
(1998) 02 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4149 of 1998

A. Rukmini

APPELLANT

Vs

Collector and District Magistrate, Kurnool

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Citation : (1998) 2 ALD 530 : (1998) 2 ALT 660 : (1998) 2 APLJ 259 : (1998) CriLJ 2116

Hon'ble Judges : N.Y. Hanumanthappa, J;B.V. Rangaraju, J

Bench : Division Bench

Advocate : Mr. A. Ramanarayana, for the Appellant; Advocate General, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—The petitioner seeks issuance of Writ of Habeas Corpus declaring that the detention of Sri A.V. Subba Reddy, the husband of the petitioner, in pursuance of the detention order passed by the respondent, the District Collector and District Magistrate, Kurnool, in RC.No.C1/330/M/98, dated 11-02-1998 u/s 3 of A.P.Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, (herein-after referred to as "Act 1 of 1986") is illegal and consequently direct that Sri A.V. Subba Reddy be set at liberty.

2. According to the petitioner, the detention order is quite bad and illegal as the same is not preceded by any satisfaction reached by the authority who passed the order, and it is contrary to the principles laid down by this Court in A. Raja Reddy v. Collector & District Magistrate 1996 (4) ALD 1154, According to the petitioner, the order of detention passed by the respondent is based on vague allegations and the grounds are irrelevant. In respect of the same allegations already criminal proceedings have been initiated which are pending disposal. Thus, the detention order passed by the respondent is not only not preceded by the satisfaction of the authority concerned but the same is resultant of non-application of mind to the provisions of Act 1 of 1986.

3. Sri A.Ram Narayana, learned Counsel for the petitioner urging the above points submits that the order of detention passed by the respondent is mala fide and it is passed at the instance of political rivalries of Sri. B. Nagi Reddy, who is a candidate contesting for the Parliament Elections for the Lok Sabha seat from Nandyal Constituency, to which group the husband of the petitioner belongs. It is also submitted that the alleged detenu was appointed as Chief Election Agent on behalf of Sri B. Nagi Reddy. In support of the above contentions, Sri A. Ram Narayana learned Counsel for the petitioner, placed reliance on the decisions of this Court and also the Supreme Court in A. Raja Reddy v. Collector & District Magistrals 1996 (4) ALD 1154., Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, , and B. Sundar Rao and Others Vs. State of Orissa, .

4. The grounds of detention refer to the incidents alleged to have been committed by the detenu on 3/4-6-1991, 25-2-1992, 6-11-1993, 2-12-1994, 16-4-1995, 22-1-1997, 6-2-1997, 6-6-1997 and 18-9-1997, i.e., offences punishable under Indian Penal Code and other Laws. According to the authority, the normal laws are not enough to curb the high-handed behaviour and criminal activities of the detenu and the detention order is proper.

5. The District Collector and District Magistrate, Kumool, byname Mr. Rajeshwar Tiwari, who passed the impugned order has filed a counter-affidavit supporting his action in passing the detention order. According to him, the husband of the petitioner alleged to have committed other offences punishable under the provisions of Explosive Substances Act and the same is sufficient to pass an order of detention. He denied any legal malice in passing the detention order. The stand of the respondent/District Collector and District Magistrate, Kumool, is supported by Smt. K. Vijaya Lakshmi, the learned Government Pleader.

6. To know how far the order of detention passed by the respondent/District Collector and District Magistrate, Kurnool, is proper, it is necessary to bear in mind the provisions of Act 1 of 1986 particularly Section 2(g) of the Act 1 of 1986. In order to pass an order of detention, the authority shall first satisfy that the grounds referred to and relied upon have disturbed the public order and not law and order. The terms "public order" and the "law and order" have been explained by the Supreme Court in B. Sundar Rao and Others Vs. State of Orissa, . It reads thus:

"By the expression "maintenance of public order" what is intended is the prevention of grave public disorder. It is not the same as maintenance of law and order: See: Dr. Ram Manohar Lohia Vs. State of Bihar and Others, . Maintenance of law and order means the prevention of disorders of comparatively lesser gravity and of local significance."

7. Curtailing of citizen's liberty by resorting to the provisions of Preventive Detention Act shall be under extra-ordinary circumstances and the acts referred therein shall be the rarest of rare incidents which warrant the detention of a

person. Since the citizens personal liberty as per our Constitution is fundamental, the authority before passing the order shall satisfy itself first that the acts referred to are not possible to be dealt with by the laws other than the laws of public safety. The grounds must have proximity and must be relevant but shall not suffer from any vagueness and shall not be irrelevant. It is seen from the order of detention that it is based on number of grounds and one out of such grounds is proved as stale, irrelevant, non-existing or does not tend to disturbance of public order. As held by the Supreme Court in Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, , vagueness shall not be a basis for detention. Then, such an order of detention shall have to be quashed. This view of ours is supported by earlier Division Bench Judgment of this Courting. RajaReddy's case 1996 (4) ALD 1154. and other decisions where this Court had an occasion to deal with the Public Order and Law and Order and the effect of stale and vague grounds including non-application of the mind on the part of the authority concerned to the relevant circumstances concerned and how far they suggest the detention of an individual, including what will be the effect, if criminal cases are pending in respect of the offences referred to as grounds in the detention order.

8. In our view, the order of detention is a resultant of non-application of mind to the provisions of the Act 1 of 1986 and the grounds urged do not fit into the definition of disturbance of "public order". Further, on some of the grounds mentioned in the detention order, criminal proceedings are already pending before the Criminal Courts.

9. The writ petition is, therefore, allowed and the order of detention passed by the respondent/District Collector and District Magistrate, Kurnool, against the detenu Mr. A.V. Subba Reddy, Son of Sri Subba Reddy, resident of Allagadda, Kumool District, is quashed, it is ordered that the detenu shall be set at liberty forthwith.