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Court : Kerala

Decided On : Jul-03-2012

Reported in : 2012(3)KLJ428

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

Appeal No. : WP(Crl.)No.148 of 2012 (S)

Appellant : Surabhi, Thiruvananthapuram

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

Judgement :

K.T. Sankaran, J.

1. The brother of the petitioner, namely, Bhuvanachandran @ Purandaran @ Biju, has been detained under Section 3(1) of the Kerala Anti-social Activities (Prevention) Act, 2007 (hereinafter referred to as 'KAAPA'), on the ground that he is a 'known rowdy' as defined in Section 2(p)(iii) of KAAPA. The detenu was detained under KAAPA on an earlier occasion as per the order dated 2.11.2007 and he was released after the full term of detention was over. It is submitted that five crimes were taken into account while issuing the earlier order of detention. After the release of the detenu, it is alleged that, the detenu was involved in two

other crimes which necessitated the issue of the present order of detention dated 11.1.2012. The order of detention was executed on 25.1.2012 by arresting the detenu and detaining him in prison. Approval under Section 3(3) of KAAPA was granted on 6.2.2012. The order of confirmation under Section 10(4) of KAAPA was issued on 22.3.2012.

2. Learned counsel for the petitioner raised two contentions:

(1) The order of detention mentions about three crimes registered after the first order of detention. In one of those crimes, namely, Crime No.272 of 2009 of Nedumangad Police Station, the detenu was acquitted. Still, mention was made about Crime No.272 of 2009 in the order of detention. This shows that there was total non- application of mind on the part of the detaining authority which vitiates the order of detention. (2) In one of the crimes alleged to have been committed by the detenu in 2011 (Crime No.1710 of 2011), on which reliance is made for arriving at the subjective satisfaction by the detaining authority, the investigation is not over. Therefore, that crime cannot be taken into account for the purpose of arriving at the subjective satisfaction. Under Section 2(p)(iii) of KAAPA, it is not sufficient that a crime is under investigation. On the other hand, it is required that the final report under Section 173(2) of the Code of Criminal Procedure should be filed by the investigating officer.

3. Point No.1: It is true that in the order of detention mention is made about Crime No.272 of 2009, in which, charge sheet was filed before the Court of the Judicial Magistrate of the First Class II, Nedumangad. That case was taken on file as C.C.No.511 of 2009 and the Court acquitted the detenu on 27.11.2011. The order of detention specifically mentions that Crime No.272 of 2009 was not considered for issuing the order of detention on the ground that the detenu was acquitted in that case. Thus it can be seen that subjective satisfaction of the detaining authority was not arrived at on the basis of the alleged involvement of the detenu in Crime No.272 of 2009 also. On the other hand, for completeness of the narration of the various crimes in which the petitioner was involved, mention is made in the order of detention about the involvement of the petitioner in Crime No.272 of 2009. In spite of the fact that the detenu was involved in that crime as well, the detaining

authority did not take into account that aspect at all for arriving at the subjective satisfaction, since the detenu was acquitted in that case. Mention of a crime (in which the detenu was involved and in which he was acquitted) only for the purpose of narration of events and which was specifically excluded from the zone of consideration for arriving at the subjective satisfaction, would not by itself vitiate the order of detention under Section 3 of KAAPA.

4. Point No.2: A similar contention has already been considered by us in W.P.(Crl) No.160 of 2012, wherein it was held thus:

"9. Under sub-clause (iii) of clause (p) of Section 2 of the KAAPA, the person concerned must be found, on investigation or enquiry, by a competent police officer or other authority, to have committed any offence mentioned in clause (t) of Section 2. The interpretation of the expression "investigation or enquiry" in sub-clause (iii) becomes relevant in this context. "Investigation", as defined in Section 2(h) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.'), includes all proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorised by a Magistrate in that behalf. "Inquiry", as defined in Section 2(g) of the Cr.P.C. means, every inquiry, other than a trial, conducted under the Code by a Magistrate or Court. Sub-clause (iii) of clause (p) of Section 2 of the KAAPA also stipulates that the finding must be on complaints initiated by persons other than the police officers. The expression "complaint" is not defined in the KAAPA. "Complaint" is defined in Section 2(d) of the Cr.P.C., as follows :

"2.(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

Sub-clause (iii) of clause (p) of Section 2 of the KAAPA nowhere mentions about Court, while in the definition of "known-goonda" in sub-clause (ii) of clause (o) of Section 2, mention is made about investigation or enquiry by a competent police officer, authority or competent Court. Sub-clause (iii) of clause (p) of Section 2 insists that the investigation or enquiry must relate to a complaint initiated by persons other than police officers. A private person cannot make a complaint to a

police officer, if we take the expression "complaint" as having the same meaning, as defined in Section 2(d) of the Cr.P.C. That means, the expression "complaint" is used in sub-clause (iii) of clause (p) of Section 2 of the KAAPA in the ordinary parlance and not for conveying the meaning of "complaint", as defined in Section 2(d) of the Cr.P.C. The requirement is that the case is not registered by the Police suo motu, but the case is registered at the instance of an aggrieved person or at the instance of a person who has got relevant information. That is to ensure that cases are not booked without substance in an attempt to see that a person is detained under the KAAPA. At the same time, there cannot be any investigation, if a charge is laid. If the investigation is over, that must result in a final report under Section 173(2) of the Cr.P.C. If the intention of the Legislature was that the offending acts must be found to have been committed, and that it must be revealed in a final report, there was no difficulty for making it clear in sub-clause (iii) of clause (p) of Section 2 of the KAAPA. On the other hand, the specific expression "investigation" is used in sub-clause (iii). The expression "enquiry" is also used, to our mind, as in ordinary parlance. There cannot be any enquiry by a police officer, if it is an "inquiry", as defined in clause (g) of Section 2 of the Cr.P.C. Therefore, we are of the view that the word "enquiry" is used in sub-clause (iii) of clause (p) to mean that after making sufficient enquiries, the Investigating Officer is satisfied that the person concerned has committed the offence mentioned in clause (t) of Section 2. In other words, to found an order of detention on the ground that the person concerned is a "known-rowdy", it is not necessary that the final report under Section 173(2) of the Cr.P.C. should be filed in the cases concerned. It is sufficient, if investigation is pending and on investigation made by the Investigating Officer, he is satisfied that the person concerned has committed the offence."

5. Accordingly, point No.2 is answered against the detnu. For the aforesaid reasons, the Writ Petition (Criminal) is dismissed.

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