

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.40823 OF 2018

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

This Writ Petition is filed for issue of Habeas Corpus directing the respondents to release the petitioner's husband viz., Kamsani Yadagiri (for short 'the detenu') from detention, after quashing the detention order passed by respondent No.2 vide No.36/PD-ACT/CCRB/CCRB/RCKD/2018, dated 25.07.2018 under Sub-section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act 1986 (Act No.1 of 1986) (for short 'the Act of 1986').

2. The sum and substance of the averments in the affidavit filed in support of the Writ Petition is that the petitioner is the wife of detenu. The 2nd respondent passed impugned detention order dated 25.07.2018 basing on one criminal case registered against detenu and the same is confirmed by the 1st respondent by its order in G.O.Rt.No.2202 dated 16.10.2018, without appreciating the material on record and that no material is furnished to the detenue, which vitiates the detention order. There is variance in the order of detention and the grounds of detention with the contents in FIR and other documents in Cr.No.220/2018 of

Yadagirigutta Police Station with respect to the description of the Act. Though a case in Cr.No.220/2018 is registered under Section 2(i) of the Act of 1986, but no case under Suppression of Immoral Traffic in Women and Girls Act, 1956 is registered against the detenu. The detenu was granted bail in CrI.M.P.No.753/2018, but no copy of bail order or its translation is furnished to the detenu, as such, the detention order passed by the 2nd respondent is liable to be set aside.

3. Counter affidavit is filed by the 2nd respondent denying the averments in the affidavit filed in support of the Writ Petition and justified the reasons for passing detention order against detenu.

4. We have heard Sri M.A.K.Mukheed, learned counsel for the petitioner and learned Special Government Pleader for Home appearing for respondents.

5. Learned counsel for the petitioner, while reiterating the averments in the affidavit filed in support of the writ petition, submitted that the detenu was not supplied with the material papers viz., copy of bail order, final order etc., as such, there was no opportunity for the detenu for making effective representation against detention order which is in violation of rights guaranteed under Article 22(5) of the Constitution of India, therefore, non furnishing of material papers vitiates the impugned detention order. He submitted that the detenu is not charged with any of the offences under Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956), as such, the detenu does not fall within the definition of 'Immoral Traffic Offender' as defined under

Section 2(i) of the Act of 1986. He further submitted that in the order of detention, an un-amended enactment i.e., Act 1 of 1986 is mentioned whereas in the confirmation order vide G.O.Rt.No.2202, dated 16.10.2018, the amended enactment is mentioned, as such, there is a variance in the order of detention and confirmation order with regard to the description of the Act, which caused any amount of confusion in the mind of the detenu. He further submitted that the detenu is not an accused in Cr.No.220/2017 under Sections 147, 148, 307 r/w 149 IPC, Sections 3 to 6 and 9 of ITP Act, 1956 as mentioned in detention order in telugu version, but he is an accused in Cr.No.220/2018 under Sections 370, 370(A) IPC sections, 3, 4, 5, 6 and 9 of ITP Act, 1956 of Police Station Yadagirigutta, as mentioned in the detention order in English version and that the detenu moved bail application vide Crl.M.P.No.753/2018, which is allowed by the V Addl.District Judge Court at Bhongiri on 24.07.2018, but he has not moved any bail application in Crl.M.P.No.680/2018 in Cr.No.220/2017, as such, there is no application of mind on the part of the detaining authority for arriving at subjective satisfaction in passing the impugned detention order detaining the detenu.

6. On the other hand, learned Special Government Pleader appearing for respondents submits that by the time of passing the Act 1 of 1986, the 'Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956)' was in force, hence the definition of 'Immoral Traffic Offender' was defined with reference to the said Act.

He submitted that subsequently, the Act was amended by the Government of India vide Act No.44 of 1986 and its title was substituted by “Immoral Traffic (Prevention) Act, 1956, which came into force with effect from 26.01.1987 and that in the impugned detention order, the Immoral Traffic (Prevention) Act, 1956 was mentioned. He submitted that at the time of passing of detention order on 25.07.2018, the un-amended Act of 1986 was in force, but by the time, when the confirmation order was passed, the Act 1 of 1986 was amended as Act 13 of 1986 and some more category of offences were included in the amended Act and that there is no change with respect to offence under ‘Immoral Traffic Offender’, as such, no prejudice would be caused to the detenu even though the confirmation order mentioned about the amended Act. He also submitted that FIR in Cr.No.220/2018, the section of law was mentioned as under section 370, 370(A) IPC, Sections 3 to 6 and 9 of PIT Act, 1956 instead of ITP Act, 1956, which is a typographical error and that no prejudice would be caused to the detenu by the said error. He further submitted that the detenu is a habitual offender committing offences in an organized manner, and after referring to earlier crimes registered against detenu, *modus operandi* adopted by the detenu, came to the subjective satisfaction that the detenu is required to be dealt with under the Act 1 of 1986, as such, the same cannot be interfered with.

7. Before considering the rival contentions of both parties, it is necessary to extract Section 2(i) of the Act 1 of 1986.

“2(i): “Immoral Traffic Offender” means ‘a person who commits or abets the commission of any offence under Suppression of Immoral Traffic of Women and Girls Act, 1956 (Central Act 104 of 1956)’”.

A perusal of the impugned detention order passed by the 2nd respondent against detenu on 25.07.2018 goes to show that the detenu was detained on the ground that his activities falls within the ambit of Section 2(i) of the Act i.e., ‘Immoral Traffic Offender’. A case in Cr.No.220 of 2018 under Section 370, 370(A) IPC, Sections 3 to 6 and 9 of Immoral Traffic (Prevention) Act, 1956 of Police Station Yadagirigutta of Rachakonda Commissionerate was registered against detenu on 14.07.2018, as he was running a brothel business at his residence. Admittedly, the detenu is not charged under any of the offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956), as such, the said ground was raised to invalidate the order of detention. But the fact remains that the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956) was amended by the Government of India vide Act 44 of 1986 and its title was substituted by Immoral Traffic (Prevention) Act, 1956, which came into force on 26.01.1987. By the time of Act 1 of 1986 was enacted, the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956) was holding the field. Admittedly, the detenu was charged for the offences under 2(i) of the Immoral Traffic (Prevention) Act, 1956. The definition of ‘Immoral Traffic Offender’ under clause (i) of Section 2 was enacted by way of referential legislation referring to the provisions of Suppression of

Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956). That apart, gazette notification published on 28.02.1986 of the A.P. Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 provides definition under clause (i) of Section 2 of the 'Immoral Traffic Offender' means a person who commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956). However, the law related to construction of reference has been clearly provided under Sub-section 1 of Section of 8 of the General Clauses Act, 1857. Sub-section 1 of Section 8, reads as follows:

“8 Construction of references to repealed enactments. —
(1) Where this Act, or any¹⁵ [Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.”

Sub-Section (1) of Section 8 of the General Clauses Act postulates that where an Act is repealed, with or without modification, then its references in any other enactment shall, unless a different intention appears, be construed as references to the provisions so re-enacted. In fact, the rule of construction embodied in Section 8(1) should apply to amendments also. If a former Act is amended, its references in the latter law should be construed as to the amended law like re-enacted law,

barring cases of contrary intention. In *Nagpur Improvement Trust v.*

*Vasantrao*¹, the Hon'ble Supreme Court held as follows:

“31. We shall now proceed to consider whether the provisions of the Land Acquisition Act, 1894 as modified by the State Acts stand incorporated in the State Acts or whether there is a mere reference or citation of the Land Acquisition Act in the State Acts. The law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitutes an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in a later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.”

34. In *U.P. Avas Evam Vikas Parishad v. Jainul Islam* [(1998) 2 SCC 467] this Court observed: (SCC p. 480, para 17)

“17. A subsequent legislation often makes a reference to the earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statute which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statute which have been incorporated would remain the same as they

¹ (2002) 7 SCC 657

were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation.”

In the light of the above settled principle of law, any amendments to legislation referred to in subsequent Act, is deemed to be incorporated in the subsequent legislation. In the instant case, the detenu involved in offences under Section 370 and 370(A) of IPC and Sections 3 to 6 and 9 of the Immoral Traffic (Prevention) Act, 1956. Therefore, the contention of the learned counsel for the petitioner that no case is registered under the provisions of Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956), does not merit consideration and on this ground, the impugned detention order cannot be invalidated.

8. Though the learned counsel for the petitioner, basing on the text of the Act published in Bare Acts, submitted that no such Act like Immoral Traffic in Women and Girls Act, 1956 is in force, but learned Special Government Pleader appearing for respondents produced gazette notification of the Act 1 of 1986 along with additional counter affidavit, goes to show that ‘Immoral Traffic Offender’ is defined under clause (i) of Section 2 of the Act, as such, the contention of the learned counsel for the petitioner that the Suppression of Immoral Traffic in Women and Girls Act, 1956 is not in force, has no legs to stand. However, it is unfortunate that the publishers, who published the Bare Acts committed error in printing the text of the Act, which made the learned counsel for the petitioner, learned Special Government Pleader and also this Court to spend some time on the issue. Though the Act 1 of 1986 is amended in

the year 2018, but the Legislature failed to amend the definition of 'Immoral Traffic Offender' under Section 2(i) of the Act. We hope and trust that the concerned authority will look into this aspect and take necessary measures to incorporate the definition of 'Immoral Traffic Offender' under clause (i) of Section 2 of the Act in Immoral Traffic (Prevention) Act, 1956.

9. It is next contended by the learned counsel for the petitioner that the detaining authority has mentioned different provisions of law in the detention order as well as in the confirmation order. Admittedly, the 2nd respondent passed the impugned detention order on 25.07.2018, which is confirmed by the 1st respondent vide G.O.Rt.No.2202, dated 16.10.2018. It is pertinent to note that by the time the detention order passed by the 2nd respondent on 25.07.2018, the Telangana Prevention of Dangerous Activities of Boot letters, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986, was in force. But when the confirmation order passed by the 1st respondent, the Act of 1986 was amended by Act 13 of 2018 by adding 13 more category of offences, which is evident from the gazette publication published on 31.08.2018, namely 'Telangana Prevention of Dangerous Activities of Boot letters, 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, 1986'. Admittedly, the 1st respondent passed confirmation order on 16.10.2018, i.e., much after amendment of the Act 13 of 1986. That apart, the offence under which the detenu was arrested i.e., 'Immoral Traffic Offender' remain unchanged in the amended Act 13 of 1986 with that of previous Act 1 of 1986. Therefore, quoting of un-amended Act in the detention order and amended Act in confirmation order, will not cause any prejudice, as rightly contended by the learned Special Government Pleader for respondents and the same does not invalidate the impugned detention order on this ground.

10. Learned counsel for the petitioner submitted that the detenu is not involved in Crime No.220 of 2017 under Sections 147, 148, 307 r/w 149 IPC, Sections 3 to 6 and 9 of ITP Act, 1956 of PS Yadagirigutta Police Station as mentioned in the grounds of detention (Telugu version) and that he has not filed any bail application in CrI.M.P.No.680 of 2018, as such, the detaining authority passed the impugned detention order without application of mind. A perusal of the grounds of detention (English version) show that the detenu involved in Crime No.220/2018 under Sections 370, 370(A) IPC, Sections 3 to 6 and 9 of ITP Act, 1956 and he has filed bail application in CrI.M.P.No.753 of 2018 before the V Additional District Judge at Bhongiri, but there is no mention with regard to Crime No.220 of 2017 as mentioned in grounds of detention (Telugu version). Even if the contention of the learned Special Government Pleader that it is only typographical error with respect to

year i.e., '17' instead of '18' is considered to be true, but the offences under which Cr.No.220 of 2017 registered against detenu are also different. That apart, admittedly, detenu had not moved any bail petition i.e., CrI.M.P.No.680 of 2018 in Cr.No.220 of 2017, which is pending before the V Additional District Judge Court, at Bhongiri, as alleged in the detention order (Telugu version). All the above aspects go to show that the 2nd respondent-detaining authority has passed the impugned detention order, without proper application of mind.

11. It is finally contended by the learned counsel for the petitioner that detenu was not supplied with the copies of confirmation order passed by the 1st respondent and also the bail orders, as such, non furnishing of necessary material to the detenu, vitiates the impugned detention order. Learned Special Government Pleader for respondents submitted that the detenu has knowledge of passing of order in bail application in CrI.M.P.No.753 of 2018 and that not furnishing the translation copy of the bail order will not vitiate the detention order and that no prejudice would be caused to the detenu. In **Vasanthu**

Sumalatha v. State of Andhra Pradesh rep. by its Chief Secretary²,

Division Bench of this Court held as follows:

“To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention.”

² 2016 (1) ALT 738 (DB)

In **M. Ahamedkutty v. Union of India**³, the Hon'ble Supreme

Court held as follows:

19. The next submission is that of non-supply of the bail application and the bail order. This Court, as was observed in *Mangalbai Motiram Patel v. State of Maharashtra* [(1980) 4 SCC 470: 1981 SCC (Cri) 49: (1981) 1 SCR 852] has 'forged' certain procedural safeguards for citizens under preventive detention. The constitutional imperatives in Article 22(5) are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation."

Though learned Special Government Pleader for respondents submitted that the detenu knew about the passing of bail order, it is immaterial whether the detenu already knew about the same or not. Non-furnishing of the copy of the bail order is fatal as the detenu, who is in jail, would have no access to his own document. The detenu is entitled to be supplied with copies of all the material documents and failure of the detaining authority to supply copies of such documents vitiates the detention, and the detenu is entitled to be released, as it amounts to denial of the detenu's right to make an effective representation and would be in violation of rights guaranteed Article 22(5) of the Constitution of India and the same would render the continued detention of the detenu illegal and he is entitled to be set at liberty. No doubt, this Court cannot go into the subjective satisfaction arrived at by the detaining authority, but in the light of the principle laid down in the

³ (1990) 2 SCC 1

aforesaid judgments, when once the detaining authority passed the detention order without proper application of mind and without furnishing copies of documents, which form the basis for passing of detention order, vitiates the detention order and the detention order is liable to be set aside on this ground alone.

In the result, the Writ Petition is allowed. Impugned Detention Order vide 36/PD-ACT/CCRB/RCKD/2018, dated 25-07-2018 of respondent No.2, as confirmed by the 1st respondent vide G.O.Rt.No.2202, dated 16.10.2018, is set aside. The detainee viz., Kamsani Yadagiri S/o. Gangaiah, is directed to be released from the detention forthwith, if he is not required in connection with any other case(s). However, it is open for the detaining authority-2nd respondent to furnish all the relevant papers and pass appropriate orders, in accordance with law.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

1st April, 2019
kvs

**HON'BLE THE CHIEF JUSTICE
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P.D Judgment for Lordship's kind perusal

WRIT PETITION No.40823 OF 2018

(per Hon'ble Sri Justice A.Rajasheker Reddy)

Date: 1st April, 2019

kvs