

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

WP.No.16905 of 2018

Between:

Mahmooda Begum,

W/o Late Ahmed Hussain

... Petitioner

And

The State of Telangana through

General Administration (Spl. Law & Order)

Department, repled., by the Public Prosecutor,

Hyderabad and another.

... Respondents

JUDGMENT PRONOUNCED ON 04.7.2018

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.16905 of 2018

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< Gist:

> Head Note:

! Counsel for the Petitioner: Mr. Mohd. Islamuddin Ansari

^ Counsel for the Respondents: Public Prosecutor for State of Telangana

? Cases Referred:

1. AIR 1966 SC 740
2. (1970) 1 SCC 98
3. 2017 (2) ALD (Cr1) 760 (DB)(AP)

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WP.No.16905 of 2018

Date:04.07.2018

Between.

Mahmooda Begum,
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.....Petitioner

And.

The State of Telangana through
General Administration (Spl. Law & Order)
Department, repto., by the Public Prosecutor,
Hyderabad and another.

.....Respondents

Counsel for the petitioner: Mr. Mohd. Islamuddin Ansari

Counsel for the respondents: Public Prosecutor for the State of Telangana

The Court made the following:

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

This Writ Petition is filed for issue of *Habeas Corpus* by quashing the detention order, vide SB(I)No.3/PD-2/HYD/2018, dated 09.01.2018, of respondent No.2 as confirmed by G.O.Rt.No.454, General Administration (Spl.(Law & Order) Department, dated 09.3.2018, of respondent No.1.

We have heard Mr. Mohd. Islamuddin Ansari, learned counsel for the petitioner, and the learned Government Pleader for Home (Telangana).

The petitioner is the grandmother of one Mr. Ahmed Hussain @ Amer Hussain @ Amer (hereinafter referred to as 'the detenu'). The detenu has been detained under the impugned detention order passed 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'). The petitioner has earlier filed Writ Petition No.3690 of 2018 before the detention order was confirmed by respondent No.1. On coming to know about the confirmation of the detention order, she has addressed letter, dated 13.4.2018, seeking permission to withdraw the said Writ Petition with liberty to file a fresh Writ Petition. It appears

that as the Bench was not constituted on 01.5.2018, she has filed the present Writ Petition on the same day. On 02.5.2018, a Division Bench of this Court has dismissed the said Writ Petition as withdrawn in terms of the letter, dated 13.4.2018, of the petitioner.

Though the learned Government Pleader for Home (Telangana) has initially sought to object to the maintainability of the present Writ Petition, in the light of the letter, dated 13.4.2018, of the petitioner, referred to in the order dated 02.5.2018 in Writ Petition No.3690 of 2018, whereunder she sought permission to file a fresh Writ Petition, he has not pressed this objection.

As regards the merits of the case, the only submission advanced by the learned counsel for the petitioner is that the two criminal cases, which were made the basis for passing the impugned detention order, were not in the nature of disturbing the public order and that, therefore, the impugned detention order, as confirmed by respondent No.1, is liable to set aside.

The learned Government Pleader has sought to justify the impugned detention order by stating that the offences committed by the detenu are in the nature of disturbing the public order. He has also argued that having regard to the

history of the detenu, the respondents have formed a subjective satisfaction that his activities have the potential to disturb the public order.

The law is well settled that preventive detention law, being an exception to Articles-21 and 22 of the Constitution of India, cannot be invoked unless the activities of a person disturb the public order.

In *Dr. Ram Manohar Lohia v. State Bihar*¹, a Constitution Bench of the Supreme Court, speaking through M.Hidayatullah, J (as his Lordship then was), explained the difference between disturbance to law and order and that of public order. The Court has explained the whole concept of 'public order' and 'law and order', by observing that one has to imagine three concentric circles wherein law and order represents the largest circle, within which is the next circle representing public order and the smallest circle represents security of State. The Court has in detail pointed out the difference between the maintenance of law and order and that of public order. This distinction has been succinctly brought out by the coordinate Bench, headed by Hidayatullah, J., in *Arun Ghosh v. State of West Bengal*² by giving examples in the

¹ AIR 1966 SC 740

² (1970) 1 SCC 98

judgment, the relevant portion of which is reproduced hereinbelow.

“3. ... Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of

public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In *Dr Ram Manohar Lohia case* examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts.

There is no formula by which one case can be distinguished from another.”

While the respondents plead that the activities of the detenu constitute disturbance to public order, the learned counsel for the petitioner contended that based on two incidents, the State cannot form the subjective satisfaction that the activities of the detenu result in disturbance to public order.

In *Arun Ghosh* (2 supra), the Supreme Court described as to what amounts to disturbance to public order and has held that in order to constitute disturbance to public order, the activities of a person must be of such nature which would disturb the even tempo of public life.

In *C. Neela vs. State of Telangana*³ a Division Bench of this Court, speaking through one of us (CVNR, J), observed as under:

“...The State cannot find an easy way out by choosing to invoke the draconian provisions of preventive detention laws against every criminal as a substitute for his prosecution. As discussed supra, the Supreme Court has drawn a clear distinction between disturbance to public order on one side and disturbance to law and order on the other and held that only in the former case the State is permitted to invoke the powers under the preventive detention laws. The State must devise a method to rein in chronic and hardcore criminals and ensure that they

³ 2017 (2) ALD (Criminal) 760(DB)(AP)

are punished under ordinary criminal laws by strengthening the investigation and prosecution systems. In reality, while dealing with prosecuting the same persons who are detained under preventive detention laws, the investigation and prosecution agencies are not showing the required seriousness, as a result of which the accused are able to secure bails as a matter of course and also get easy acquittals. Paradoxically, while easily letting them off under the ordinary criminal laws, the State is resorting to invocation of preventive detention laws, painting the very same accused as goondas and dreaded criminals. We feel that it is time that the State must overhaul the whole criminal law enforcement system by plugging the huge gaping holes. The State must have efficient and scientifically trained Police officers for investigation of cases. It must also select and appoint efficient, knowledgeable and honest lawyers as Public Prosecutors, without being guided by extraneous factors, such as the individual's allegiance to the powers that be etc., in order to strengthen prosecution agency."

We have examined the allegations made against the detenu in the two criminal cases referred to in the grounds of detention order. We are least impressed by the stand taken by the State that the activities of the detenu have the potential to disturb the public order. Merely because he was found to have taken to committing crimes, his every criminal act cannot be viewed as disturbing the public order unless the severity and magnitude of such act has the potential to cause such

disturbance. It is worth noticing that though the detenu is allegedly a habitual criminal, so far the State has not secured his conviction even in one case.

In our opinion, the respondents have guided themselves more by the habitual nature of the criminal activities of the detenu than by the seriousness of the two criminal cases as indicated in the grounds of detention order. Even on a strict scrutiny of the said two criminal cases, we fail to understand as to how they have the potential of disturbing the public order as, in one case, the State itself alleged that the detenu has enacted a drama in complicity with a person who is no other than the son of the victim and in another case, the detenu has gone to the aid of his alleged accomplice who had a quarrel in a private case, viz., Snooker Club. To say that these two activities of the detenu have disturbed the even tempo of the public life is far from the reality.

On the analysis as above, we are not able to uphold the legality and validity of the impugned detention orders and the same are liable to be quashed.

In the result, the Writ Petition is allowed setting aside the detention order, vide SB(I)No.3/PD-2/HYD/2018, dated 09.01.2018, of respondent No.2 as confirmed by G.O.Rt.No.454,

General Administration (Spl.(Law & Order) Department, dated
09.3.2018, of respondent No.1.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

04th July, 2018

Note:

LR copies to be marked.

B/o

dr

