

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.8874 of 2019

Date: 27.06.2019

Between:

Smt. Arifa Begum

...Petitioner

And

The State of Telangana,
Rep. by its Chief Secretary,
Secretariat Buildings, Hyderabad,
and others.

...Respondents

Counsel for the petitioner : Sri. Dadi Radha Krishna

Counsel for the respondents : The Advocate General

The Court made the following:

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

Smt. Arifa Begum, has filed this present petition on behalf of her husband, Mr. Mohammed Azad @ Chacha @ Dudu Miyan @ Basha Khan @ Azad Chowdhary, S/o. Late Abdul Rasheed Chowdhary @ Mohammed Rasheed Khan, in order to challenge the detention order dated 02.12.2018 passed by the Commissioner of Police, Hyderabad City, the respondent No.2, and the confirmation order dated 06.02.2019, passed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law & Order) Department, Government of Telangana.

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 recent cases registered against the detenu, the Commissioner of Police, Hyderabad City, the respondent No.2, passed the detention order dated 02.12.2018. According to the respondent No.2, the detenu is involved in five cases of cheating, criminal breach of trust and theft in the year 2018, in the limits of police stations under Hyderabad Police Commissionerate. The detenu is a 'White Collar Offender' and he has been habitually committing offences of cheating by diverting attention of innocent people in the limits of Hyderabad Police Commissionerate, in an organized manner. Relying on the four criminal cases of cheating, criminal breach of theft registered against the detenu in the year 2018, the detention order was

passed. Subsequently, by order dated 06.02.2019, the detention order was confirmed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law & Order) Department, Government of Telangana. Hence, this writ petition before this Court.

Mr. Dadi Radha Krishna, learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, that relying only on the four recent cases registered against the detenu, the detention order is passed. The alleged cases do not add up to “disturbing the public order”. They are confined within the ambit and scope of the word “law and order”. Since the offences alleged are under the Indian Penal Code, the detenu can certainly be tried and convicted under the penal code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned order tantamount to the colourable exercise of power. Thus, the impugned orders are legally unsustainable.

On the other hand, Mr. S. Sharath, the learned Special Government Pleader, pleads that in each case allegedly committed by the detenu, he managed to get bail from the Courts concerned. The series of crimes allegedly committed by the detenu were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was cheating, criminal breach of trust and theft, it has

created sufficient panic in the minds of the general public. Therefore, the detaining authority was legally justified in passing the impugned orders. Hence, the learned Government Pleader has supported 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 02.12.2018, passed by the respondent No.2 and the confirmation order, dated 06.02.2019, passed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana, are liable to be set aside?

In catena of cases, the Hon'ble Supreme Court had clearly opined that there is a vast difference between "law and order" and "public order". The offences which are committed against a particular individual fall within the ambit of "law and order". It is only when the public at large is adversely affected by the criminal activities of a person, is the conduct of a person said to disturb the public order. Moreover, individual cases can be dealt with by the criminal justice system. Therefore, there is no need for the detaining authority to invoke the draconian preventive detention laws against an individual. For the invoking of such law adversely effects the fundamental right of personal liberty which is protected and promoted by Article 21 of the Constitution of India. Hence, according to the Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

In the case of **Ram Manohar Lohia v. State of Bihar**¹, 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 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

¹ AIR 1966 SC 740

order but not in aid of maintenance of law and order under ordinary circumstances.”

In the case of **Kanu Biswas v. State of West Bengal**², 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 the present case, the detaining authority relied on four (04) criminal cases in Crime Nos.64/2018, 202/2018, 207/2018 and 296/2018. We shall present in a tabular column the date of occurrence, the date of registration of FIRs, the offences complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
64/2108 of Sultan Bazar PS	20.04.2018	20.04.2018	Sections 379 & 420 of IPC	Non-bailable/ Cognizable
202/2018 of Kachiguda PS	27.07.2018	10.08.2018	Sections 406 & 420 of IPC	Non-bailable/ Cognizable
207/2018 of Shahinayathgunj PS	12.09.2018	13.09.2018	Section 420 r/w 34 of IPC	Non-bailable/ Cognizable
296/2018 of Afzalgunj PS	13.09.2018	14.09.2018	Sections 379 & 420 of IPC	Non-bailable/ Cognizable

² (1972) 3 SCC 831

Grave as the offences may be, they have been committed against particular individuals. So, no inference of disturbance of public order can be drawn. These cases can be tried under the normal criminal law. Hence, there was no need for the detaining authority to pass the detention order.

A bare perusal of the detention order clearly reveals that the detaining authority is concerned by the fact that in all the four criminal cases relied by it, the detenu has been granted bail by the Courts concerned. However, the apprehension of the detaining authority that since the detenu was already enlarged on bail, there is every possibility of his indulging in the similar offences in future is highly misplaced. Since the detaining authority is the Commissioner of Police himself, it is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of an accused and to handover the history-sheet of the accused. If the Police were vigilant enough to collect the data on the alleged offenders, and to furnish the relevant information to the learned Public Prosecutors, the same could be placed by the learned Public Prosecutors before the learned Court. However, it is the Police that has failed to inform the learned Public Prosecutor about the criminal history of the offender. For the fault of the Police, the respondent No.2 cannot be permitted to invoke the preventive detention laws in order to breach the liberty of an individual. Therefore, for the reasons stated above, the impugned orders are legally unsustainable.

In the result, the Writ Petition is allowed. The impugned detention order dated 02-12-2018, passed by respondent No.2, and the confirmation order, dated 06-02-2019, passed by the respondent No.1 are set aside. The respondents are directed to set the *detenu*, namely, Mr. Mohammed Azad @ Chacha @ Dudu Miyan @ Basha Khan @ Azad Chowdhary, S/o. Late Abdul Rasheed Chowdhary @ Mohammed Rasheed Khan, 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

Date: 27.06.2019
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