

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 4957 of 2015 (T)

PETITIONER:

THEJAS, AGED 22 YEARS
S/O. RAVEENDRAN, SREEDEEPAM, PINARAYI AMSOM
PINARAYI, KANNADI MUKKU, KANNUR DISTRICT.

BY ADVS. SRI.K.S. ARUN KUMAR
SRI.M.S. DILEEP
SMT. RESMI THOMAS

RESPONDENT:

INSPECTOR GENERAL OF POLICE
KANNUR RANGE - 670 001.

BY ADDL. DIRECTOR GENERAL OF PROSECUTION
SRI. TOM JOSE PADINJAREKARA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10.04.2015, ALONG WITH WPC. 10458/2015 AND 7993/2015, THE COURT ON
11.06.2015, DELIVERED THE FOLLOWING:

WP(C).No. 4957 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT-P1 TRUE COPY OF THE ORDER DATED 09/01/2015 NO. A3-14061/2014.

EXHIBIT-P2 TRUE COPY OF THE APPEAL/REPRESENTATION DATED 28/01/2015.

EXHIBIT-P3 TRUE COPY OF THE ORDER DATED 13/02/2015 IN O.P 04/2015.

RESPONDENT'S EXHIBITS :

EXT.R1(a) TRUE COPY OF THE ORDER PASSED BY THIS COURT IN
CRL.M.C.NO.761/2015 DATED 6.2.2015.

//TRUE COPY//

AHZ/

“C.R.”

**K.T.SANKARAN &
ANU SIVARAMAN, JJ.**

W.P.(C) Nos.4957,10458 & 7993 of 2015

Dated this the 11th day of June, 2015

JUDGMENT

K.T.Sankaran, J.

The question involved in these Writ Petitions is: In order to pass an order under Section 15 of the Kerala Anti-Social Activities (Prevention) Act, 2007 (hereinafter referred to as the 'KAAPA') in cases where proceedings under Section 107 of the Code of Criminal Procedure are taken against the person concerned, is it necessary that another case should be registered against him after the initiation of the proceedings under Section 107 Cr.P.C.?

2. Since the question involved in all these Writ Petitions is the same, these Writ Petitions are being disposed of by this common judgment.

3. An order under Section 15(1) of the KAAPA was passed against Thejas, the petitioner in W.P.(C) No.4957 of 2015, on

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9.1.2015, on the ground that the petitioner is a 'known rowdy' as defined under the KAAPA. The petitioner was involved in five cases registered at Dharmadam police station as Crime Nos.879/2012, 556/2013, 71/2014, 85/2014 and 275/2014. In the first among the aforesaid cases, the petitioner was acquitted even before the passing of the order under Section 15(1) of the KAAPA. Proceedings under Section 107 Cr.P.C. were taken against the petitioner on 29.4.2014. It is stated that the petitioner was directed to execute a bond under Section 111 Cr.P.C. and he executed the bond accordingly. The last crime mentioned in the order of detention was allegedly committed on 17.4.2014 and the final report therein was filed on 21.5.2014. The petitioner is not involved in any other crime after the initiation of the proceedings under Section 107 Cr.P.C. In the order of detention, initiation of the proceedings under Section 107 Cr.P.C. has been mentioned. However, it is stated that to complete the proceedings therein, delay would occur and that an order under Section 15(1) of the KAAPA would be necessary in the circumstances. The order of detention was challenged by the petitioner before the Advisory Board under Section 15(2) of the KAAPA. The Advisory Board rejected the contentions raised by the

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petitioner. It was contended that the fifth case mentioned in the order under Section 15(1) of the KAAPA was quashed under Section 482 Cr.P.C.. Relying on the decisions in Vijayamma v. State of Kerala (2014 (4) KLT 563) and Fazludhin v. State of Kerala (2014 (1) KHC 14 (DB)), the Advisory Board held that the subjective satisfaction arrived at by the authority under Section 15(1) of the KAAPA would not be affected by the subsequent quashing of the case or the acquittal of the person concerned. It was held that there are sufficient number of cases against the petitioner to hold him as a 'known rowdy' under the KAAPA. The Advisory Board also held that though the last crime was registered against the petitioner on 17.4.2014, "the petitioner was found responsible for the offences" on 21.5.2014, on which date charge sheet was filed, which would establish the "habitual criminal nature" of the petitioner. The Advisory Board also held that the petitioner is "untameable anti-social element who is a threat to the public at large unless he is externed".

4. Jyothish.K., the petitioner in W.P.(C) No.10458 of 2015, is a co-accused in the five cases in which Thejas is involved. The order

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under Section 15(1) of the KAAPA against Jyothish was passed on 28.1.2015. It is submitted that proceedings under Section 107 Cr.P.C. were initiated against him in April, 2014 and in which, as per the order passed by the Sub Divisional Magistrate, he executed a bond. In the case of Jyothish also, the Advisory Board rejected the contentions put forward by him. The Advisory Board also held that it “is not a case of detention where the liberty of the individual is fully curtailed so as to warrant subjective satisfaction at a more rigorous plane”. The contention put forward that there was delay in passing the order of externment was also rejected, on facts, by the Advisory Board.

5. Gopakumar P.P., the petitioner in W.P.(C) No.7993 of 2015, was involved in three crimes registered at Iritty Police Station in the year 2014. Final reports were filed in those cases and the trial of the cases is pending. The order of externment was passed by the Deputy Inspector General of Police, Kannur Range on 9.1.2015, holding that the petitioner satisfies the definition of “known rowdy” under Section 2(p)(iii) of the KAAPA. Proceedings were initiated under Section 107 Cr.P.C. against the petitioner and the matter is

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pending before the Sub Divisional Magistrate. It is stated that the petitioner has not appeared before the Sub Divisional Magistrate. In the case of Gopakumar also, the Advisory Board rejected his representation under Section 15(2) of the KAAPA on almost similar grounds as in the other two cases referred to above.

6. The learned counsel appearing for the petitioners submitted that since the petitioners were not involved in any crime after the date of initiation of the proceedings under Section 107 Cr.P.C., there was no justification for passing an order under Section 15(1) of the KAAPA against them. The ordinary law of the land would be sufficient to prevent the petitioners from committing crimes and the drastic step of passing an order of externment under Section 15(1) of the KAAPA before finding the petitioners guilty was not justified. The learned counsel submitted that in the case of Thejas and Jyothish, they had executed bonds as directed by the Sub Divisional Magistrate in the proceedings under Section 107 Cr.P.C. It is submitted that when a bond is executed, the person concerned would be under constant surveillance and it cannot be expected that he would involve in another crime during the period of one year for

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which the bond is executed. If there is violation of the conditions of bond, Section 188 of the Indian Penal Code and Section 122(1)(b) of the Code of Criminal Procedure would apply. The learned counsel also relied on the decisions in Susi v. State of Kerala (2011(1) KLT 760), Manju v. State of Kerala (2011 (3) KLT 150) and Rekha Gopakumar v. State of Kerala (2012 (4) KLT 990).

7. Sri.Tom Jose Padinjarekara, the learned Additional Director General of Prosecution, submitted that the object and purpose of the proceedings under Section 107 Cr.P.C. and Section 15(1) of the KAAPA are not the same. Even if proceedings are initiated against the person concerned under Section 107 Cr.P.C., there is no bar for passing an order of externment under Section 15(1) of the KAAPA and it is not necessary that the person concerned should have involved in another crime after the date of initiation of the proceedings under Section 107 Cr.P.C. The authority who passed the order of externment under Section 15(1) of the KAAPA took note of the proceedings initiated against the petitioners under Section 107 Cr.P.C. and arrived at the subjective satisfaction that in spite of the proceedings under Section 107 Cr.P.C., it was necessary to pass an

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order of externment under Section 15(1) of the KAAPA. The subjective satisfaction was arrived at on valid grounds. He also relied on the decisions of the Supreme Court in Haradhan Saha v. The State of West Bengal and others ((1975) 3 SCC 198), Subramanian v. State of Tamil Nadu and another ((2012) 4 SCC 699), Lt. Governor, NCT and others v. Ved Prakash alias Vedu ((2006) 5 SCC 228) and D.M.Nagaraja v. Government of Karnataka and others ((2011) 10 SCC 215) as well as the decision of the Kerala High Court in Hidayath K. v. State of Kerala and others (2014 (1) KHC 718 (DB)).

8. The KAAPA deals with preventive detention under Section 3 and externment under Section 15 (the word 'externment' is not used in Section 15). In a case where a detention order is passed under Section 3 of the KAAPA, the maximum period of detention shall not exceed six months from the date of detention, as provided under Section 12. Section 7 of the KAAPA provides for the procedure to be followed when a person is arrested in pursuance of a detention order. The grounds of detention with copies of relevant documents, on the basis of which the person concerned is

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considered as a “known goonda” or “known rowdy” and giving such materials relating to his activities on the basis of which his detention has been found necessary, shall be furnished to him, as soon as possible, nevertheless, in any case, within five days of detention. The person concerned would get a right to represent to the Government and before the Advisory Board against the detention. Section 7(3) provides that the Superintendent of the Jail where such person is detained shall afford him reasonable opportunity to consult a lawyer and reasonable assistance in making a representation against the detention order to the Government or to the Advisory Board. In the case of detention under Section 3 of the KAAPA, the matter shall be placed before the Advisory Board within three weeks from the date of detention and the Advisory Board shall give its opinion and report within nine weeks from the date of detention of the person concerned. The Government may confirm the detention order in every case where the Advisory Board has reported that there is sufficient cause for the detention of the person concerned. In every case where the Advisory Board has reported that there is no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person

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to be released forthwith. The Government has the authority to revoke or modify a detention order at any time, as provided under Section 13 of the KAAPA. In the case of an order of externment under Section 15 of the KAAPA there is no requirement to refer the matter to the Advisory Board. Before passing an order under Section 15(1), an opportunity of being heard shall be provided to the person concerned after giving him sufficient notice. Any person aggrieved by an order of externment under Section 15(1) may represent before the Advisory Board within fifteen days of the date of service of the order. On receipt of such representation, the Advisory Board shall within thirty days of the date of receipt of such representation, annul, amend or confirm the order, either in part or in full. Any person violating an order under sub-section (1) of Section 15 shall be liable to be punished with a term which may extend to three years. Section 7 of the KAAPA does not apply in the case of an order for externment under Section 15. A right of hearing before passing the order is not available to the person concerned, who is sought to be detained invoking the power under Section 3. The procedural safeguards as provided in Section 7 of the KAAPA are in tune with the provisions of Article 22 of the Constitution of India.

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Clauses (4), (5), (6) and (7) of Article 22 deal with cases of preventive detention. An order of externment does not strictly amount to an order of detention.

9. The difference between detention under Section 3 and externment under Section 15 of the KAAPA is stated by a Division Bench of this Court (wherein Justice K.T.Sankaran was a member) in **Hidayath K. v. State of Kerala and others (2014 (1) KHC 718 (DB))**, as follows:

“6. The scheme of Section 15 is quite distinct and different from the scheme under Sections 3 to 13 of the KAAPA. An order of detention under Section 3 is intended with a view to prevent any known goonda or known rowdy from committing any anti-social activity within the State of Kerala. An order under Section 15(1) would be issued on satisfaction that a known goonda or known rowdy is indulging in or about to indulge in or likely to indulge in anti-social activities; and that with a view to prevent him from so acting at any place within the jurisdiction of the District Magistrate or the Police Officer concerned, it is necessary to issue an order under Section 15(1). The gravity and magnitude of the

activities of a known goonda or known rowdy which is sought to be prevented are higher in the case of Section 3(1) and not so higher in the case of Section 15 (1). The acts sought to be prevented under Section 15 (1) are within the jurisdiction of the Magistrate or the officer concerned while the activity sought to be prevented under Section 3(1) of the KAAPA is within the State of Kerala as such. An order under Section 15(1) would be resorted to when the Magistrate or officer concerned is satisfied that if a direction to the person concerned not to visit the area or place within the jurisdiction of the Magistrate or officer, as the case may be, for a period not exceeding one year would be sufficient to meet the situation. On the other hand, if the Government or the authorised officer is satisfied that to prevent such person from committing any anti-social activity within the State of Kerala, detention of the person concerned is necessary, an order of detention under Section 3(1) can be issued. It is the subjective satisfaction of the authority concerned to take resort to either Section 15 or to pass an order of detention under Section 3(1) that matters.”

10. In **Lt. Governor, NCT and others v. Ved Prakash alias Vedu** ((2006) 5 SCC 228), the Supreme Court dealt with a case of

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externment under Section 47 of the Delhi Police Act, 1978. The said proceeding was initiated, inter alia, on the ground that the movements of the person concerned and acts have been causing alarm, danger and harm to person and property. After hearing the person concerned, an order of externment was passed against him directing his removal beyond the limits of the National Capital Territory of Delhi for a period of two years. The principles of law relating to externment were stated by the Supreme Court thus:

“18. The law operating in the field is no longer res integra which may hereinafter be noticed:

(i) In a proceeding under the Act all statutory and constitutional requirements must be fulfilled.

(ii) An externment proceeding having regard to the purport and object thereof, cannot be equated with a preventive detention matter.

(iii) Before an order of externment is passed, the proceedee is entitled to an opportunity of hearing.

(iv) The test of procedural safeguards contained in the Act must be scrupulously complied with.

(v) The satisfaction of the authority must be based on objective criteria.

(vi) A proceeding under Section 47 of the Delhi Police Act stands on a different footing than the ordinary proceeding in the sense that whereas in the latter the details of the evidence are required to be disclosed and, thus, giving an opportunity to the proceedee to deal with them, in the former, general allegations would serve the purpose.”

11. In Haradhan Saha v. The State of West Bengal and others ((1975) 3 SCC 198), a Constitution Bench of the Supreme Court held thus:

“19. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence.

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32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched.”

12. The Constitution Bench in **Haradhan Saha's** case considered the constitutional validity of the Maintenance of Internal Security Act, 1971, Act 26 of 1971. The Supreme Court in **Haradhan Saha's** case, after referring to various decisions of the Supreme Court, laid down the principles thus:

“34. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail

and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”

13. The decision of the Constitution Bench in Haradhan Saha v. The State of West Bengal and others ((1975) 3 SCC 198) was followed by the Supreme Court in D.M.Nagaraja v. Government of Karnataka and others ((2011) 10 SCC 215).

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14. In **Susi v. State of Kerala (2011(1) KLT 760)**, a Division Bench of this Court considered the question whether pendency of proceedings against a detenu under Chapter VIII of the Code of Criminal Procedure was a relevant circumstance to which mind of the detaining authority must be applied before ordering preventive detention under the KAAPA. The Division Bench held thus:

“21. It is in this context that we feel that application of mind to the fact of the initiation, pendency, culmination or actual detention under Chapter VIII of the Cr.P.C. by the detaining authority is essential before ordering detention under S.3 of the KAAPA. If after application of mind to the fact that such proceedings have been initiated, is pending, has culminated, the detenu has furnished security or is under detention for failure to furnish security, the Detaining Authority still comes to the conclusion that invocation of powers under S.3 of the KAAPA is necessary, the subjective satisfaction cannot be held to be vitiated in law on that ground alone. But where such application of mind has not at all taken place the situation is totally different. We are unable to subscribe to the view that the circumstance is irrelevant, alien or extraneous while considering the need for preventive detention under S.3 of the KAAPA.”

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15. In **Manju v. State of Kerala (2011 (3) KLT 150)**, an order of detention under Section 3 of the KAAPA was quashed, following the decision in **Susi v. State of Kerala (2011(1) KLT 760)**, on the ground of non-application of mind to the vital aspect of the pendency of proceedings under Section 107 Cr.P.C. against the detenu.

16. In **Rekha Gopakumar v. State of Kerala (2012 (4) KLT 990)**, the person who was detained under Section 3 of the KAAPA challenged the order of detention. Though the sponsoring authority mentioned about the proceedings under Section 107 Cr.P.C. against the detenu, no mention was made about the same either in the order of detention or in the grounds of detention. On that ground, the Division Bench held that the detaining authority did not apply its mind to the relevant factor while arriving at the conclusion that the detenu has to be detained by passing an order of detention under Section 3 of the KAAPA. The Division Bench also held that:

“9. The proceedings under S.107 Cr.P.C. are initiated against a person for preventing him from committing breach of peace or disturbing public

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tranquillity. In other words, it is intended for keeping peace and public tranquillity. KAAPA is also intended to prevent persons from committing anti-social activities. If proceedings initiated under S.107 Cr.P.C. are sufficient for preventing a person from committing anti-social activities, the detention order under S.3 of KAAPA is not necessary. Whether the proceedings under S.107 Cr.P.C. are sufficient or not is a question of fact depending upon various factors. In the case of certain persons, proceedings under S.107 Cr.P.C. may be sufficient for preventing them from committing anti-social activities causing breach of peace or disturbing public tranquillity. In respect of certain other persons, the proceedings under S.107 Cr.P.C. may not be sufficient.”

17. In **Hidayath K. v. State of Kerala and others** (2014 (1) KHC 718 (DB)), it was held that the decision in ***Rekha Gopakumar's*** case did not apply to the facts of that case since after the initiation of proceedings under Section 107 Cr.P.C., the person concerned continued to indulge in criminal activities with added force and he involved himself in commission of four crimes thereafter.

18. In Susi v. State of Kerala (2011(1) KLT 760) and Rekha Gopakumar v. State of Kerala (2012 (4) KLT 990), the Court considered the question of validity of the order of detention under Section 3(1) of the KAAPA. In the present case, no order of detention as such is passed and the order passed is under Section 15(1) of the KAAPA for externment. As held in Lt. Governor, NCT and others v. Ved Prakash alias Vedu ((2006) 5 SCC 228), an externment proceeding cannot be equated with an order of preventive detention. The consequences of an order of externment under Section 15 and an order of detention under Section 3 of the KAAPA are quite different. In the former, though the liberty of movement of the person concerned is restricted, he is not detained. The restriction of movement is only with respect to a particular area or place as may be specified in the order. That area or place must be within the jurisdiction of the District Magistrate or the Police Officer who is competent to pass an order under Section 15. On the other hand, an order of detention under Section 3 deprives the person concerned of his liberty of movement in its full extent. Article 22 of the Constitution of India provides for the safeguard to be taken and the procedure to be followed in the case of preventive detention.

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Article 22 as such may not apply to a person who is externed as per an order under Section 15(1) of the KAAPA. However, Section 15 itself provides for the procedural safeguards and for the necessity of subjective satisfaction to be arrived at by the authority concerned. We are of the view that the decisions and the principles laid down therein in cases where a person is preventively detained, with respect to the impact of the proceedings initiated against him under Section 107 Cr.P.C., as such may not apply to a case where a person is externed under Section 15 of the KAAPA. An order under Section 15 of the KAAPA can be passed in respect of a “known goonda” or “known rowdy”. The authority passing the order must be satisfied that the person concerned is indulging in or about to indulge in or likely to indulge in anti-social activities. An order under Section 15(1) would be passed with a view to prevent such person from so acting at any place within the jurisdiction of the authority. An order under Section 3 of the KAAPA would be passed with a view to prevent the person concerned, who is a “known goonda” or “known rowdy”, from committing any anti-social activity within the State of Kerala in any manner. Proceedings under Section 107 Cr.P.C. would be initiated when an Executive Magistrate receives

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information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The person concerned would be required to execute a bond for keeping the peace as provided under Section 107 Cr.P.C. The purpose and object of an order of detention under Section 3 or an order of externment under Section 15 is different from the object and purpose of an order under Section 107 Cr.P.C.. Under the KAAPA, the thrust is on the prevention of anti-social activities, while that under Section 107 Cr.P.C. is to keep peace and tranquillity and to avoid breach of peace or disturbance of public tranquillity. If a person indulges in anti-social activities, that may sometimes result in breach of peace or disturbance of public tranquillity. At the same time, breach of peace or disturbance of public tranquillity need not necessarily be a result when a person indulges in anti-social activities as defined under the KAAPA. Anti-social activity is defined under the KAAPA as follows:

“2. Definitions.-- In this Act, unless the context otherwise requires,--

(a) “anti-social activity” means acting in such manner as to cause or likely to cause, directly or indirectly,

any feeling of insecurity, danger or fear among the general public or any section thereof, or any danger to the safety of individuals, safety of public, public health or the ecological system or any loss or damage to public exchequer or to any public or private property or indulges in any activities referred in clauses (c), (e), (g), (h), (i), (l), (m), (n), (q) and (s) of this section;”

19. The Constitution Bench of the Supreme Court in **Haradhan Saha v. The State of West Bengal and others ((1975) 3 SCC 198)** held that merely because a detenu is liable to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Maintenance of Internal Security Act, 1971. Initiation of proceedings under Section 107 Cr.P.C. is of a lesser magnitude when compared to preventive detention under the preventive detention laws. An order of externment also is qualitatively different from a proceeding under Section 107 Cr.P.C. Simply because proceedings are initiated against a person under Section 107 Cr.P.C., it cannot be said that a proceeding under the preventive

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detention laws either for preventive detention or for externment cannot be resorted to. The decisions of the Supreme Court and that of the High Court with respect to an order of preventive detention in which proceedings are also taken against the detenu under Section 107 Cr.P.C. may not be strictly applicable to an order of externment under Section 15 of the KAAPA.

20. The main contention raised is that if proceedings are initiated against the person concerned under Section 107 Cr.P.C., it is necessary that he should have indulged in another criminal activity in order to enable the authority to pass an order of detention under Section 3 or an order of externment under Section 15 of the KAAPA. This argument is fallacious. As stated above, Section 3 as well as Section 15 of the KAAPA are intended to be applied against a “known goonda” or a “known rowdy”. Section 2(p) defines “known rowdy”. A person becomes a “known rowdy” if any of the conditions mentioned in sub-clauses (i), (ii) or (iii) of clause (p) of Section 2 are satisfied. Sub-clause (i) applies to a person who was made guilty by a competent Court at least once for an offence of the nature under item (i) of clause (t) of Section 2 or any offence notified as such

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under the said clause. It is sufficient if he has been made guilty with respect to an act done within the previous seven years of the order imposing any restriction or detention under the Act. "Known goonda" is defined under Section 2(o) of the KAAPA. A person becomes a "known goonda" if any of the conditions in sub-clauses (i) or (ii) of clause (o) of Section 2 is satisfied. Sub-clause (i) would apply if the person concerned was found guilty, with respect to an act done within the previous seven years, by a competent Court or authority at least once for an offence within the meaning of the term 'goonda' as defined in clause (j) of Section 2. If a person can be detained or externed under Section 3 or Section 15 respectively, on being found guilty for a single act within a period of seven years, how could it be said that he cannot be proceeded with under Section 3 or Section 15 unless and until he indulges in a criminal act after initiation of the proceeding under Section 107 Cr.P.C.? If such an interpretation is taken, we would be putting fetters on the power given to the authorities under the KAAPA. That would be adding to the conditions in clauses (o) and (p) of Section 2 of KAAPA. It is true that the subjective satisfaction of the detaining authority or the authority passing an order of externment as provided in the KAAPA

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is required. But such subjective satisfaction cannot be circumscribed by a condition that the person concerned should have committed another crime after the date of initiation of proceedings under Section 107 Cr.P.C. against him. The KAAPA does not contain such a condition. The Code of Criminal Procedure also does not provide anywhere of such a condition in the matter of preventive detention or externment under any law for preventive detention. The Constitution of India also does not provide for the same. The existence of an order under Section 107 Cr.P.C. would be relevant only in the realm of subjective satisfaction of the authority concerned before passing an order under Section 3 or Section 15 of the KAAPA. That subjective satisfaction is with respect to the likelihood of the person concerned indulging in any anti-social activity and the measures to be taken to prevent the same. If a particular act constitutes an anti-social activity and if any of the conditions prescribed under sub-clauses (i) to (iii) of clause (p) or sub-clauses (i) and (ii) of clause (o) of Section 2 of KAAPA applies in a particular case, the power conferred on the authority under the KAAPA cannot be further restricted with a condition that the person concerned should have indulged in another criminal act after initiation of the

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proceedings under Section 107 Cr.P.C. That will be adding something to the legislative enactment.

For the aforesaid reasons, we are of the view that the contentions put forward by the petitioners with respect to the question raised in paragraph 1 above are unsustainable. It is submitted that Thejas and Jyothish.K., the petitioners in W.P.(C) Nos.4957 of 2015 and 10458 of 2015 are students and externment for a period of one year would be harsh. In the facts and circumstances, we are of the view that the period of externment in the case of Thejas and Jyothish K. should be reduced to a period of six months each. Accordingly, W.P.(C) Nos.4957 of 2015 and 10458 of 2015 are allowed in part reducing the period of externment to six months each instead of one year. W.P.(C) No.7993 of 2015 is dismissed.

(K.T.SANKARAN)
Judge

(ANU SIVARAMAN)
Judge

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