
(1950) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Criminal Case No. 499/6 of 1950

Narayanamma

APPELLANT

Vs

The State of Hyderabad

RESPONDENT

Date of Decision : 05-07-1950

Acts Referred:

Constitution of India, 1950 — Article 22, 32
Preventive Detention Act, 1950 — Section 3(1), 7

Citation : AIR 1950 AP 68

Hon'ble Judges : Shripat Rao, J; M.A. Ansari, J

Bench : Division Bench

Advocate : Shah Ali Hussain, for the Appellant; Rajaram Iyar, General, for the Respondent

Judgement

1. Narayanamma by application dated 12-4-1950 alleges that Mullam Raj, her husband has been arrested on 3-3-1950 and is now confined in Nalgonda jail; he belongs to a police patel family, was living as an agriculturist in Erra-Panar, Suriapet Taluqa and has also acted as agent and gumasta to Pertab Reddy, a Deshmukh; for the last three years they have been living in Hyderabad because of the communist menace and all their property and animals in the village have been either looted or destroyed; the husband's detention is without any reason, no grounds for being detained have yet been communicated, she has been informed by the Deputy Inspector General's office that the release or otherwise would be done in due course, after charges pending against the husband have been fully enquired into. The application is supported by her affidavit and she prays for issue of habeas corpus to secure his release. This Court directed Jail Authorities to produce the accused but as no document relating to the husband's being kept in custody were then filed, definite orders for such filing were made on 22-6-1950. A copy of the detention order has since been received which shows the husband to be detained u/s 3, Sub-section (1), Preventive Detention Act. There is, however, nothing on the record to show what are the grounds and whether the grounds have been communicated to the detenu. This is so,

notwithstanding the fact that the Government Advocate was afforded several opportunities to file copies of the ground and receipt showing communication. The result is that we have to decide the application on the assumption that most of the allegations contained in the application are true, especially when they are supported by affidavit and have not been controverted by the Government, except to the extent of filing the copy of the order under Act IV [4] of 1950.

2. Authorities directing detention of persons should do well to remember Article 22 of the Constitution of India. Under this article certain safeguards have been made regarding the position of arrested persons and conditions have to be fulfilled before such persons be allowed to remain under arrest. One of the conditions is that the persons detained must have as soon as may be grounds for his liberty being curtailed, communicated to him. This is proved by the opening words of Clause (1) of the Article and is repeated again in Clause (5) with special reference to preventive detention, with a view to secure to the detenu the earliest opportunity of making representation against the order. Similar provision is made in Section 7, Preventive Detention Act. The Indian Constitution, therefore, attaches special importance to communication of ground to the detenu and failure or non-fulfillment of the condition has far reaching consequences. It makes the detention illegal for this safeguard having been prescribed it must be complied with in order to regularize the detention. In *Thomas Pelham Dale's case* (1881) 6 Q.B.D. 376 at p. 461, *Britt L.J.* makes the following observation with regard to necessity of all steps relating to legal arrest being strictly complied with:

It is a general rule, which has always been Acted upon by the Courts of England, that if any person produces the imprisonment of Anr. he must take care to do so by steps all of which are entirely regular and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue.

The observation has been approved by the Madras High Court in *M.R.S. Mani Vs. District Magistrate and Another*, at p. 167 and by the East Punjab High Court in *Har Tirath Singh Vs. The Crown*, at p. 224. A part from these authorities it appears to us to be correct proposition that curtailment of personal liberty being subjected to certain condition those conditions must be complied with in order to continue the curtailment. Therefore, the failure to show whether there are grounds of detention and if so whether they have been communicated renders the husband's detention illegal.

3. In this case it is also important to note the distinction between preventive and punitive detention. The former is allowed where acts prejudicial to maintenance of public order are apprehended; the latter arises when the illegality is actually committed. It would not be proper to detain a person where really the ground for arrest is investigation of crime committed, for to such arrest Clause (2) of Article 32 of the Constitution will apply and the accused must be brought within twenty-four hours before the Magistrate, excluding of course the time necessary for

journey. If the main ground of arrest be investigation of a crime his detention under the Preventive Detention Act would be colourable improper and amount to circumventing important provisions of the Constitution, and as such it cannot be allowed. We have thought it necessary to make these observations because the closing words in the letter of the Deputy Inspector General's office have given rise to the impression that the detention was with object to complete some investigation of crimes which have been committed, and the detention WAS without any order of remand.

4. The reason, however, for release is that it has not been shown what the grounds of the detention are nor whether there has been communication of the ground to the detenu. The detenu Mallamraj is ordered to be released forth-with.