it was without a basis or mala fide. (see Sahib Singh Duggal v. Union of India [AIR 1966 SC340." 8. In the present case, even if the case in which the detenu was acquitted subsequent to the date of the order of detention is deleted from the total number of crimes, still sufficient number of crimes are available against him to classify him as a "known rowdy".

9. The learned counsel for the petitioner submitted that the detenu was released on bail in all the cases and the detaining authority was not alive to this fact. It is submitted that the conditions imposed while granting bail would have been sufficient deterrent for preventing the alleged illegal activities against the detenu. In the order of detention, it is specifically stated that the conditions imposed while granting bail to the detenu would not be sufficient deterrent for preventing him from indulging in anti-social activities. A Division W.P.(Crl) No.346 of 2015 (S) ::

8. :: Bench of this Court in Elizebath George v. State of Kerala and others [2008 KHC4879= 2008 (4) KLT425 held that granting of bail to the detenu on conditions is no bar for the detaining authority in passing an order of detention. For the aforesaid reasons, we do not find any ground to hold that the order of detention or the continued detention is vitiated. The Writ Petition is, accordingly, dismissed. K.T.SANKARAN Judge RAJA VIJAYARAGHAVAN V. Judge ahz/