

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.43532 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 mother viz., Kamsani Andalu (for short 'the detenu') from detention, after quashing the detention order passed by respondent No.2 vide No.64/PD-ACT/CCRB/CCRB/RCKD/2018, dated 25.09.2018 under Sub-section (2) of Section 3 of the 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 (Amendment) Act, 2018 (Act No.13 of 2018).

2. The sum and substance of the averments in the affidavit filed in support of the Writ Petition is that the petitioner is the son of detenu. The 2nd respondent passed impugned detention order dated 25.09.2018 basing on one criminal case i.e., Cr.No.277/2018 of Yadagirigutta Police Station under Sections 370(1)(5), 372, 373, 366(A) IPC, Section 17 of POCSO Act and Sections 3 to 7 of ITP Act, 1956, Sections 75, 81 of JJ Act, 2015 registered against detenu during the year 2018 and the same is confirmed by the 1st respondent by its order in G.O.Rt.No.2050 dated 04.10.2018, without

appreciating the material on record and that no material is furnished to the detenu, which vitiates the detention order. The copy of bail order and documents of complete Telugu translation version are not supplied to the detenu and that no case under Suppression of Immoral Traffic in Women and Girls Act, 1956 is registered against 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 application, order of confirmation 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 the detenu is not a habitual offender and that basing on two crimes only, the impugned detention order was passed, which is illegal. He submitted that no complete Telugu translation version is supplied

to the detenu and that in all the pages in statement of witnesses, the particulars of the witnesses, their addresses etc., are given in English language, in which the detenu has no knowledge, as such, the detention order is liable to be dismissed on this ground also.

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, as such, no prejudice would be caused to the detenu. He further submitted that the detenu is a habitual offender committing offences in an organized manner, and after referring to earlier crimes registered against her, *modus operandi* adopted by her, 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 25.09.2018 goes to show that the detenu was detained on the

ground that her activities falls within the ambit of Section 2(i) of the Act i.e., 'Immoral Traffic Offender', which is evident from the fact that a case in Cr.No.277/2018 of Yadagirigutta Police Station under Sections 370(1)(5), 372, 373, 366(A) IPC, Section 17 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POSCO Act'), Sections 3 to 7 of ITP Act, 1956, Sections 75, 81 of Juvenile Justice Act, 2015 of Police Station Yadagirigutta, registered against detenu on the allegation that the detenu running brothel house by securing the girls from her community, other part of the State and forcibly trapping them into prostitution by offering money and luxury life. 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 said Act 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).

8. The law related to construction of reference has been clearly provided under Sub-section 1 of Section 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

¹ (2002) 7 SCC 657

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 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 (1)(5), 372, 373, 366 (A) of IPC, Sections 3 to 7 of the Immoral Traffic (Prevention) Act, 1956, Section 17 of POCSO Act and Sections 75 and 81 of Juvenile Justice Act. 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. It is finally contended by the learned counsel for the petitioner that detenu was not supplied with the copy of bail order dated 22.09.2018 in

CrI.M.P.No.571 of 2018 in Cr.No.277 of 2018 along with grounds of detention, as such, non furnishing of necessary material to the detenu, vitiates the impugned detention order. Learned Special Government Pleader for respondents submitted that filing of bail petition and orders passed therein is within the knowledge of the detenu and that not furnishing the bail order will not vitiate the detention order and that no prejudice would be caused to the detenu. He submitted that a copy of bail petition in Cr.No.227/2018 was furnished to the detenu. However, a perusal of the booklet filed by the learned Special Government Pleader at page Nos.54 and 55, goes to show that a copy of bail application in Crime No.227 of 2018 is supplied to the detenu under her acknowledgment but no copy of bail order is furnished to the detenu. It is well settled law that the documents which are made basis for passing an order of detention must be furnished in the language understood by the detenu and non- supply of such material would be fatal. In **Vasanthu Sumalatha v. State of Andhra Pradesh rep. by its Chief Secretary**², 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.”

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 *Mangalbhai 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)

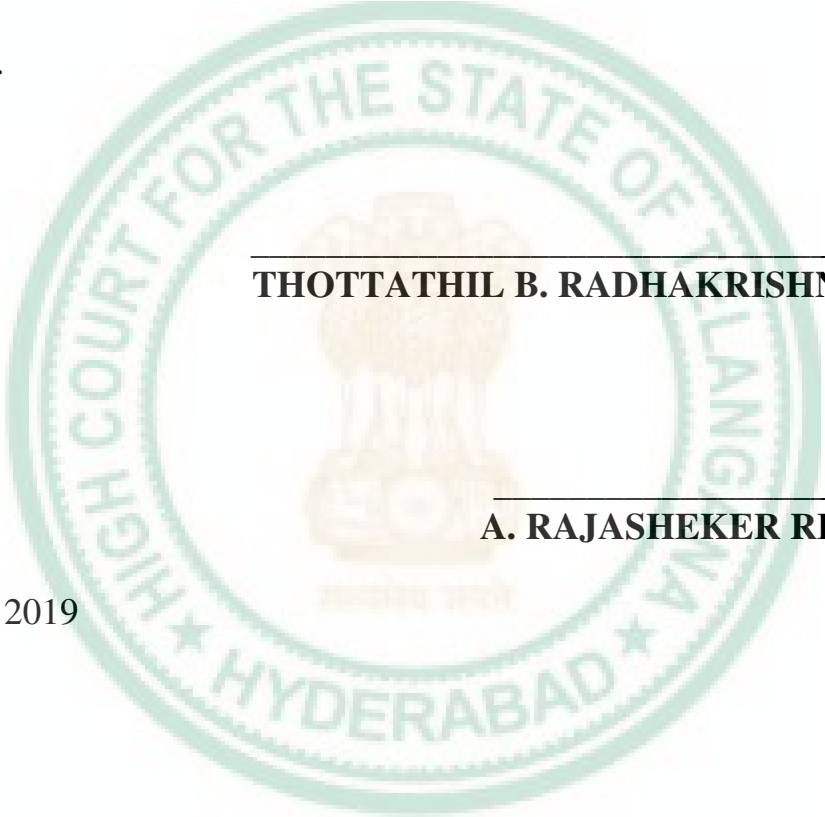
² 2016 (1) ALT 738 (DB)

³ (1990) 2 SCC 1

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 and furnished copy of bail application, but no copy of bail order is furnished to the detenu. Non-furnishing of the copy of the bail order is fatal as the detenu, who is in jail, would have no access to her own documents. 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 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 aforesaid judgments, when once the detaining authority passed the detention order without 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 64/PD-ACT/CCRB/RCKD/2018, dated 25-09-2018 of respondent No.2, as confirmed by the 1st respondent vide G.O.Rt.No.2050, dated 04.10.2018, is set aside. The detenu viz., Kamsani Andalu D/o.Late Ravi, is directed to be released from the detention forthwith, if she 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

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P.D Judgment for Lordship's kind perusal

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