

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(Crl.).No. 403 of 2013 (S)

PETITIONER(S)/PETITIONER:

KUMARAN AGED 60 YEARS
S/O.THEVAN, KIZHAKKESSERIL HOUSE, ULAVAIPPU P O
WARD NO 2, THAIKKATTUSSERY PANCHAYATH, ALAPPUZHA DIST

BY ADVS.SRI.B.PRAMOD
SMT.R.REJI (ATTINGAL)

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REP.BY SECRETARY TO GOVERNMENT, HOME DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001
2. THE INSPECTOR GENERAL OF P OLICE
KOCHI RANGE-682031
3. THE DISTRICT POLICE CHIEF
ALAPPUZHA-688001
4. THE STATION HOUSE OFFICER
POOCHAKKAL POLICE STATION, ALAPPUZHA DIST-688001

R1,R2,R4 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.K.I.AB DUL RASHEED

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(Crl.).No. 403 of 2013 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:-TRUE COPY OF THE ORDER DTD 26/7/2013 PASSED BY THE 2ND
RESPONDENT U/S 15(1) OF THE KERAL ANTISOCIAL ACTIVITIES
PREVENTION ACT(KAAPA)

EXT.P2:-TRUE COPY OF THE SHOW CAUSE NOTICE DTD 6/6/2013 ISSUED BY
THE 1ST RESPONDENT

EXT.P3:-TRUE COPY OF THE REPLY

EXT.P4:-TRUE COPY OF THE REPORT DTD 17/5/2013

EXT.P5:-TRUE COPY OF THE FIR IN CRIME NO 818/2013 OF POOCHACKAL
POLICE STATION, ALAPPZUHA DIST

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

K.T.SANKARAN & RAJA VIJAYARAGHAVAN.V., JJ.

W.P.(Crl.) 403 of 2013

Dated this the 7th day of September, 2015

JUDGMENT

As per Exhibit P1 order dated 26.7.2013, an order of externment was passed against Shahul, son of the petitioner, under Section 15(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'the Act').

2. The reliefs prayed for in the Writ Petition are the following :

- “(i) issue a writ of habeas corpus or any other appropriate writ order or direction commanding the respondents to produce the petitioner's son by name Shahul, aged 24 years before the Hon'ble Court and release him forthwith;
- (ii) issue a writ of certiorari or any other appropriate writ or order calling for the original of Exhibit P1 order and quashing the same;

- (iii) issue a writ of certiorari or any other appropriate writ or order calling for the original of Exhibit P5 F.I.R. and quashing the same;
- (iv) issue such other orders as this Hon'ble Court deems fit and necessary in the facts and circumstance of the case.”

3. Alleging that Exhibit P1 order was violated by entering into the limits of Alappuzha District, which was sought to be prevented by Exhibit P1 order, Crime No.818 of 2013 was registered at Poochakkal Police Station for the offence under Section 15(4) read with Section 19 of the KAAPA. Therefore, relief No.(i) was moulded as stated above. Relief No.(ii) is to quash Exhibit P1 order. Relief No.(iii) is to quash Exhibit P5 F.I.R.No.818 of 2013 of Poochakkal Police Station.

4. As per the interim order dated 9th September, 2013 passed by a Division Bench of this Court, an interim direction was issued that the detenu, namely, Shahul, the son

of the petitioner, who was detained, be released. Accordingly, relief No.(i) has become infructuous.

5. As regards relief No.(ii), the period of externment is over by 25.7.2014. Therefore, we need not go into the validity of Exhibit P1 order.

6. As regards relief No.(iii) prayed for in the Writ Petition, that question cannot be gone into in a Writ Petition like this, since questions of fact are involved. It cannot be decided in this Writ Petition as to whether on facts, a case is made out against the son of the petitioner.

7. The learned Additional Director General of Prosecution submitted that a Writ Petition (CrI.) was filed since the petitioner's son was detained on the basis of Exhibit P5 F.I.R. An order under Section 15(1) can be challenged not in a W.P.(CrI.), but only in a W.P.(Civil). Therefore, it is submitted that the validity or otherwise of Exhibit P1 order

cannot be challenged in W.P.(CrI.). The submission made by the learned Additional Director General of Prosecution has force.

8. Since we are not going into the correctness or otherwise of Exhibit P1 order or Exhibit P5 proceedings, for the reasons mentioned above, it is not necessary to decide the question on the merits in this Writ Petition.

The Writ Petition is accordingly closed with liberty to the petitioner to raise all legally available contentions in accordance with law in appropriate proceedings.

**K.T.SANKARAN
JUDGE**

**RAJA VIJAYARAGHAVAN.V.
JUDGE**