

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.4807 of 2019

Date: 18.07.2019

Between:

Smt. Muvva Sri Vani

...Petitioner

And

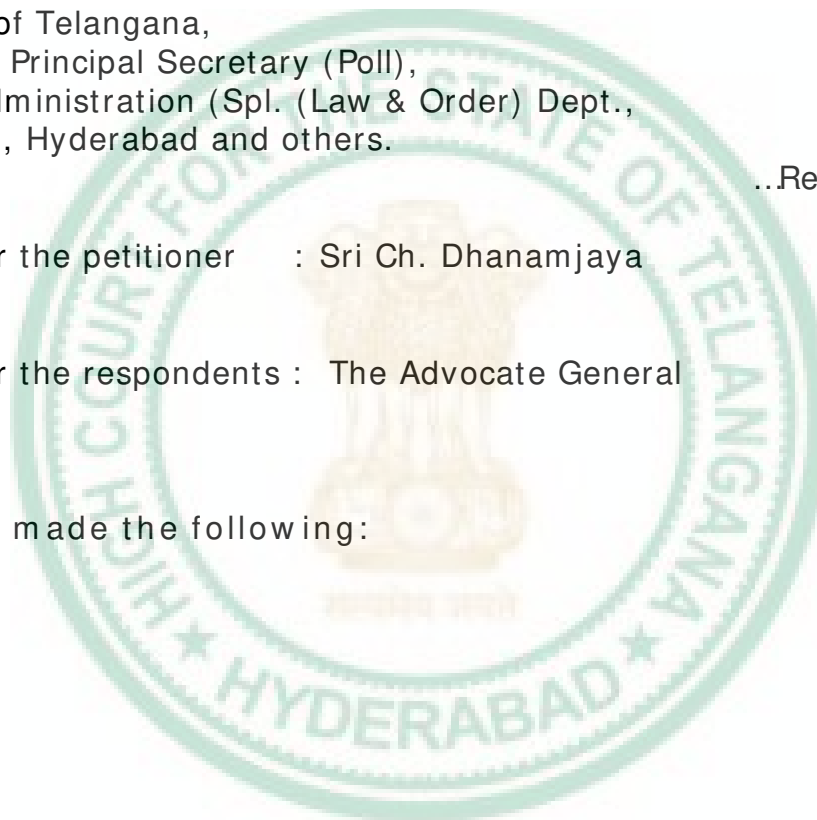
The State of Telangana,
Rep. by its Principal Secretary (Poll),
General Administration (Spl. (Law & Order) Dept.,
Secretariat, Hyderabad and others.

...Respondents

Counsel for the petitioner : Sri Ch. Dhanamjaya

Counsel for the respondents : The Advocate General

The Court made the following:



ORDER: (Per the Hon'ble Dr.Justice Shameem Akther)

Alleging that her husband, Mr. Muvva Veeraiah Chowdary, S/o. M. Hari Babu, aged 33 years, is involved in series of property offences, her husband is being preventively detained by order dated 25.08.2018 passed by the Commissioner of Police, Hyderabad Police Commissionerate, the respondent No.2, and confirmed by order dated 13.11.2018 by the Principal Secretary to Government, General Administration (Spl. (Law and order) Department, Government of Telangana, the respondent No.1, the unfortunate wife, Smt. Muvva Sri Vani, has approached this Court.

Heard the learned counsel for the parties, and perused the impugned orders.

Briefly, the facts of the case are that by relying on the four criminal cases registered against the detenu during the years 2017 and 2018, the Commissioner of Police, Hyderabad Police Commissionerate, the respondent No.2, passed the detention order dated 25.08.2018. According to the respondent No.2, the detenu was involved in as many as twenty one cases of cheating, theft and forgery in the limits of Hyderabad and Warangal Police Commissionerates. But, merely relying on the four recent cases registered against the detenu, the detention order was passed. According to respondent No.2, the detenu is a 'Goonda' and he has been indulging in a series of property offences by diverting the attention of ATM users and committing theft of their money in the limits of Hyderabad and Warangal Commissionerates. Subsequently, by order dated 13.11.2018, the detention order was confirmed by the respondent No.1. Hence, this petition before this Court.

Mr. A. Prabhakar Rao, learned counsel, appearing for Sri Ch. Dhamanjaya, learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, relying only on the four cases registered against the detenu during the years 2017 and 2018, the impugned detention order is passed.

Secondly, such cases can easily be tackled by the criminal justice system by holding a criminal trial. Therefore, the alleged cases, basing on which the detention order was passed, would fall within the ambit of “law and order problem”. Relying on the case of *Ram Manohar Lohia v. State of Bihar*¹, learned counsel has pleaded that a distinction has to be maintained between “a law and order problem” and “a public order problem”. Since the cases narrated by the detaining authority do not fall within the ambit of “disturbance of public order”, the detaining authority is unjustified in invoking the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act. Therefore, the detention of the detenu is patently illegal. Hence, the detaining authority is unjustified in claiming that the alleged crimes have created a panic and have “disturbed the public order”.

¹ AIR 1966 SC 740

Thirdly, the detaining authority is not justified in invoking a draconian power under the preventive detention laws. According to the learned counsel, the detaining authority has to be extremely careful while passing a detention order. For detention *ipso facto* adversely affects the fundamental right of personal liberty enjoyed by the people under Article 21 of the Constitution of India.

Lastly, even while confirming the detention order dated 25.08.2018 by order dated 13.11.2018, the respondent No.1 has not applied his mind to the facts and circumstances of the case. Instead, the confirmation order has been passed in a mechanical manner. Admittedly, in three cases registered against the detenu, he was granted bail by the Courts concerned. However, the detenu is so poor that he has not even managed to submit the sureties despite the fact that bail was granted by the Courts concerned. Thus, the detenu continues to be in judicial custody. Despite the fact that the detenu is in custody, still the preventive detention order has been passed against the detenu. Therefore, even the confirmation order deserves to be set aside by this Court.

On the other hand, Mr. Sharath, learned Special Government Pleader, has vehemently pleaded that the detenu is involved in as many as twenty one property offences in the limits of Hyderabad and Warangal Police Commissionerates. Therefore, the series of crimes allegedly committed by the detenu have created a sense of insecurity and panic in the minds of the people. Hence, these cases fall within the ambit of "public order". Therefore, the detaining authority was certainly justified in passing the impugned orders. Thus, the learned counsel has supported both the impugned orders.

In view of the submissions made by both the sides, the point that arises for determination in this Writ Petition is:

“Whether the detention order, dated 25.08.2018, passed by the respondent No.2 and the confirmation order, dated 13.11.2018, passed by the respondent No.1, are liable to be set aside?”

Point:

In the case of Kanu Biswas v. State of West Bengal², the Supreme Court has opined as under:

“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. Public order is what the French call ‘order publique’ and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?”

In Ram Manohar Lohia’s case (supra) the Hon’ble Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. The Hon’ble Supreme Court has observed as under:

“54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a

² (1972) 3 SCC 831

manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances."

In the present case, the detaining authority had relied on four cases registered against the detenu during the years 2017 and 2018 for preventively detaining him, vide Crime Nos.758/2017, 756/2017, 111/2018 and 112/2018. We shall present in a tabular column, the

date of occurrence, the date of registration of FIR, the offences complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

Sl. No.	Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
1.	758/2017 of Sanjeeva Reddy Nagar PS	26.09.2017	22.10.2017	Sections 380& 420 of IPC	Cognizable/ Non-Bailable
2.	756/2017 of Sanjeeva Reddy Nagar PS	21.10.2017	21.10.2017	Sections 380& 420 of IPC	Cognizable/ Non-Bailable
3.	111/2018 of Inthezar Gunj PS, Warangal Police Commissionerate	03.04.2018	06.04.2018	Sections 420, 448, 468, 471, 379 of IPC and Sections 65, 66B & 66C of IT Act	Sections 420, 468 & 379 of IPC : Cognizable/ Non-Bailable Sections 448, 471 of IPC and Sections 65, 66B & 66C of IT Act : Cognizable/ Bailable
4.	112/2018 of Inthezar Gunj PS, Warangal Police Commissionerate	03.04.2018	06.04.2018	Sections 420, 448, 468, 471, 379 of IPC and Sections 65, 66B & 66C of IT Act	Sections 420, 468 & 379 of IPC : Cognizable/ Non-Bailable Sections 448, 471 of IPC and Sections 65, 66B & 66C of IT Act : Cognizable/ Bailable

A perusal of the impugned detention order reveals that the detenu moved bail petitions in Crime Nos.758/2017 and 756/2017, vide CrI.M.P.Nos.3149/2017 and 3148/2017 and he was granted bail by the Court concerned and was released from prison on 22.11.2017. He was again arrested on 13.04.2018 in connection with Crime No.23/2018. Subsequently, the detenu moved a bail petition in the said crime before the Court concerned vide CrI.M.P.No.356/2018 and he was granted bail on 24.04.2018. Despite of the fact that the detenu

was granted bail, he could not be released from the prison, as he was unable to furnish the sureties required. Thus, the detenu happens to be an extremely poor person, who could not be set at liberty, only because of his poverty. The crimes allegedly committed by the detenu relates to cheating, theft & forgery. These type of cases can certainly be tried under the normal criminal justice system. And, if convicted, can certainly be punished by the Court of law. Thus, these cases do not fall within the ambit of the words “public order”. Instead, they fall within the scope of the words “law and order”.

It is, indeed, trite to state that preventive laws are draconian in nature, as they adversely affect the personal liberty of an individual. Therefore, in catena of cases, the Hon'ble Supreme Court has repeatedly opined that preventive detention laws should be used sparingly, rather than being used frequently. It is only when it is a case of “disturbance of public order” that the detaining authority would be legally justified in invoking and in using the powerful weapon of the preventive laws. But, the preventive laws cannot be used in order to control petty offences. In case the use of preventive detention laws were permitted to be invoked for tackling petty offences, it will make the normal criminal justice system redundant.

A perusal of the order, dated 25.08.2018, passed by the respondent No.2 reveals that the said order has been passed in a mechanical manner. For neither the facts, nor the circumstances have been discussed to any extent. Therefore, neither of the two orders are legally sustainable.

In the result, the Writ Petition is allowed. The impugned detention order dated 25.08.2018, passed by respondent No.2, and the

confirmation order dated 13.11.2018, passed by respondent No.1, are set aside. The respondents are directed to set the detenu, namely, Mr. Muvva Veeraiah Chowdary, S/o. M. Hari Babu, at liberty forthwith, if he is no longer detained in judicial custody in the criminal cases, which have been so far registered against him.

The miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

18th July, 2019
Bvv

