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Court : Kerala

Decided On : Feb-14-2012

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

Appeal No. : WP(Crl).No. 18 of 2012 (S)

Appellant : Sujitha

Respondent : State of Kerala, Represented by the Chief Secretary to Government Secretariat, Thiruvananthapuram and Others

Judgement :

K.M. Joseph, J.

1. Petitioner is the wife of the detenu, who has been detained under the provisions of the Kerala Anti-social Activities (Prevention) Act (for short, 'the Act'). Ext.P1 is the order of detention dated 11.11.2011. The prayers in the Writ Petition (Criminal) interalia are as follows:

"(i) To issue a writ of mandamus or order and call for the records leading to Ext.P1 and quash Ext.P1 by issuing a writ of certiorari.

(ii) To issue a writ of habeas corpus commanding the 4th respondent to produce the detenu before this Honourable Court and set him at liberty forthwith."

2. We heard the learned counsel for the petitioner and the learned Director General of Prosecution.

3. The following are the contentions raised by the petitioner: He would point out that in Ext.P1 order of detention, the detaining authority has referred to the report of the Superintendent of Police dated 31.10.2011. However, the detenu was not served with the said report. Instead, he was served with Ext.P2. Ext.P2 is the report of the Superintendent of Police dated 6.8.2011. Next, he would contend that Ext.P2 was served in English language. According to him, detenu is not familiar with English language and he was not served with the Malayalam version of Ext.P2. On this ground also, he would submit that the detention is invalid. It is his further contention that in the order of detention, one of the grounds raised is that the detenu was convicted in C.C.1090/08 on the file of the JFMC II, Attingal and convicted on 22.1.2009 and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.1,000/-. But, he would point out that even before the order of detention was passed, Crl.Appeal 96/09 was filed and it was allowed by the Fast Track Court No.1, Thiruvananthapuram on 30.9.2011. Therefore, this is again sufficient to grant relief in the matter, it is submitted.

4. We heard the matter. Thereafter, learned D.G.P. sought time to ascertain the facts and produce the file. Today, when the matter came up, learned D.G.P. would submit that the contention of the petitioner that detenu was not served with the report dated 31.10.2011, which is referred to in Ext.P1 is correct. We would think, on this short ground, the petitioner is entitled to relief. The detenu was apparently served with only Ext.P2. Ext.P2 is the earlier report of the Superintendent of Police. The actual report, which is referred to and apparently relied on by the detaining authority is the report dated 31.10.2011 with the enclosures. It is admitted that the said document is not served on the detenu. A document, which is relied on by the detaining authority and which is vital, is to be served on the detenu. This is mandatory under Section 7 of the Act. Without being served with a document, which is relied on by the detaining authority, it is inconceivable as to how the detenu can exercise the right to make a representation. The very purpose of service of vital documents, which are relied on by the detaining authority, is to facilitate the detenu to make an effective representation. The report of the

Superintendent of Police is indeed the very basic document, on the basis of which action is to be taken under Section 3 of the Act. The non- service of the actual report(in this case, the report dated 31.10.2011), in our view, is sufficient to render the detention illegal.

5. Accordingly, the Writ Petition (Criminal) is allowed and the detention of the detenu is held illegal and we direct that the detenu, viz., Suresh Kumar @ Kalpana Suresh @ Vettu Suresh shall be released, unless his detention is necessary in connection with any other case.

Registry will communicate the above order to the concerned Prison Authorities forthwith.

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