
(2015) 10 KL CK 0032
In the High Court Of Kerala
Case No : W.P.(Crl). No. 408 of 2015 (S)

C.H. Suhara

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 26-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Kerala Anti-Social Activities (Prevention) Act, 2007 — Section 2(p)(iii), 3(1)

Citation : (2015) 10 KL CK 0032

Hon'ble Judges : K.T. Sankaran and Raja Vijayaraghavan V., JJ.

Bench : Division Bench

Advocate : T. Madhu and Murugan P.V., Advocates, for the Appellant; Asaf Ali, Director General of Prosecution and Kochumol Kadavath, Senior Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The petitioner challenges the order of detention as well as the continued detention of her son Ramsheed C.H., who has been detained as per the order of detention dated 06.06.2015 issued by the District Magistrate, Kasaragod under S. 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as the "KAAPA"). The order of detention was executed on 08.06.2015 and it was confirmed on 01.08.2015.

2. The detenu is involved in five crimes. The last prejudicial activity was on 15.03.2015. The sponsoring authority submitted a report dated 01.06.2015 and the detention order was passed on 06.06.2015.

3. The detenu is classified as a "known rowdy" as defined under S.2(p)(iii) of the KAAPA. Proceedings under S.107 of the Code of Criminal Procedure were initiated against the detenu in 2012. However, as revealed in the order of detention, the detenu clandestinely went abroad. The detenu came back to India and thereafter, he indulged in the commission of two offences. Again, proceedings were initiated under S.107 of the Code of Criminal Procedure against the detenu. The order of

detention shows that the detaining authority arrived at the subjective satisfaction that in spite of the proceedings initiated under S.107 of the Code of Criminal Procedure, the detenu did not mend his ways and he continued to indulge in anti-social activities.

4. The learned counsel for the petitioner raised two points.

i) In Crime No. 1469/2011 of Hosdurg police station and in Crime No. 31/2012 of Hosdurg police station, final reports were filed and the cases were pending before the Judicial First Class Magistrate Court - I, Hosdurg as C.C. No. 862/2012 and C.C. No. 1292/2012. It is submitted by the petitioner that in those cases, the detenu was acquitted on 12.06.2015 and 09.06.2015 respectively. Exts.P5 & P6, computer printouts of the case details have been produced to support the contention of the petitioner.

ii) The subjective satisfaction arrived at by the detaining authority is vitiated, since he did not take into account that in three out of five crimes, trial was practically over. Therefore, the exercise of power made by the detaining authority was a mala fide exercise of power.

5. As regards the first point mentioned above, the law on the point is well settled. In *Vijayamma Vs. State of Kerala*, a Division Bench of this Court held that the mere quashing of a charge, except on a ground that no offence is disclosed, would not result in purging the accused of the allegations against him. In spite of the quashing of the charge, the materials on record could be taken into account by the detaining authority or the sponsoring authority. In *Fazaludin Vs. State of Kerala and Others*, another Division Bench held that acquittal of the person concerned after the passing of the detention order cannot be profitably relied on by the detenu to challenge the detention order and a subjective satisfaction arrived at by the detaining authority would not be vitiated on the ground that those cases were also taken into account for passing the order of detention. In *W.P.(Crl) No. 346/2015*, we had taken the following view:

"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, 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 the subjective satisfaction against the detenu, provided there are sufficient materials to consider that the person concerned is indulging in anti-social activities."

6. The contention of the petitioner that the detenu was acquitted in two cases is disputed by the learned Public Prosecutor. It is submitted that Exts.P5 & P6

would show that the nature of the disposal of the respective cases was "withdrawn & made over". It is submitted that the cases in respect of Exts.P5 & P6 are pending as C.C. No. 1501/2015 and C.C. No. 1905/2015 respectively before the Judicial First Class Magistrate Court - II, Hosdurg. On a perusal of Exts. P5 & P6, it is clear that the detenu was not acquitted, but the cases were made over. It is true that the entries in Exts.P5 & P6 would show that the cases were disposed of, but the nature of disposal is specifically mentioned as "withdrawn & made over". Therefore, it cannot be held that the detenu was acquitted subsequent to the passing of the order of detention in the cases covered by Exts.P5 & P6. Even assuming that he was so acquitted, for the reasons mentioned above, it cannot be said that the subjective satisfaction arrived at by the detaining authority is vitiated.

7. As regards the second point raised by the learned counsel for the petitioner that there was mala fide exercise of power, we are of the view that the contention is unsustainable. We have carefully gone through the order of detention and the grounds of detention. The nature of the crimes and the allegations regarding the involvement of the detenu in those crimes would show that the subjective satisfaction arrived at by the detaining authority is well founded. That the trial of 3 cases was practically over is not a ground to stay hands by the detaining authority and desist from taking action under the KAAPA. The jurisdiction of the detaining authority to initiate proceedings under the KAAPA would not be affected by the trial of the cases in which the detenu is involved.

The challenge against the order of detention as well as the continued detention is unfounded. Accordingly, the writ petition is dismissed.