

(2008) 09 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16040 of 2008

Shakera Begum

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2, 3(1), 3(2)
Arms Act, 1959 — Section 25(1)
Constitution of India, 1950 — Article 21, 22(5)
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 302, 399

Citation : (2009) 1 ALD(Cri) 168 : (2009) 1 ALT 354

Hon'ble Judges : K.C. Bhanu, J; D.S.R. Varma, J

Bench : Division Bench

Advocate : T. Bali Reddy and K. Suresh Reddy, for the Appellant; A.G. for Respondent Nos. 1 and 2 and Public Prosecutor of Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—Mother of the detenu, filed the present writ petition, challenging detention of her son, by name, Syed Wahed @ Wahab u/s 3(2) of the A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act (for brevity "the Act").

2. Commissioner of Police, Hyderabad City, passed the impugned order in proceedings in S.B. (1) No. 119/PD-DGS-1/2007, dated 10-03-2008, detaining the son of the petitioner in Central Prison, Chenchalguda. The Detaining Authority referred to three cases; one relating to Kukatpally Police Station and the other two relating to S.R. Nagar Police Station. The detenu was an illiterate and he cannot read either Urdu or English and the substance of the detention order was not even explained to him in the language known to him. It is stated

that the grounds of detention were not served upon him and thereby, depriving him from making representation against the order to the Government. The substance of bundle of papers served on the detenu was not explained for making effective representation to the Government under Article 22(5) of the Constitution of India. The three crimes referred to in the order of detention relating to law and order, but not public order. Cr. No. 14 of 2007 of Kukatpally Police Station, relating to offences punishable under Sections 447, 427, 504, 506 of the Indian Penal Code, 1860 (for brevity "IPC") and 25(1)(a) of Arms Act, fall under Chapters XVII and XXII of IPC, but the said offences cannot be treated as activities falling u/s 2(a) of the Act. Cr. No. 506 of 2007 of S.R. Nagar Police Station, relating to the offences punishable under Sections 147, 148, 302 and 120B r/w 149 IPC of which Section 302 IPC alone would fall under Chapter XVI of IPC. However, the offences relating to Law and Order, but not Public Order. Similarly, Cr. No. 1146 of 2007 of S.R. Nagar Police Station, relating to the offences punishable under Sections 399, 402 and 120B IPC, fall under Chapter XVII of IPC and the said offences would relate to Law and Order, but not Public Order. Therefore, the detention order passed by the 2nd respondent is illegal and is violative of Article 21 of the Constitution of India.

3. A detailed counter-affidavit has been filed by the Commissioner of Police, Hyderabad City, stating that while passing the detention order, he had gone through the three cases and from the above three cases, it can be said that the activities of the detenu clearly fall within the definition of "Goonda" as defined u/s 2(g) of the Act. Therefore, the detenu has been detained to prevent from further indulging in similar offences in future. It is further stated that at the time of taking the detenu into custody, the order of detention, the grounds of detention and material relied upon by him, were served on the detenu both in English and vernacular language and the same were acknowledged by the detenu. The detenu was duly informed that he has right to make representation to the Detaining Authority, Chief Secretary to the Government and Advisory Board. Therefore, the Commissioner of Police, Hyderabad City, prays to dismiss the writ petition.

4. Mr. T. Bali Reddy, learned senior counsel appearing for the petitioner contended that the grounds of detention have not been read over and explained to the detenu, that there is no material to indicate the same, that the three crimes relied upon by the Detaining Authority, would be Law and Order problem, but not disturbance of Public Order, that the alleged acts did not fit into definition of "Goonda" as defined under the Act 1 of 1986 and hence, he prays to set aside the order of detention.

5. On the other hand, learned Assistant Government Pleader, representing the learned Advocate General, appearing for the respondents, contended that the impugned order was passed to prevent the detenu from acting in any manner prejudicial to the maintenance of the Public Order, that the grounds relied upon by the Detaining Authority were taken into consideration for assessing propensity

of the detenu, that certainly the activities of the detenu would affect on the community at large and hence, he prays to dismiss the writ petition.

6. Under Sub-section (1) of Section 3 of the Act 1 of 1986, the Government may, if satisfied with respect to any boot legger, dacoit, drug offender, goonda, immoral traffic offender, or land grabber, that with a view to prevent him from acting in any manner prejudicial to the maintenance of the "public order", it is necessary so to do, make an order directing that such person be detained. The expression "acting in any manner prejudicial to the public order" is defined u/s 2(a) of the Act, which means, when a boot legger, a dacoit, a drug offender, a goonda, an immoral traffic offender or a land grabber is engaged or is making preparations for engaging in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order. Explanation reads for the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health. As rightly contended by the learned senior counsel appearing for the petitioner that there is a mark definition between the expressions "Law and order" and "Public Order".

7. Learned senior counsel appearing for the petitioner relied on a decision reported in Ashok Kumar Vs. Delhi Administration and Others, wherein it was held thus:

The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. That test is clearly fulfilled in the facts and circumstances of the present case.

8. He also relied on a decision reported in Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another, , wherein it was held thus:

The explanation to Section 2(a) (supra) bring into effect a legal fiction as to the adverse effect on "public order. It provides that if any of the activities of a person referred to in Clauses (i)-(iii) of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or a widespread danger to

life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall-out of the activity of the "bootlegger" which determines whether "public order" has been affected within the meaning of this deeming provision or not. This legislature intent has to be kept in view which dealing with detentions under the Act.

9. After referring to various decisions of the Apex Court, a Division Bench of this Court in a decision reported in *S. Prasad Reddy and Others Vs. Collector and District Magistrate and Others*, , held thus:

Therefore, from the aforesaid decisions, it is clear that there is a mark definition between the law and order and the public order. The potentiality of the act in question and the degree of its impact on the members of the community in the locality in which the act was committed are some of the instances, which will fall in the category of public order. It also embraces the acts committed with an intention and object to strike at the normal and orderly life of the community in the locality.

A mere infraction of law are stray and unorganized crimes of theft and assaults or offences against the individual which have no affect on the public order cannot be comprehended within the expression public order. The maintenance public order has to be construed with reference to the prevention of the disorder of a grave nature than compared to law and order, the degree of disorder of which is comparatively of lesser gravity having local insignificance only.

10. Bearing the above principles in mind, it has to be seen whether the activities of the detenu would affect the maintenance of the public order or they will come as incidents of law and order problem or whether the acts of the detenu are having an impact on public life or those acts would be covered by the provisions of the penal laws.

11. In the first act, it is alleged that on 08-01-2007, the detenu along with his associates armed with weapons criminally trespassed into the land in Survey Nos. 904 and 901 of Moosapet village belonging to P. Krishna and Narsimha respectively, in TATA safari vehicle bearing No. AP9AB 111 and when they questioned about the highhanded behaviour of the detenu and Ors. they threatened them with dire consequences by showing deadly weapons. The second act is that on the intervening night of 7/8-06-2007, the detenu along with his associates brutally committed murder of one Syed Yunus, due to previous enmity. The third act is that on 22-12-2007, the detenu along with his associates were making preparation to commit dacoity. In that connection, he was arrested. On interrogation, he stated that one Kaiser, Rowdy sheeter of Habeebnagar is his boss and presently he is in Dubai. He is having enmity with Shahbaz Khan who is supporting his opponents Sheru, Latheef and Firdous and earlier also hatched a plan to eliminate them. But, he was arrested before execution of plan. On coming to know that Sheru, Latheef and Firdous were making plans to eliminate his gang with the help of Shahbaz Khan, his boss Kaiser gave instructions to his

gang to commit dacoity to earn money for purchasing fire arms and also instructed him to finish Shahbaz Khan with the fire arm. These criminal acts if read together, though they appear to be acts relating to law and order, but the material on which the Detaining Authority relied upon would indicate that the detenu was a leader of the rowdy gang. As per the instructions of his boss, they are going to commit dacoity to earn money. Though preparation to commit the offence is not an act punishable under anyone of the provisions of IPC, but u/s 399 IPC, making preparation to commit dacoity, is an offence. After making preparation to commit dacoity, the persons proceed further and there will be insecurity among the public at large. In such circumstances, it cannot be said to be a law and order problem. In attempting to commit dacoity or committing dacoity would certainly create a sense of fear, panic and insecurity in the minds of the general public and those acts would certainly prejudicial to the maintenance of the public order. The offence of dacoity necessarily involve five or more persons conjointly commit an attempt of robbery or where the whole number or the persons conjointly committing or attempting to commit robbery and the persons present and aiding such commission or attempt amount to five or more persons. So these acts are if unchecked, then certainly they would adversely affect even the tempo of the society by creating a feeling of insecurity among those persons who are the victims of the dacoity in a specified locality. While committing dacoity, the possibility of grave or widespread danger to life, property or public health cannot be ruled out. Therefore, if the activities of the detenu and his associates if unchecked, the preparation to commit dacoity squarely falls within the category of disturbance of public order.

12. From the aforesaid discussion, the expression maintenance of law and order is comparatively lesser gravity. Expression of maintenance of public order involves disorder of grave nature. The acts, which are lesser in gravity, may affect specific individuals only. When the potentiality of the act of the detenu is going to disturb even the tempo of the life of the community, certainly, it can be said that it would cause prejudicial to the maintenance of the public order. The material relied upon by the Detaining Authority would also go to show that he along with his gang members created nuisance in the colony. Therefore, the contention raised by the learned senior counsel appearing for the petitioner that the acts of the detenu would fall within the meaning of law and order, cannot be accepted.

13. It is further contended by the learned senior counsel appearing for the petitioner that the grounds of detention have not been read over and explained to the detenu in the language known to him. For that, he placed strong reliance on the decision reported in Chaju Ram Vs. The State of Jammu and Kashmir, , wherein it was held thus

In contrast to this order, the grounds of detention did not have an endorsement that the grounds should be explained to Chaju in the language he understood. In the affidavit in answer to the first petition, the grounds were filed but there was

no endorsement on the copy of the grounds showing that it had been so read to him in Urdu and that he was explained the contents. Mr. Sachthey, however, brought to our notice the original file in which copy of the grounds which was served upon the detenu has an endorsement in Urdu that they had been read over and fully explained to him in Urdu. There is a Thumb Impression and against Thumb Impression is noted that it is that of Chaju. The date is April 6, 1969.

14. No doubt, the above decision makes it clear that the grounds of detention shall be explained to the detenu in the language known to him. It is the specific case of the Detaining Authority that on 08-05-2008, the detenu was taken into custody and at that time itself, the order of detention, the grounds of detention and the material relied upon were served on him, both in English and vernacular language. As seen from the grounds of detention, the Superintendent, Central Prison was requested to read over and explain the contents of grounds of detention along with the supporting material in the language known to the detenu and to obtain a certificate from him. In pursuance of the said request, a certificate was obtained from the detenu to the effect that he received grounds of detention along with the documents relied upon on 08-05-2008 and the grounds of detention and relied upon the documents were understood and the same were read over and explained to him in the language known to him i.e., in Urdu by the jail authorities which was duly signed by the detenu. A note was also appended to the said certificate by the Jailor explaining the contents of the certificate also in the language known to him. Therefore, the contention of the learned Counsel for the petitioner that the contents of the grounds of detention and order were not explained to the detenu in the language known to him is devoid of merit. The allegation in the writ petition that the grounds of detention were not served upon him and thereby, depriving him of making representation against the order cannot be accepted because on the date on which, the detenu was taken into custody i.e., on 08-05-2008, the order of detention, grounds of detention and material relied upon were served on him and they were duly acknowledged by the detenu through the Jailor, Central Prison, Hyderabad, on 08-05-2008 itself.

15. It is also contended by the learned senior counsel appearing for the petitioner that the impugned order was passed mechanically without application of mind because the incidents referred to by the Detaining Authority may affect law and order problem. The Detaining Authority referred to three cases and also relied upon the charge sheets filed in those three cases. As per the charge sheets, it is clear that the detenu was a leader of rowdy gang committed murder, attempt to commit murder and created a sense of fear, panic and insecurity in the minds of the general public. Therefore, it cannot be said that it is a case of non-application of mind by the Commissioner of Police, Hyderabad City. Considering the acts of the detenu and the evil consequences that will follow if, unchecked, causing disturbance to the general public, the impugned order was passed, which does not suffer from any infirmities, much less legal, so as to call for interference by this Court. Therefore, the writ petition is devoid of merit and

is liable to be dismissed.

16. Accordingly, the writ petition is dismissed. There shall be no order as to costs.