

THE HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN

&

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.31128 OF 2018

ORDER: (*Per the Hon'ble Sri Justice A. Rajasheker Reddy*)

This writ of habeas corpus petition has been filed by the paternal uncle of the detenu -G.Venkanna. The petitioner seeks for a direction to call for the records relating to the impugned order dated 12-07-2018 passed by the 2nd respondent whereby and whereunder the said authority has detained the detenu, on being assessed him as a drug offender on account of his being indulging in narcotic drugs peddling, under preventive detention, invoking the provisions of Section 3, sub-Section (2) 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' and to declare the said proceedings as being illegal and arbitrary and consequently to set aside the same.

2. The allegation against detenu is that he has been habitually engaging himself, as a leader of the gang in unlawful acts such as procurement, transportation and sale of

‘ganja’ a narcotic substance to the innocent youth, affecting the public order and public health. That during the years 2012 and 2013, two cases were registered against him for contravention of provisions under NDPS Act, 1985, vide Cr.No.19/2012 and Cr.No.47/2013. That in the recent past, the detenu was involved in one more similar offence registered in Cr.No.39 of 2018 by contravening the provisions of NDPS Act, 1985, and found to be transporting huge quantity of 460 kgs of ‘ganja’.

3. Counter affidavit is filed justifying the impugned order by reiterating the contents of impugned order and also relied on the decisions of the Supreme Court.

4. Learned counsel for the petitioner strenuously contended that as against three crimes registered against the detenu, which formed the basis for subjective satisfaction of the 2nd respondent-detaining authority for arriving at a decision, as is evident from the impugned order, one case, being Sessions Case No.4 of 2013 on the file of Special Judge for trial of cases under NDPS Act-cum-I Addl. District & Sessions Judge, Srikakulam, ended in acquittal, it was observed that the detenu was convicted in that case which shows there is non

application of mind by the detaining authority as the said aspect was not placed before it.

5. Learned Government Pleader for Home does not dispute the same though made submissions in support of the impugned order. He relied on the decision in ***SUBRAHMANIAN vs. STATE OF TAMIL NADU***¹ to canvass the well settled law that the Court does not interfere with the subjective satisfaction reached by the detaining authority except in exceptional and extremely limited grounds moreso when detenu is involved in serious cases.

6. It is true that the Supreme Court in a plethora of decisions has restricted the scope of judicial review, in respect of subjective satisfaction arrived at by the detaining authority and held that the Court cannot sit in appeal over the subjective satisfaction arrived at by the detaining authority, yet the adequacy or sufficiency of the material considered by the detaining authority has been the bone of contention in many of the Habeas Corpus Petitions.

7. In this case admittedly three cases are registered against the detenu which formed basis of the decision which

¹ 2012 (4) SCC 699

culminated into passing of the impugned order. So far as Cr.No.47 of 2013, out of which Sessions Case No.4 of 2013 arose, ended in acquittal by judgment dated 22-04-2016, but in the grounds of detention order it is recorded that the detenu was convicted for a period of six months in the said crime. This goes to show that the judgment pertaining to Sessions Case No.4 of 2013 arising out of Cr.No.47 of 2013 was not placed for consideration before the detaining authority. A copy of the judgement in SC No.4 of 2013 is placed before this Court which indicates the detenu has been acquitted of the charges levelled in Cr.No.47 of 2013 which goes to show that there is non-application of mind by the detaining authority before arriving at subjective satisfaction for passing the impugned order. Had the said judgment in SC No.4 of 2013 been placed before the detaining authority, it is not known what decision it would have taken. It is for the detaining authority to consider the said aspect. It would be a relevant document and in such situations there cannot be a casual reference to the factual matrix in the grounds of detention.

8. In ground 4(e) of the writ affidavit, it is mentioned that *“the sponsoring authority failed to furnish the relevant material before the 2nd respondent in respect of those two offences referred to in the detention order to arrive at a conclusion that the detenu was convicted in one of those two offences to undergo imprisonment for 6 months without considering the fact that the detenu was acquitted in those two offences, which itself sufficient to set aside the impugned detention order for not furnishing relevant material before the 2nd respondent”* and this averment has not been denied in the counter affidavit. The allegation in the writ affidavit in grounds 4 (g) and (h), *“(g) the 2nd respondent failed to furnish the grounds of detention and the material papers relied upon within the mandatory period of 3 days from the date of execution of detention order, and, (h) the 2nd respondent failed to furnish the copies of the documents on which they relied upon in the language known to the detenu enabling him to make an effective representation. The detenu is not conversant with the English language as he only knows Telegu language”*, were denied in the counter affidavit. In the circumstances, the impugned order of detention is unsustainable and is liable to be set aside and it is accordingly

set aside. However, this order will not preclude the authorities to examine the matter de-novo and pass orders in accordance with law, if so advised.

9. In the result, the writ petition is allowed to the extent indicated above. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Dated: 05-02-2019
NRG

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