

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH

WRIT PETITION Nos. 30992, 30995 & 30996 OF 2016

Between:

Shahana and ors

.....Petitioners

and

State of Telangana, rep. by Chief Secretary,
General Administration, Law & Order, Secretariat,
Hyderabad and ors.

.....Respondents

Date of Judgment pronounced on : 13-02-2017

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

AND

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION Nos. 30992, 30995 & 30996 OF 2016

%13-02-2017

#Shahana and ors Petitioners

Versus

\$ State of Telangana, rep. by its Chief Secretary,
Law and Order, General Administration,
Secretariat, Hyderabad and ors.

....Respondents.

< GIST:

> HEAD NOTE:

!Counsel for the petitioners in all WPs :Smt. B. MOhana Reddy

^ Counsel for the respondents : Government Pleader
representing Advocate General

? Cases referred

1. 2016 (1) ALT 738 (DB)
2. AIR 1981 SC 728.
3. 2015 (6) alt 499 (DB)
4. (1999) 2 SCC 413
5. (1970) 1 SCC 98
6. (1996) 1 SCR 709
7. 2016 SCC IBKUBE SC 1313.

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION Nos. 30992, 30995 & 30996 OF 2016

COMMON ORDER:

(Per HON'BLE SRI JUSTICE SURESH KUMAR KAIT)

Vide present Writ Petitions, the petitioners seek a direction thereby to set aside detention orders dated 5.6.2016 passed by the second respondent and consequential conformation orders passed by the first respondent vide G.O.Rt.Nos.1870, 1869 and 1870 respectively dated 23.08.2016.

In these three Writ Petitions, the issues of facts and law are common. Therefore, these cases are heard together and being disposed of by this common order.

For the sake of convenience, we would refer to the facts and contentions in Writ Petition No.30992 of 2016. It was stated by the learned counsel for both the parties before us that this Writ petition can be taken as representative of the facts and contentions in the other two Writ Petitions.

It is submitted by learned Counsel appearing on behalf of the petitioner that in the detention order dated 5.6.2016 it is mentioned that the petitioner was involved in as many as seven property offences and he has been creating fear and panic in general public by committing such offences in public places and

thus he has been acting in a manner prejudicial to maintenance of public order apart from disturbing the peace, tranquility and social harmony in the society. Thus the petitioner/detenu was declared as 'Goonda' as he has been indulging in series of property offences by diverting attention of ATM users and committing theft of their money in the limits of Hyderabad Police Commissionerate, due to which, large scale fear and panic among the people was adversely affecting the public order. It is also specifically stated that it has been brought to the notice of the detaining authority that the detenu/petitioner was arrested on 10.05.2016 in Crime No. 93 of 2016 of Habeebnagar Police Station and remanded to Judicial custody in Cr. Nos. 93/2016, 96/2016 and 100/2016 of same police station and his arrest was regularized in Cr.Nos.110 of 2016, 116 of 2016 of Asifnagar Police Station and 302 of 2016 and 306 of 2016 of S.R.Nagr Police Station through PT Warrants.

Learned Counsel further submits that in the detention order, it is specifically stated that the detenu involved in as many as seven property offences in the limits of Hyderabad Police Commissionerate; thus all the seven cases were mentioned in the grounds of detention and while passing the order of detention, the detaining authority had taken into consideration all the seven cases and accordingly passed the order. Learned Counsel submits that out of seven cases, Crime No.110 of 2016 was registered at Asifnagar Police Station for the offence punishable under Sections 379 and 420 IPC and Crime No. 116 of 2016 was registered at the aforesaid same police Station for the same

offences. However in the said crimes, the grounds of detention and the other documents which are at Page Nos. 121 to 123 of the paper book are in Telugu and English languages, which are not known languages of the detenu, as the detenu hails from New Delhi and his known language is Hindi. Thus, as the documents relied upon supplied to the detenu are in English and Telugu, the detenu failed to make effective representation under Article 22(5) of the Constitution of India.

More over as per Section 8 of THE TELANGANA PREVENTION OF DANGEROUS ACTIVITIES OF BOOT LEGGERS, DACOITS, DRUG-OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986 (for short ' the Act'), the detaining authority has to supply the documents relied upon within five days; however, the aforesaid documents were not supplied till date. Thus the respondent-detaining authority has violated Section 8 of the Act.

In addition to the above, learned Counsel appearing on behalf of the petitioner has argued that as per Section 2(g) of the Act, detention order can be passed if the acts of a person create panic and fear in the minds of the public at large and thereby disturbing the law & order and tranquility; but, however, there is no such disturbances to public order, in those cases, as such person cannot be detained. To strengthen her arguments, learned Counsel appearing on behalf of the petitioner relied on the

decision of this Court in VASANTHU SUMALATHA AND OTHERS Vs. STATE OF ANDHRA PRADESH { 2016 (1) ALT 738 (DB)} wherein this Court relied on the decision of the Apex Court in LALLUBHAI JOGIBHAI PATEL Vs. UNION OF INDIA { AIR 1981 SC 728} in which, the grounds of detention were drawn up in English, though the detenu did not know English; and the Police Inspector, who served the grounds of detention on the detenu, filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. The Supreme Court held that this was not sufficient compliance with the mandate of Article 22(5) of the Constitution, which require that the grounds of detention must be 'communicated' to the detenu; 'communicate' meant that sufficient knowledge, of the basic facts constituting the 'grounds', should be imparted effectively, and fully to the detenu in writing, in a language which he understood.

In the case of VASANTHU SUMALATHA (supra), this Court also relied on the decision of the Supreme Court in V.MUTHUVELU Vs. STATE OF ANDHRA PRADESH { 2015 (6) ALT 499 DB}, wherein, no material was supplied to the detenu by translating it into Tamil; all the crimes were registered in the State of Andhra Pradesh; while referring to such crimes, under various Sections, reasons were recorded for invoking the provisions of the Act, but such material was not supplied in Tamil; however, the detenu had signed in English in token of receiving the grounds etc,. In those circumstances, this Court observed that merely

because he had signed in English, it could not be said that he was well versed in English. It is a common practice that many of those who sign in English are not conversant with the said language and the plea that non-supply of material in Tamil did not affect the right of detenu in making an effective representation, was not convincing.

Learned Counsel appearing on behalf of the petitioner submits that the known language of the detenu is Hindi; he can right and read Hindi, however, the documents relied upon have not been supplied in Hindi language known to him. Thus the detaining authority has violated the very mandate of Article 22(5) of the Constitution of India. Therefore the detenu could not make effective representation before the Government or Advisory Board.

In support of her argument, learned Counsel relied on the decision in *POWANAMMAL Vs STATE OF TAMILNADU* {(1999) 2 SCC 413} wherein the Supreme Court held that the amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.

Learned Counsel appearing on behalf of the petitioner also relied on the decision in ARUN GHOSH Vs. STATE OF WEST BENGAL { (1970) 1 SCC 98} wherein the case of Dr. RAM MANOHAR LOHIA Vs. STATE OF BIHAR { (1996) 1 SCR 709} was considered. In the said case, a question arose as to, if a detenu was creating disturbance to individuals, does it lead to disturbance of the current life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed ? In a case where there is fear in the community at large by a particular wrong, when that act does not amount to disturbance to public order, however affecting against individuals or habitually creating disturbance to law and order, on such ground, detention order cannot be passed.

Learned Counsel appearing on behalf of the petitioner submits that among seven cases, the detaining authority has taken three offences which formed the grounds for detention and got influenced the approving authority and advisory board. As the detaining authority provided the documents relied on in English and Telugu, which are not known languages, the detenu could not make effective representation to the Government or the advisory board.

On the other hand, learned Government Pleader appearing on behalf of the respondents submits that the petitioner is a graduate and pursuing M.A. first year. He himself stated in the receipt which is at Page No. 254 of the paper book that he is 23 years old student; pursuing M.A. and resident of Nehru Camp, Govindpuri, New Delhi. However, his known language is Hindi and he can read and write Hindi.

Learned Counsel submits that though detenu was served with the detention order, grounds of detention and the documents relied upon by the detaining authority in English as well as Hindi languages, and in the grounds of appeal, it is specifically mentioned that among the above seven cases mentioned supra, three cases were considered as grounds for detention which were committed by the detenu, which amply prove his activities prejudicial to maintenance of public order.

Crime No. 93 of 2016 was registered for the offences punishable under Sections 380 and 420 IPC at Habeebnagar Police Station, Hyderabad. It was alleged therein that on 25.04.2016 the detenu along with his associates entered the SBH ATM, Mallepally, Hyderabad and inserted a silver coloured strip below the hash key of the ATM key board panel with an intention to fraudulently withdraw cash from the ATM users and later diverted the attention of the complainant Sri Mohd. Abdul Waheed who visited the SBH ATM at Mallepally, Hyderabad for withdrawal of cash; pretending to help him, noted his ATM pin number and

swapped his ATM card with an old ATM card and fled away from the scene. Thereafter the detenu withdrew an amount of Rs.35,100/- and Rs.40,100/- on 25.04.2016 and 26.04.2016 respectively through ATMs and also used the complainant's ATM card for shopping for Rs.23,298/- at Hyderabad Central, Panjagutta and Rs.9,695/- at E-Zone, Panjagutta on 26.4.2016, thereby committed theft of total amount of Rs.1,08,183/-. Similarly the detenu and his associates cheated various ATM users. Accordingly Crime No. 96 of 2016, Crime No. 100 of 2016 were registered at Habeebnagar Police Station for the offences punishable under Sections 380 and 420 IPC.

Learned Government Pleader further submits that the documents relied upon were supplied to the detenu in Hindi language which is known to him. The CD Part II of two crimes i.e. Crime Nos. 116 of 2016 and 110 of 2016 as noted above have been supplied in English and Telugu languages. However, the said crimes are not relied on by the detaining authority while passing the detention order. Thus it is specifically mentioned in the grounds that among seven cases registered against the detenu, three cases as mentioned supra were considered to pass the detention order.

Heard Smt. B.Mohana Reddy, learned Counsel appearing on behalf of the petitioners and learned Government Pleader appearing on behalf of the respondents.

The fact remains that the detenu is pursuing M.A. He is the resident of New Delhi. If a person is a graduate from Delhi, he would certainly understand Hindi and English, because the said languages are compulsory up to degree. The documents in Crime Nos. 116 of 2016 and 110 of 2016 are case diary Part II wherein statements of witnesses were recorded in Telugu. We find on the top of same cases wherein case number, offences and names of persons whose statements are recorded are mentioned in English. As stated supra, if a person is pursuing M.A. and that too, from Delhi, he would certainly read and understand English and Hindi languages. More over, after receipt of the documents relied upon, the detenu did not raise such issue either before the approving authority, i.e. Government or advisory board stating that he has not been provided with the documents relied upon in the known language.

In the case of E.SUBBULAKSHMI Vs. SECRETARY TO GOVERNMENT & ORS { 2016 SCC ONLINE SC 1313}, it was held that relied upon documents must be served to the detenu in his known language. In the said case, the question before the Apex Court was, whether the FIR in Crime No. 598 of 2015 therein furnished to the detenu is a relied upon document or only a referred to document by the detaining authority for arriving at his subjective satisfaction. If it is a relied upon document, issue must be in favour of the detenu. However, in the said case, it was held that subject FIR was only a referred to document in the

grounds of detention. Thus it does not affect the detenu to make effective representation before the authority.

In the case on hand, the petitioner indulged in seven property offences; among them, the detaining authority has relied upon only three cases as mentioned supra and the documents relied upon have been supplied to the detenu in the language known to him i.e. English or Hindi.

The *modus operandi* adopted by the detenu is such that he has been habitually committing the grave and gruesome unlawful activities by diverting attention of ATM users and commits theft of their money. There is huge panic in the minds of people who were scared to make transactions. The detenu used the PIN numbers of different consumers and misappropriated their money from different ATMs. Thus the detenu indulged in several offences by diverting the attention of ATM users and committed theft of their money in the limits of Hyderabad Police Commissionerate. In the present era, a large section of account holders of the society are using the ATM facility. The persons who are cheated certainly made hue and cry before the Banks, police and media through which other users were also become scared due to panic and fear. It amounts to disturbance to public order. More over, the detenu committed theft through various ATMs situated at different places. Thus, fear and panic were spread to

large groups of ATM users. Accordingly the offences committed by the petitioners fell under the purview of Section 2 (g) of the Act.

For the foregoing discussion, we find no valid ground to set aside the detention orders. Accordingly the Writ Petitions are dismissed.

Miscellaneous petitions pending consideration if any in the Writ Petitions shall stand closed in consequence. No order as to costs.

JUSTICE SURESH KUMAR KAIT

JUSTICE U.DURGA PRASAD RAO

DATED 13TH FEBRUARY, 2017.

Note: LR Copy to be marked.
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