

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.14710 of 2016

DATED:- 25-10-2016

Between:

Cheemakurthi Bhagyalakshmi

..... PETITIONER

AND

The State of Telangana, rep.by its Principal Secretary,
General Administration (Law & Order) Department,
Secretariat, Hyderabad and another

.....RESPONDENTS

COUNSEL FOR THE PETITIONER : M/s.BHARADWAJ ASSOCIATES

COUNSEL FOR RESPONDENTS : G.P.FOR HOME (TS)

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT PETITION No.14710 of 2016

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The wife of one Cheemakurthi Balasubramanyam (hereinafter referred to as "the detenu") filed this writ petition feeling aggrieved by the detention of the detenu by Respondent No.2 under the provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, "the Act").

For disposal of this case, detailed facts need not be recorded. It will suffice to note that in the detention order dated 07.01.2016, Respondent No.2 has enumerated the crime history of the detenu wherein he has referred to five cases of the years of 2004, 2011, 2012 and 2015. However, in the detention order, Respondent No.2 observed as under:

"Among the above, the following facts of the (02) cases (considered as grounds for detention) which were committed by you in the recent past, would prove your activity prejudicial to the maintenance of public order.

- 1) Cr.No.334/2015 U/s.420, 447, 427, 406, 419, 464, 465, 468, 471, 120(B) r/w.34 IPC and Secs.3, 4, 5 of A.P.Land Grabbing (Prohibition) Act, 1982 of Chaithanyapuram PS;
- 2) Cr.No.345/2015 U/s.420, 406, 464, 465, 471 r/w.34 IPC of Chaitanyapuri PS."

The detention order has referred to Cr.Nos.334/2015 and 345/2015 as the grounds on which the detention order is passed. It is alleged that the detenu has impersonated late K.S.Ramachandrarao by creating a sale deed and link documents in respect of 500 square yards of land in plot No.225 in Sy.No.9/1 situated at SRK Puram, Income Tax colony and sold

the same to one Mr.Harish Gosike, S/o. Venkataiah, R/o.H.No.1-5-24, Street No.12/A, New Maruthi Nagar, Kothapet for Rs.1,65,00,000/-. Cr.No.334/2015 was registered on the complaint of Mr.K.Krishnarao, S/o.late K.S.Ramachandrarao, the original owner. Cr.No.345/2015 was registered on the complaint of Mr.Harish Gosike, the purchaser.

As rightly submitted by Sri Vedula Venkataramana, learned senior counsel, though two separate FIRs were registered on the reports submitted by the original owner and the purchaser, the alleged offence is common. The learned senior counsel submitted that since respondent No.2 has relied upon only two grounds relating to a common offence, the detenu cannot be considered as a 'goonda' within the definition of Section 2(g) of the Act.

The learned Govt.Pleader for Home for the State of Telangana submitted that the detenu is a habitual offender, falling within the definition of 'goonda' and that though respondent No.2 has taken into consideration two grounds, the detaining authority is entitled to take into account the past conduct and antecedent history of a person while making a detention order, and that therefore, the impugned detention order cannot be said to be illegal. He has further submitted that though the transaction is one, since there are two victims, two cases have been registered on the complaints given by them, and that therefore, both the cases shall be taken as separate crimes.

We have carefully considered the submissions of the learned counsel of both parties with reference to the record.

In order to pass an order of detention under the Act, the detaining authority must be satisfied that the proposed detenu habitually commits

any of the acts enumerated in Section 2(g) of the Act, which is reproduced hereunder:

“Sec.2(g): “goonda” means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.”

From the definition of Section 2(g), it follows that a person committing an isolated act howsoever grave, cannot be treated as a habitual offender. In order to treat a person as habitual offender, he must be shown to have committed a series of acts which disturbs public order.

No doubt in *Rameshwar Shaw v. D.M., Burdwan*¹ the Constitution Bench of the Supreme Court held that the past conduct or antecedent history of the person can be taken into account in making detention order. The Supreme Court however did not hold that the detaining authority need not mention the past conduct in the grounds. If the past conduct or antecedent history is relevant in the opinion of the detaining authority, we do not find any reason why such past conduct or antecedent history is not made part of grounds of detention.

Though in all five cases were referred to in the detention order, respondent No.2 has consciously chosen only two cases to include in the grounds of detention. While respondent No.2 himself has felt that the remaining three cases which were allegedly committed by the detenu in the past were not relevant for inclusion in the grounds of detention, the respondents cannot justify the detention order with reference to those cases excluded from the grounds in order to support the same before the court. As respondent No.2 has considered only Cr.No.334/2015 and

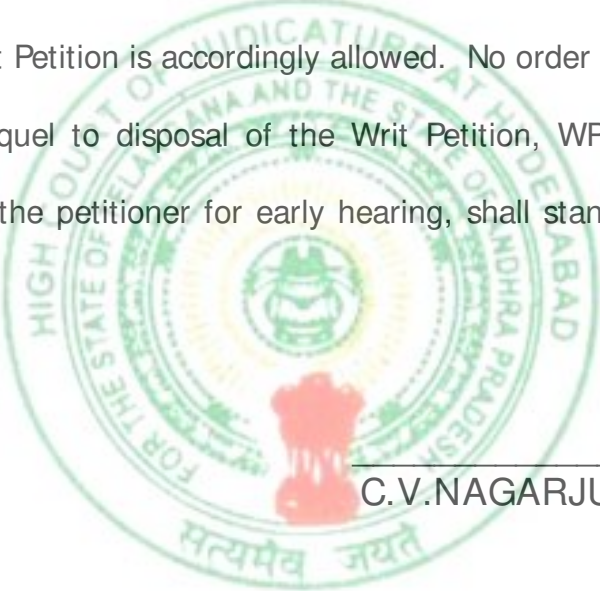
¹ AIR 1964 SC 334

Cr.No.345/2015 which as noted above constituted the same transaction, they must be considered as one case. Viewed in this manner, it cannot be said that the detenu is a habitual offender, falling within the definition of 'goonda' under Section 2(g) of the Act.

For the above mentioned reasons, the detention order and its confirmation are not sustainable. The impugned order of detention, passed by Respondent No.2, dated 07.01.2016, and its confirmation dated 21.03.2016 are accordingly set aside and the detenu-Cheemakurthi Balasubramanyam shall be released forthwith from detention, if he is not required in any other case or crime.

The Writ Petition is accordingly allowed. No order as to costs.

As a sequel to disposal of the Writ Petition, WPMP No.18300 of 2016, filed by the petitioner for early hearing, shall stand disposed of as infructuous.



C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 25.10.2016
Dsr