

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.38372 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The order, under challenge in this Writ Petition, is the order detaining Sri Shaik Simpathi Jakeer @ Chimpathi Jakeer, S/o Fakruvalli @ Sabun, who is presently lodged in central prison, Kadapa and to set him at liberty declaring the order of detention passed by the second respondent on 02.09.2015, as confirmed in G.O.Rt.No.3126 General Administration (Law & Order) Department dated 15.10.2015 by the first respondent, as arbitrary and illegal.

On a perusal of the order of detention, it is evident that, while the *detenu* was informed that he had a right to make a representation to the Government and the Advisory Board against his detention, and he also had a right to be heard personally by the Advisory Board, if he so desired, under Section 10 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, he was not informed that he also had a right to make a representation to the detaining authority.

Notwithstanding the fact that the detaining authority is required to forthwith report the factum of detention, together with the grounds and material, to the State Government, and notwithstanding that the Act provides for making a representation to the State Government, the officer under Section 3(2) continues to be the detaining authority until the orders of detention issued by him are approved by the State Government. He can, until then, entertain a representation from a *detenu* and, in exercise of his powers under the General Clauses Act, can amend, vary or rescind the order. Non-communication of the fact to the *detenu*, that he can make a representation to the detaining

authority as long as the order of detention has not been approved by the State Government, would constitute an infraction of a valuable right of the *detenu* under Article 22(5) of the Constitution. (**State of Maharashtra v. Santosh Shankar Acharya**^[1]).

The right to make a representation carries within it a corresponding obligation on the authority, making the order of detention, to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation. This right, necessarily, implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation, and failure to do so results in denial of the right of the person detained to make a representation (**Kamleshkumar Ishwardas Patel**²¹; **Nutan J. Patel v. S.V. Prasad**^[2]). The representations made by the *detenu* are required to be considered both by the detaining authority as also the State Government. They are required to be considered on their own merit upon application of independent mind on the part of the authorities concerned. (**Harshala Santosh Patil v. State of Maharashtra**^[3]).

Reliance is placed by the Learned Advocate-General on **Amin Mohammed Qureshi v. Commissioner of Police, Greater Bombay**^[4], wherein a two Judge Bench of the Supreme Court held that the detaining authority is not under an obligation to tell the *detenu* that he can make a representation to the detaining authority also. In the light of the subsequent Constitution Bench judgment of the Supreme Court, in **Kamleshkumar Ishwardas Patel v. Union of India**^[5], holding to the contrary, reliance placed on the earlier two

Judge Bench judgment, in **Amin Mohammed Qureshi**⁴, is of no avail. Failure on the part of the detaining authority to inform the *detenus*, of their right to submit a representation to the detaining authority, would vitiate the orders of detention.

As the *detenu* was not informed that he had a right to make a representation to the detaining authority also, the impugned order of detention must be, and is accordingly, set aside.

The Writ Petition is allowed, the order of detention is quashed, and the *detenu* shall be set at liberty forthwith, provided he is not required to be kept in custody in connection with any other case/cases registered against him. Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

28^h January, 2016.

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^[1] (2000) 7 SCC 463

^[2] (1996) 2 SCC 315

^[3] (2006) 12 SCC 211

^[4] (1994) 2 SCC 355

^[5] (1995) 4 SCC 51