

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.110 OF 2017
(Arising out of SLP (Crl) No.8681 of 2016)

JAYAMMA

... Petitioner

VERSUS

STATE OF KARNATAKA AND ORS.

... Respondents

O R D E R

Leave granted.

An order of detention was passed against one Gidappa @ Lambu Giddappa, son of the appellant herein, on 15.7.2016 under Section 3(2) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Video or Audio Piracy Activity Act, 1985 (Karnataka Act 12 of 1985). The grounds which found mention in the order for detention were nine in number. Be it noted, the six grounds which found mention in the order pertaining to detention were challenged before the High Court of Karnataka at Bengaluru in W.P. No. 64 of 2015. The High Court, adverting to various aspects, passed the following order :-

"The petitioner relies on an order rendered by a Co-ordinate Bench of this Court in W.P.H.C. No.1/2014 wherein, this Court was pleased to hold as hereunder:

"4. Heard learned counsels.

"It is not in dispute that an opportunity shall be given to the detenu to give a representation to consider his case to the detaining authority only. Unfortunately in the present case, vide Annexure-A the 1st respondent has stated in his order that if the petitioner's husband so desires to make a representation he can send a representation to the State of Karnataka through the Superintendent of Jail which is quite contrary to the provisions of the Act and also Article 22(5) of the Constitution of India."

5. The learned Government Pleader has filed statement of objections. The respondents do not deny the contention that no right of representation to the Detaining Authority has been made known to the detenu. In the light of the same, the writ petition requires to be allowed. Accordingly, the writ petition is allowed. The order of detention is quashed. The respondents are directed to set at liberty the petitioner's brother forthwith if not required in any other cases."

After the said order came to be passed, three other cases were instituted against the son of the appellant and on that basis, the order of detention was passed. The High Court, by the impugned order, affirmed the order of detention. In paragraphs 20 and 21, the High Court has observed as follows :

"20. Ground Nos.1 to 6 stated in the present 'grounds for detention' are the same grounds which were relied on to pass the earlier order of detention. However, ground Nos.7, 8 & 9 are fresh grounds based on fresh facts that have happened after quashing of the earlier order of detention by this Court on 07.05.2015. In view of the fresh grounds, relying also on the earlier grounds which were relied on to pass the earlier order of detention has not visited the impugned order of detention; this is in view of Section 6A of the Act, which creates a legal fiction, namely that it shall be deemed that there are as many orders of detention as there are grounds which

mean that each of such orders is an independent order. Therefore, the impugned order of detention is sustainable in law on the basis of fresh grounds stated at Sl. Nos.7, 8 & 9 in the 'grounds for detention' dated 15.07.2016 as they are based on fresh facts that have happened after 07.05.2015, the date of quashing of the earlier order of detention by this Court.

21. It is a settled law that Courts cannot enquire into sufficiency of the grounds to justify the detention. However, as could be seen from the fresh grounds at ground Nos.7, 8 & 9 of the 'grounds for detention' dated 15.07.2016 which are extracted above, it cannot be said that the said grounds do not warrant detention under the Act. There is also proximity between the acts of the detenu referred to in the aforesaid grounds and the order of detention."

Ordinarily, we would have debated with regard to justification of the view expressed by the High Court. On the earlier occasion, i.e., on 16.12.2016, when the matter was listed, the Court had passed the following order :

"It is submitted by Mr. P. Vishwanatha Shetty, learned senior counsel appearing for the petitioner that the High Court has erred in sustaining the order of detention despite the fact that six grounds were mentioned in the earlier order of detention which has been quashed by the High Court. It is further urged that the three grounds which find place in the second detention order in the proceedings relating to the criminal cases have been quashed by the High Court and, therefore, the detention order as such has to pave the path of extinction.

Learned counsel for the State shall take instructions in respect of both the aspects.

List in the second week of January, 2017."

Mr. Joseph Aristotle S., learned counsel appearing for the State has submitted that the High Court has, in exercise the power under Section 482 of the Code of Criminal Procedure, quashed the

said proceedings. Mr. Sharan Thakur, learned counsel appearing for the appellant has produced a copy of the order dated 7.12.2016 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No.8930 of 2016 titled as Gidappa @ Lambu Gidappa vs. The State of Karnataka. Let that be kept on record.

In view of the aforesaid order, as is evincible, nothing remains on record on the basis of which the order of detention can be sustained. Resultantly, the same is quashed.

The appeal is allowed accordingly and the order of the High Court is set aside. As we have quashed the order of detention passed against Gidappa @ Lambu Giddappa, son of the appellant herein, he shall be set at liberty forthwith.

.....,J.
(Dipak Misra)

.....,J.
(R. Banumathi)

New Delhi;
January 16, 2017.

ITEM NO.56

COURT NO.2

SECTION IIC

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.8681/2016

(Arising out of impugned final judgment and order dated 27/10/2016
in WP No. 117/2016 passed by the High Court of Karnataka at
Bangalore)

JAYAMMA

Petitioner(s)

VERSUS

STATE OF KARNATAKA AND ORS.

Respondent(s)

(With interim relief and office report)

Date : 16/01/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Sharan Thakur, Adv.
Mr. Vijaykumar Paradeshi, Adv.
Mr. Mahesh Thakur, Adv.
Mr. Siddharth Thakur, Adv.
Dr. Sushil Balwada, AOR

For Respondent(s) Mr. Joseph Aristotle S., AOR
Mrs. Priya Aristotle, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)