

(2015) 04 KAR CK 0121

In the Karnataka High Court

Case No : Writ Petition H.C. No. 200004 of 2015

Sangeeta

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226, 32
Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 — Section 3(1), 3(3)

Citation : (2015) 04 KAR CK 0121

Hon'ble Judges : Ravi V. Malimath, J; Budihal R.B., J

Bench : Division Bench

Advocate : Chandrashekar K. for Shivasharana Reddy, for the Appellant; P. Vilas Kumar, GA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi V. Malimath, J.—The petitioner is the wife of the detainee. The detainee is Sri. Satish S/o. Venkataswamy, who was kept under detention by the impugned orders under Section 3(1) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Gabbers Act, 1985 (for short "Act") and the subsequent orders of confirmation.

2. Questioning the orders of detention, the petitioner had filed W.P. No. 200015/2014 before the Hon'ble High Court. By the order dated 27.10.2014, at the request of the petitioner's counsel, the petition was dismissed as withdrawn with a liberty to the petitioner to file an appropriate proceeding for redressal of his grievance. Thereafter, W.P. No. 206009/2014 was filed. By an extensive order dated 02.12.2014, the writ petition was dismissed. Aggrieved by the same, the petitioner approached the Hon'ble Supreme Court in SLP (Criminal) No. 875/2015 wherein by the order dated 06.02.2015, the same was dismissed. Thereafter, the instant writ petition has been filed on 18.03.2015.

3. Learned counsel for the petitioner urges one ground in support of his case by placing reliance on the provisions of Section 3(3) of the Act. He contends that the Deputy Commissioner could not have passed the order of detention in a period of three months and the same is in violation of the Act as well as the various pronouncements of the Hon''ble Supreme Court and also of this Court. Hence, he submits that the order of detention be set aside.

4. On the other hand, learned counsel appearing for the State defends the impugned order. He contends that the present petition is not maintainable as there are no changed circumstance and hence hit by the principles of "Res Judicata". Since the petitioner has already filed the earlier writ petition and the same was dismissed on merits and he has also filed SLP before the Hon''ble Supreme Court and the same was also dismissed, the present petition is not maintainable.

5. Heard learned counsels.

6. In support of his case, learned counsel for the petitioner on the question of res-judicata, placed reliance on the judgment of the Hon''ble Supreme Court reported in Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others, AIR 1981 SC 728 : (1982) 52 CompCas 543 : (1981) CriLJ 288 : (1981) 2 SCC 427 : (1981) SCC(Cri) 463 : (1981) 2 SCR 352 with reference to paragraph Nos. 13 and 14, which reads as follows:

"13. The position that emerges from a survey of the above decisions is that the application of the doctrine of constructive res judicata is confined to civil actions and civil proceedings. This principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Article 32 of the Constitution on fresh grounds, which were not taken in the earlier petition for the same relief.

14. In the present petition fresh, additional grounds have been taken, to challenge the legality of the continued detention of the detenu. We would therefore hold that the subsequent writ petition is not barred as res judicata, and overrule the preliminary objection raised by the respondents."

7. The Hon''ble Supreme Court therein has stated that the principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Article 32 of the Constitution on a fresh ground or additional grounds. Therefore, the contention of the State that the same grounds are sought to be urged herein once again, requires to be considered, since the only contention urged by the petitioner's counsel is based on Section 3(3) of the Act.

8. Para 6 of the present petition reads as follows:

"6. The petitioner submits that the order of detention passed by the respondent No. 2 was required to be forwarded to the respondent No. 1 along with grounds on which the order was made and documents relied upon and a report of the

respondent No. 2 within 12 days of issuance or order of detention as provided U/ Sec. 3(3) of the Act. The proceedings of the respondent No. 1 in that regard and order dated 02.06.2014 bearing No. HD 285 SST 2014 is produced herewith at Annexure-E."

Therefore, the contention based on Section 3(3) of the Act has been clearly narrated.

9. In the earlier petition which was considered on merits namely, in W.P. No. 206009/2014 in para 6, the very ground is urged by the petitioner therein which reads as follows:

"6. The petitioner submits that the order of detention passed by the Respondent No. 2 was required to be forwarded to the respondent No. 2 along with grounds on which the order was made and documents relied upon and a report of the respondent No. 2 within 12 days of issuance or order of detention as provided U/ Sec. 3(3) of the Act. The proceedings of the respondent No. 1 in that regard dated 11.06.2014 bearing No. HD 285 SST 2014 is produced at Annexure-E-1."

The above would indicate that the very same ground urged by the petitioners under Section 3(3) of the Act was raised in the earlier petition also. The very same ground is sought to be urged herein.

10. The Hon"ble Supreme Court in the aforesaid judgment have held that a subsequent petition under Article 32 of the Constitution of India for habeas corpus is not barred, provided, it is taken on fresh grounds. Therein the Writ Petition was filed before the Hon"ble Supreme Court. It was dismissed. The second Writ Petition was filed alleging additional grounds. Preliminary objections were raised by the Respondent - State that a subsequent petition is barred by Res-judicata. It is under these circumstances the Hon"ble Supreme Court have held in para 13 as herein above extracted. However, that is not the case herein. The Hon"ble Supreme Court were concerned with the exercise of powers under Article 32 of the Constitution of India. This is a petition under Article 226 of Constitution of India.

11. A five Judge bench of the Hon"ble Supreme Court of India in the case of Ghulam Sarwar Vs. Union of India (UOI) and Others, AIR 1967 SC 1335 : (1967) CriLJ 1204 : (1967) 2 SCR 271 have clarified the same. Therein, the Hon"ble Supreme Court considered the question of Res Judicata in matters of detention. The judgments of the English and American Courts were considered. In so, considering, the Hon"ble Supreme Court at para No. 9 held as follows;

"(9) But coming to India, so far as the High Courts are concerned, the same principle accepted by the English Court will equally apply, as the High Court functions in Divisions not in benches. When it functions as a Division, it speaks for the entire Court, and, therefore, it cannot set aside the order made in a writ of habeas corpus earlier by another Division Bench. xxx xxx xxx"

12. Therefore, the pronouncement of Hon"ble Supreme Court is clear and cogent

so far as petition under Article 226 of Constitution of India is concerned. Hence, the subsequent Division Bench cannot set aside the order made in a Habeas Corpus Petition in an earlier case by another Division Bench.

13. The Hon"ble Supreme Court in the judgment reported in Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others, AIR 1981 SC 1621 : (1983) 53 CompCas 107 : (1981) 1 SCALE 223 : (1981) 2 SCC 437 : (1981) 2 SCC 436 : (1981) SCC(Cri) 471 : (1981) 2 SCR 718 , have held in para 10 as follows:

"10. Apart from the cases discussed above there is another ground on which the argument of Mr. Phadke for respondents must be rejected. The doctrine of finality of judgment or the principles of res judicata are founded on the basis of principle that where a Court of competent jurisdiction has decided an issue, the same ought not allowed to be agitated again and again. Such a doctrine would be wholly inapplicable to cases where the two forums have separate and independent jurisdictions. In the instant case, the High Court decided the petition of the detenu under Article 226 which was a discretionary jurisdiction whereas the jurisdiction to grant relief in a petition under Article 32 filed in the Supreme Court is guaranteed by the Constitution and once the Court finds that there has been a violation of Article 22(5) of the Constitution then it has no discretion in the matter but is bound to grant the relief to the detenu by setting aside the order of detention. The doctrine of res judicata or the principles of finality of judgment cannot be allowed to whittle down or override the express constitutional mandate to the Supreme Court enshrined in Art. 32 of the constitution".

14. In the judgment reported in T.P. Moideen Koya Vs. Government of Kerala and Others, (2004) 96 ECC 369 : (2004) 8 JT 383 : (2004) 8 SCALE 364 : (2004) 8 SCC 106 , the Hon"ble Supreme Court held at para 15 as follows:

"15. We would like to clarify here that the subsequent petition under Article 32 of the Constitution seeking a writ of habeas corpus for setting at liberty a person who has been detained under any of the detention laws would be maintainable if the circumstances have changed. It would also be maintainable on the grounds which were not available when the earlier petition was decided."

15. In all the three cases referred to herein above, the Hon"ble Supreme Court have held that when a petition under Article 226 has been rejected, the petitioner is entitled to avail an independent petition under Article 32 of the Constitution and this cannot be said to be hit by principles of res judicata. But however, the Constitution Bench in Ghulam Sarwar's case cited supra, have held that the Division Bench of the High Court cannot set aside the earlier order of the Division Bench made in a writ seeking for a habeas corpus.

16. Hence, we are of the considered view that the judgment relied upon by the learned counsel for the petitioner would be of no avail to him in the light of the fact that the petitioner has contended the very same grounds in the earlier petition. He cannot be permitted to re-agitate the same herein. The exception

made by the Supreme Court is with regard to taking of a fresh ground or additional grounds in a petition under Article 32 of the Constitution of India before the Hon''ble Supreme Court of India. The earlier writ petition would clearly indicate that the same contention has already been taken. It is not a fresh ground.

Under these circumstances and following the aforesaid judgments, we are of the considered view that the petition requires to be rejected.

Ordered accordingly.