

Fousiya Vs. State of Kerala and Others

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Court : Kerala

Decided On : Jun-25-2012

Reported in : 2012(3)KLT232; 2012(3)KLJ325

Judge : K.T. Sankaran & M.L. Joseph Francis

Appeal No. : W.P.(Crl.) No. 172 of 2012

Appellant : Fousiya

Respondent : State of Kerala and Others

Judgement :

K.T. Sankaran J.

1. Altlhaf @ Issac, the son of the petitioner, was detained in execution of the order of detention dated 30-01-2012 issued under Sec. 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (hereinafter referred to as the KAAPA'), on his arrest on 04-02-2012. The order of detention is under challenge in the Writ Petition. (The order of detention is not produced along with the Writ Petition. The grounds of detention are produced as Ext.P1 in the Writ Petition. The prayer in the Writ Petition is to quash Ext.P1. However, after perusing the original records and taking into account the submissions made by the learned counsel for the petitioner, we are inclined to consider the validity of the order of detention).

2. There is no dispute that the approval of the order of detention under Sec. 3(3) and confirmation of the order of detention under Sec. 10(4) of the KAAPA were duly made within the time stipulated.

3. In the order of the detention, mention is made about five crimes in which the detenu was involved. The detaining authority was satisfied that the detenu is a "known-rowdy" as defined under Sec. 2(p)(iii) of the KAAPA and that if he remained at large, he would involve in anti-social activities with reference to the public peace and order, which would directly or indirectly cause harm, danger or alarm or a feeling of insecurity or cause threat to the public life and property. There is no dispute that the five crimes referred to in the order of detention are sufficient to attract the definition of "known-rowdy" under Sec. 2(P)(iii) of the KAAPA.

4. The learned counsel for the petitioner submitted that though in the grounds of detention reference is made to five crimes, the grounds of detention refers to four other crimes. Copies of documents in respect of those four crimes were not supplied to the detenu. It is contended that since the grounds of detention are at variance with the order of detention, it cannot be said that the subjective satisfaction arrived at by the detaining authority is valid and genuine. It is to be noted that this point raised by the learned counsel for the petitioner is not seen raised in the Writ Petition. Still, we were inclined to consider the point raised by the learned counsel for the petitioner only on the ground that the detenu is under preventive detention.

5. The order of detention refers to live cases. The details of those five crimes have been mentioned in the order of detention. The detailed particulars of those crimes and allegations made against the detenu, are stated in the grounds of detention. It is true that apart from the five crimes mentioned in the order of detention, the grounds of detention refer to four other crimes as well, at the end of the grounds of the detention. It is stated in the grounds that apart from the five crimes referred to in the order of detention, four other crimes were also registered against the detenu. The grounds of detention do not indicate that the subjective satisfaction of the detaining authority was arrived at on the basis of those four cases as well. The five cases referred to in the grounds of detention are sufficient for the purpose of

attracting the definition of "known rowdy". The detaining authority recorded its satisfaction that the detenu is a "known rowdy" within the meaning of Sec. 2(P)(iii) of the KAAPA. There is no indication in the grounds of detention (apart from making a passing reference in respect of the four cases) that those four cases were also taken into account by the detaining authority to arrive at the subjective satisfaction. In short, the subjective satisfaction of the detaining authority is not at all based on those four crimes about the registration of which mention is made in the grounds of detention. Those four crimes were referred to in the report submitted by the Sub Inspector of Police to the District Police Chief, routed through the proper channel. Copy of that report submitted by the Sub Inspector of Police was also supplied to the detenu and he has acknowledged receipt of the same. No mention is made about those four crimes in the representation submitted by the detenu. On the other hand, specific reference was made in the representation about the five crimes taken into account for terming him as "known rowdy" in the order of detention and the grounds of detention. In other words, the detenu was well aware that the order of detention is based only on the five crimes referred to therein and not at all based on the other four crimes of which mention is made in the grounds of detention.

6. Art. 22(5) of the Constitution of India provides that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. It is well settled that the communication of the grounds include the communication of the relevant documents as well. Sec. 7(2) of the KAAPA, is in tune with Art. 22(5) of the Constitution of India. Sec. 7(2) of the KAAPA reads as follows:

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

(1) xxxxxxxxxx

(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."

7. Sec. 7(2) of the KAAPA provides that the grounds of detention, specifying the instances of offences, with copies of relevant documents, as far as practicable, on the basis of which the detenu is considered as a "known rowdy" or "known goonda", shall be furnished to him. That means the requirement for supply of documents is in respect of those documents on the basis of which the detenu is considered as a "known rowdy" or a "known goonda". In other words, supply of documents which were not made the basis for considering the detenu as a "known goonda" or "known rowdy" is not a legal requirement under Sec. 7(2) of the KAAPA. Sec. 7(2) also provides for giving such materials relating to the activities of the detenu. There also the materials need be those materials relating to the activities of the detenu, on the basis of which his detention was found necessary. In the order of detention in the present case, the detention of the detenu was found necessary on the basis of the five crimes mentioned in the order of detention as well as in the grounds of detention. The four other crimes of which mention is made in the grounds of detention were not considered as the basis on which the detenu was considered as a "known rowdy" and his detention was found necessary. Therefore, non-supply of the documents, in respect of those four crimes (of which reference is made in the grounds of detention and which were not relied on for arriving at the subjective satisfaction that the detenu is a "known rowdy" and his detention is necessary), would not vitiate the order of detention or the continued detention of the detenu.

8. Sec. 7(4) of the Act reads as follows:

"(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, non-existent, 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."

An order of detention would not be invalid merely because one or more of the facts or circumstances stated in the grounds are vague, non-existent, irrelevant or invalid for any reason whatsoever, provided the other conditions in Sub Sec. (4) of Sec. 7 of KAAPA are satisfied. It cannot be disputed that the five crimes referred to in the order of detention would constitute sufficient satisfaction about the need for detention and the facts stated in the order of detention and the grounds of detention are sufficient to arrive at that subjective satisfaction. Even assuming that the grounds of detention and the order of detention are at variance, with respect to the four crimes additionally referred to in the grounds of detention, so long as the satisfaction for detention is arrived at on the basis of the five crimes referred to in the order of detention and the grounds of detention, such variance would not make the order of detention invalid. The minimum conditions for the detenu being classified as a "known rowdy" are satisfied in the present case, on the basis of the five crimes referred to in the order of detention and as well as in the grounds of detention. So long as the satisfaction of the detaining authority is not vitiated with respect to the same, even if one or more of the facts and circumstances cited among the grounds are found to be invalid, that would not invalidate the order of detention.

9. The next contention raised by the learned counsel for the petitioner is that name of the detenu is different in the five crimes referred to in the order of detention and the grounds of detention. In one of the crimes, the name is stated as Issac, S/o. Masood, while in four crimes, the name of the accused is shown as Althaf @ Issac. In the representation submitted by the detenu, he describes himself as Althaf, S/o. Masood. He does not say that he has no alias name. There is also no dispute with respect to the address of the accused shown in the five crimes. There

is no dispute that the father of the detenu is not Masood, as mentioned in the five crimes. The petitioner or the detenu has no case that the age and address of the detenu shown in the five crimes are not correct. There is no case of any dispute regarding identity of the accused in any of the crimes referred to in the order of detention or grounds of detention. The mere fact that in one of the cases only the alias name of the detenu is mentioned, that by itself would not vitiate the order of detention.

For the aforesaid reasons, the Writ Petition is dismissed.

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