

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR**

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(CRL.).NO. 268 OF 2014 (S)

PETITIONER(S):

**LAKSHMI, W/O. APPUKUTTAN,
AGED 60 YEARS, UDAYAMADOM HOUSE,
KARINKARAPULLI, PALAKKAD DISTRICT.**

**BY ADVS.SRI.O.V.MANIPRASAD,
SRI.JOLLY GEORGE.**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DISTRICT COLLECTOR
AND DISTRICT MAGISTRATE, PALAKKAD-678 001.**
- 3. THE DISTRICT POLICE CHIEF,
PALAKKAD-678 001.**
- 4. THE SUB INSPECTOR OF POLICE,
TOWN SOUTH POLICE STATION,
PALAKKAD DISTRICT- 678 001.**
- 5. THE SUPERINTENDENT OF CENTRAL PRISON,
KANNUR-670 001.**
- 6. THE SUPERINTENDENT OF CENTRAL PRISON,
VIYYOOR, THRISSUR - 680 001.**

BY SRI.T. ASAF ALI, DIRECTOR GENERAL OF PROSECUTION.

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 15/10/2014, THE COURT ON 09/03/2015 DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT-P1- TRUE COPY OF THE DETENTION ORDER DATED 25/02/2014 OF THE 2ND RESPONDENT.

EXHIBIT-P2- TRUE COPY OF THE DETENTION SERVED ON THE DETENUE.

EXHIBIT-P3- TRUE COPY OF THE PRELIMINARY REPORT DATED 11/02/2014.

EXHIBIT-P4- TRUE COPY OF THE JUDGMENT DATED 28/08/2010 IN C.C. NO.491/2009 OF THE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, PALAKKAD.

EXHIBIT-P5- TRUE COPY OF THE ORDER DATED 18/01/2014 IN CRL.M.P.194/2014 OF THE SESSIONS COURT, PALAKKAD.

EXHIBIT-P6- TRUE COPY OF THE ORDER DATED 02/05/2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

Thottathil B.Radhakrishnan,

C.T.Ravikumar

&

Babu Mathew P.Joseph, JJ.

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WP(Cr1).No.268 of 2014

= = = = =

Dated this the 9th day of March, 2015

Judgment

Thottathil B.Radhakrishnan, J.

1.This writ petition challenging an order of detention under the provisions of Kerala Anti-Social Activities (Prevention) Act, 2007, for short, the “Kerala Act”, is before the Full Bench on an order of reference doubting the correctness of the views expressed in paragraph 5 of the judgment in Prasannakumari v. State of Kerala [2012(2) KHC 42] and in paragraph 12 of the judgment in Sruthi v. State of Kerala [2009(3) KLT 8].

2.Heard the learned counsel for the petitioner and the learned State Government’s counsel.

3.Considering the reference order and the disputes raised for decision, we see that no principle of law as such, to be treated as a decision on an issue of law is reflected in either paragraph 5 of Prasannakumari or paragraph 12 of Sruthi. We say this because, the consideration by this Court in those paragraphs of those judgments ultimately revolved on the question as to whether the detention orders impugned in those cases were vitiated on account of lack of due and proper application of mind to the relevant aspects of the cases dealt with therein. It cannot be held that any principle of law is declared in those paragraphs of Prasannakumari and Sruthi which would have any impact on the consideration of the arguments raised on behalf of the petitioner based on the decisions of the Hon'ble Supreme Court of India in D.S.Agarwal v. Police Commissioner [AIR 1989 SC 1282] and in Ramesh v. State of Gujarat [(1989) 4 SCC 124].

4. In the reference order, the Division Bench has

copiously considered the law laid by the Apex Court in D.S.Agarwal(supra) and Ramesh(supra) and has held that the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 are distinct from the quality and content of Section 7 (4) of the Kerala Act and therefore, those decisions cannot be acted upon as precedents to deal with cases in which an issue as to severability is raised under the Kerala Act.

5.Having bestowed our anxious consideration to the contents of the reference order and Prasannakumari (supra) and Sruthi(supra) and having heard the learned counsel for the parties, as noted in paragraph no.3 above,we are of the view that the contents of paragraph 5 of Prasannakumari and those of paragraph 12 of Sruthi confine only to the question as to whether the competent authority had reached the required satisfaction in each of those cases. The findings in those cases were that there was non-application or improper application of mind in issuing the detention orders which were under challenge therein. Those findings rest only

on the facts of those cases. The contents of those paragraphs in those verdicts are cases-specific and facts-specific. They do not lay down any legal principle to be applied in any other case.

6. Hence, we hold that there is nothing to be answered following the reference order, except to state that nothing in paragraph 5 of Prasannakumari or in paragraph 12 of Sruthi lays down any principle of law. We also do not have to speak on the distinctions carved out by the Division Bench in the reference order between the provisions of the Kerala Act and those of the Gujarat Act to decide the question referred to the Full Bench.

We see that while in the order of reference on 8.8.2014 it was noted that the period of detention would expire on 25.8.2014, the Division Bench had passed an order suspending the detention till the Full Bench renders the judgment. We are of the view that with the passage of time and the period of detention having run out, all that needs to be

done while affirming the detention order is to make absolute the release of the detenu following the order of suspension that was issued by the Division Bench. It is so ordered. The writ petition is ordered accordingly.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
C.T.Ravikumar
Judge

Sd/-
Babu Mathew P.Joseph
Judge

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-true copy-

P.S.to Judge.