

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2148 of 2023

K.K.Reshma

... Petitioner

Vs.

1. The Principal Secretary to the
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.
2. The Commissioner of Police,
Coimbatore City.
3. The Superintendent of Prison,
Central Prison, Coimbatore.
4. The Inspector of Police,
D-1, Ramanathapuram Police Station,
Coimbatore City.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records in

C.No.68/G/IS/2023 on the file of the second respondent, set aside the detention order dated 05.10.2023 and direct the second respondent to produce M.Kaja Hussain, Son of Muthalif, aged about 45 years, presently detained at the Central Prison, Coimbatore under the Tamil Nadu Act 14 of 1982 as a Goonda, before this Hon'ble Court and set him at liberty.

For petitioner : Mr. K. Balasubramaniam
For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Aravind.C

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The petitioner, wife of the detenu M.Kaja Hussain, Son of Muthalif, aged about 45 years,, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 05.10.2023, in C.No.68/G/IS/2023, slapped on her husband, branding him as "GOONDA " as contemplated under Section 2(f) of the Tamil Nadu Act 14/1982.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the case attributed to the detenu do not disclose any disturbance to maintenance of public order to warrant detention under the harsh detention laws.

4. While expressing satisfaction that the detenu acted in a manner prejudicial to the maintenance of public order, the Detaining Authority stated as follows:

"---- I am satisfied that M.Kaja Hussain is habitually committing offences and he is thereby acting in a manner prejudicial to the maintenance of public order and as such he is a "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The prejudicial activities of the accused M. Kaja Hussain made use of the alike businessmen those who had close contact with him by conversing cunningly and creating favourable situation for him with a intention of cheating them continuously and purchased yarn in large quantities from them.

.... As a result of the cheating attitude of the accused, the genuine entrepreneurs scared that their business would be affected and also scared that they would lose their money.

..... I am further aware of the need for the preventive steps to restrain these activities of the accused, failing which they will indulge in such activities in future, which will be prejudicial to the maintenance of public order."

5. The Hon-ble Supreme Court in ***Ram Manohar Lohia Vs. State of Bihar and Another***, reported in **1965 SCC OnLine SC 9** had considered the difference between public order and law and order. The relevant observations are extracted hereunder:-

"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 disorder or only some ? 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."

6. As seen from the above observations, in order to categorise an act as prejudicial to the maintenance of public order, it must affect the community or the public at large. The facts of this case do not suggest that

the community or the public at large were affected. The ground case relates to a commercial transaction whereby it is alleged by the complainant that the detenu had committed criminal breach of trust and cheated the complainant in a transaction relating to the supply of yarn. The complaint, when read in toto, would reveal that there was no activity involved which could be prejudicial to the maintenance of public peace and order. So also the three adverse cases relied upon by the detaining authority, also relates to similar commercial transactions, being complaints for criminal breach of trust and cheating, which are strictly between private parties in a contract of a commercial transaction. We are unable to comprehend as to how all these breach of contracts, as alleged, would in any way affect the maintenance of public peace and order. The detaining authority has apparently failed to apply his mind while invoking the detention law and thus had exceeded his powers conferred under the Act while passing the order of detention. We express our discontentment on the callous manner in which the stringent provisions of a detention law have been misused. In normal circumstances, when we encounter with such an illegal and unlawful action of the authorities, we would be passing deterrent orders by imposing costs on the

concerned authorities. However, we refrain from doing so in the present case with a fond hope that the authority would mend its approach and refrain from passing such careless orders in future.

7. In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 05.10.2023 in C.No.68/G/IS/2023, is hereby set aside, and the Habeas Corpus Petition is allowed. The detenu, viz., M. Kaja Hussain, S/o.Muthalif, aged about 45 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[M.S.R., J] [S.M., J]
08.02.2024

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Index : Yes / No

Neutral Citation : Yes / No

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4. The Inspector of Police,
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5. The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.

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