
(2006) 01 KAR CK 0034
In the Karnataka High Court
Case No : Write Petition (HC) No. 118 of 2005

Srikant

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 18-01-2006

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)

Citation : (2006) CriLJ 1557 : (2006) ILR (Kar) 898 : (2006) 2 KarLJ 120 :
(2006) 2 KCCR 83 SN

Hon'ble Judges : H.L. Dattu, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : Kiran S. Javali, for the Appellant; Chandra Mouli SPP, for the
Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—The petitioner is before us challenging the detention order dated 26.5.2005 passed by the District Magistrate, Bijapur ordering detention of his brother viz., Sri Shi valingappa S/o Veerappa under the provisions of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug offenders, Gamblers, Goondas, Immoral Traffic offenders and Slum Grabbers Act, 1985 (Karnataka Act No. 12/ 85.) The said detention order has been approved by the Government and the Advisory Board. The main grounds on which the petitioner has challenged the said order is the noncompliance of the procedure contemplated under Article 22(5) of the Constitution of India and the petitioner therefore contends that the fundamental right guaranteed to him has been violated. The petitioner has more specifically contended that the detaining authority has not provided the opportunity of making representation and this right of the detainee to make such a representation has not been made known to the detainee. That apart, the petitioner has further contended that the detaining authority could have issued only one order of detention u/s 3(1) of the Act. The

petitioner has contented that the detaining authority in the present case has passed two orders of detention-one in Kannada and another in English and the same is impermissible. It is further contended that the two versions of the said order are at variance in its contents and in effect if there were two orders, the detaining authority was required to furnish two sets of documents which were relied upon. It is also the contention of the petitioner that the detaining authority has purportedly passed the order in kannada since the detenue knows Kannada, but, certain of the documents relied upon are in English and have not been translated to Kannada and as such the communication is no communication at all. In effect, the petitioner has attacked the order of detention mainly on the ground that his fundamental right guaranteed under Article 22(5) of the Constitution of India has been violated and therefore, the detention order dated 26.5.2005 which is thereafter confirmed by the Government and the Advisory Board, is bad at its inception and the same is to be declared as illegal and void ab initio.

2. It is to be noticed that the petitioner while raising the above said contention has also averred in the petition that in respect of impugned detention order and confirmation thereof, the petitioner had already approached this Court by filing a writ petition in W.P. (HC) No. 56/05 and the said writ petition came to be dismissed by this Court vide order dated 6.10.2005 and the same has attained finality.

3. The respondents herein have filed their objection statement dated 13.12.2005 and at the outset justified the detention order passed against the brother of the petitioner and have also disputed that there had been violation of right available to the detenue. The respondents have further contended in their objection statement that the petitioner has earlier filed the writ petition in No. 56/05 challenging the order of detention and the same had been rightly dismissed by this Court. It is further contended that all the grounds urged by the petitioner in this writ petition were very much available to the petitioner even at the time of filing the earlier writ petition. It is further specifically contended that the petitioner has not made out any subsequent events and hence the writ petition does not merit any consideration. On the said objections, the respondents have sought for dismissal of the above writ petition.

4. We have heard Sri Kiran S. Javali, learned Advocate for the petitioner and Sri. H.S. Chandramouli, learned State Public Prosecutor for the respondents at length.

5. Learned Counsel for the petitioner Sri Kiran S. Javali placing reliance on the decision of the Hon''ble Supreme Court in the case of Ghulam Sarwar Vs. Union of India (UOI) and Others, strenuously contended that the principle of res-judicata or constructive res-judicata would apply only in the case of civil proceedings and the same does not bar subsequent or successive petition in the matter of habeas corpus petition where the personal liberty of a citizen is in question.

6. Further in his attack against the validity of the detention order based on the grounds stated supra, Sri Kiran Javali placed reliance on the decisions of the Hon"ble Supreme Court in the case of Col. Dr. B. Ramachandra Rao Vs. The State of Orissa and Others, , Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another, , Jayanarayan Sukul Vs. State of West Bengal, , Khudiram Das Vs. The State of West Bengal and Others, and also the decision in the case of Niranjansingh Vs. State of Madhya Pradesh, for the proposition that it is the duty of the state of satisfy the Court regarding the validity of the detention order.

7. Per contra Sri. H.S. Chandramouli, learned SPP apart from relying on certain decisions of the Hon"ble Supreme Court to support the validity of the detention order, strenuously contended that the second petition on the same cause of action and for similar relief is not maintainable in view of the dismissal of the earlier petition wherein the petitioner had challenged the very same detention order.

8. Since the contention of maintainability of the petition has been raised as a threshold bar, we propose to examine the same at the outset. We have extensively heard Sri Kiran Javali on the said question. He placed much reliance on the decision in Ghulam Sarwar Vs. Union of India (UOI) and Others, and Kirit Kumar Chaman Lal Kundaliy"s case (1981 SCC (Cri) 471) to canvas the proposition that successive petitions are maintainable. We have carefully perused the said decisions. Both the decisions have been rendered in the context wherein the first petition was filed before the concerted High Court under Article 226 of the Constitution of India and the subsequent petition was filed before the Hon"ble Supreme Court under Article 32 of the Constitution. The Scope of entertaining a petition under Article 226 and Article 32 of the Constitution of India by the High Court and the Supreme Court respectively are different and as such the said decisions are of no assistance to the petitioner on the face of it to support his case that repeated petitions before the very same Court is maintainable. In fact in Ghulam Sarwar"s case, the Hon"ble Supreme Court referred to the position in American and English Courts and observed that subsequently the English Courts have held that a person detained cannot file successive petitions. The Apex Court has further observed that the same principle accepted by the English Court will equally apply in India so far as the High Courts are concerned, as the High Court functions in Division, not in benches and 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. The Apex Court has there after clarified that this principle will not apply to different Courts. It is in this context a petition under Article 32 of the Constitution has been entertained by the Hon"ble Supreme Court despite dismissal of a petition under Article 226 by the High Court. In the instant case, both the petitions are under Article 226 of the Constitution before two benches of the same High Court which functions as a Division as explained by the Apex Court. To justify this aspect of the matter, the learned Counsel Sri Kiran Javali placed reliance on a decision of the Division Bench of the Bombay

High Court in the case of Kochu Krishnan Shashidharan v. State of Maharashtra 1987 Cri. L.J. 1441 The said decision is not of much assistance to the petitioner since all that the Bombay High Court has said is, that the second petition for habeas corpus is maintainable on fresh grounds. (emphasis supplied by us) In fact the said position of subsequent petition to challenge preventive detention on fresh grounds has been approved by the Hon''ble Supreme Court in the case of Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others, on which reliance has been placed by Sri Kiran Javali. Therefore, it would boil down to the position that a subsequent petition would be maintainable only on fresh grounds. In this regard the Honble Supreme Court in the case of T.P. Moideen Koya v. Govt. of Kerala (2004 SCC (cri.) 2120) even though dealing with the question of successive petitions under Article 226 and Article 32 of the constitution of India has made it clear that the subsequent petition would be maintainable if circumstances have changed or on the grounds which were not available when the earlier petition was filed.

9. In the instant case, it is not in dispute that the grounds raised herein were available to be raised when the earlier petition in W.P. (HC) No. 56/05 was filed. That being so, the grounds raised at present can neither be classified as fresh grounds which were not available earlier nor do they constitute changed circumstance. Though Sri Kiran Javali further contended that T.P. Moideen Koy's case cannot be relied on in view of Ghulam Sarwar's case which is by a Constitutional Bench and further that a detention order which is void-ab-initio could be challenged at any point, we are not impressed by such contention. It is to be noticed that the decision in T.P. Moideen Koy's case has been rendered by the Hon''ble Supreme Court after referring to Ghulam Sarwar's case and as such the observations made therein are binding, That apart the contention that it is a void detention order, was available to the petitioner when the first petition was filed. But, the petitioner has failed to raise the same. The position that a subsequent petition can be filed on a fresh ground does not mean that it could be filed on an inadvertently missed out, forgotten or abandoned ground which was already available when the first petition was filed and not raised for the reason best known to the petitioner, but it must be a ground which was not available when the first petition was filed or there should be a change in circumstance of the case. We are, therefore, of the firm view that this petition which is a subsequent petition by the petitioner before the same forum against the very same detention order dated 26.5.2005 even though on a different set of grounds is not maintainable.

10. Since we have come to the conclusion that the petition is not maintainable, we do not propose to dwell into the merits of the case questioning the validity of the impugned detention order. Consequently, we dismiss the writ petition with no order as to cost. Ordered accordingly.