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V. SHANCHA

v.

STATE OF TELANGANA AND ORS.

(Criminal Appeal No. 965 of 2017)

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MAY 24, 2017

[L. NAGESWARA RAO AND NAVIN SINHA, JJ.]

Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 – ss. 3(1) and (2) r/w s. 2 (a) and (b) – Order of Preventive detention under – Sustainability of – FIRs lodged against distributor of seeds under Penal Code and the Seeds Act, 1966 – Allegation that detenu sold spurious chilli seeds which did not yield sufficient crops causing wrongful loss to the farmers and illegal gains to the accused – Issuance of order of preventive detention under the Act – On appeal, held: Sufficient remedies for the offence alleged were available and had been invoked also under the ordinary laws of the land for the offence alleged – Recourse to normal legal procedure would be time consuming, and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities – Rhetorical incantation of the words “goonda” or “prejudicial to maintenance of public order” cannot be sufficient justification to invoke the powers of preventive detention – To classify the detenu as a “goonda” affecting public order, because of inadequate yield from the chilli seed sold by him and prevent him from moving for bail even is a gross abuse of the statutory power of preventive detention – Grounds of detention are ex-facie extraneous to the Act – Thus, the order of preventive detention is unsustainable and is set aside.

Allowing the appeal, the Court

G HELD: 1.1 An order of preventive detention, though based on the subjective satisfaction of the detaining authority, is nonetheless a serious matter, affecting the life and liberty of the citizen under Articles 14, 19, 21 and 22 of the Constitution. The power being statutory in nature, its exercise has to be within the limitations of the statute, and must be exercised for the purpose

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the power is conferred. If the power is misused, or abused for collateral purposes, and is based on grounds beyond the statute, takes into consideration extraneous or irrelevant materials, it would stand vitiated as being in colourable exercise of power. [Para 11][362-A-B]

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1.2 Three FIRs were lodged against the detenu and others under Sections 420, 120-B, 34, IPC and Sections 19, 21 of the Seeds Act, 1966, alleging selling of spurious chilli seeds. Whether the seeds were genuine or not, the extent of the yield, are matters to be investigated in the FIRs. Sufficient remedies for the offence alleged were, available and had been invoked also under the ordinary laws of the land for the offence alleged. [Para 12][362-C-E]

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1.3 The order of preventive detention passed against the detenu states that his illegal activities were causing danger to poor and small farmers and their safety and financial well-being. Recourse to normal legal procedure would be time consuming, and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities in the business of spurious seeds, affecting maintenance of public order. The rhetorical incantation of the words "goonda" or "prejudicial to maintenance of public order" cannot be sufficient justification to invoke the draconian powers of preventive detention. To classify the detenu as a "goonda" affecting public order, because of inadequate yield from the chilli seed sold by him and prevent him from moving for bail even is a gross abuse of the statutory power of preventive detention. The grounds of detention are *ex-facie* extraneous to the Act. Thus, the order of preventive detention is held to be unsustainable and is set aside. [Paras 13, 17][362-E-H; 363-A]

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Munagala Yadamma v. State of A.P. (2012) 2 SCC 386
 : [2012] 1 SCR 26; *Rekha v. State of Tamil Nadu & Anr. (2011) 5 SCC 244 : [2011] 4 SCR 740 – referred to.*

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Case Law Reference

[2011] 4 SCR 740	referred to	Para 3
[2012] 1 SCR 26	referred to	Para 14

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A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 965 of 2017.

From the Judgment and Order dated 10.04.2017 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in WP No. 3671 of 2017.

B Ms. Prerna Singh (for Guntur Prabhakar), Advs. for the Appellant.

Ms. Bina Madhavan, Mrityunjai Singh (for S. Udaya Kumar Sagar), Advs. for the Respondents.

C The Judgment of the Court was delivered by
NAVIN SINHA, J. 1. Leave granted.

2. The appellant assails the order of preventive detention of her husband dated 17.10.2016, passed by Respondent No.2, under the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits,

D Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of 1986) (Telangana Adaptation) Order, 2015, (G.O.Ms.No.124, Dated 17.03.2015) (hereinafter referred to as the 'Act').

E 3. Ms. Prerna Singh, learned counsel for the appellant, submits that an order of preventive detention is a serious matter affecting the liberty of the citizen. It cannot be resorted to when sufficient remedies are available under the general laws of the land for any omission or commission under such laws. The detenu was already being prosecuted under the penal code and the Seeds Act. Reliance was placed on *Rekha vs. State of Tamil Nadu & Anr.*, (2011) 5 SCC 244.

F 4. It was next submitted that the detenu was already in custody in two other cases. The order of detention does not consider the same, setting out special reasons for an order of preventive detention, with regard to a person already in custody. The reasoning that there was every likelihood of his being released on bail, in view of an earlier bail order in a similar case, is flawed, as the detenu has not even filed any application for bail in these two cases.

G 5. Ms. Bina Madhavan, learned counsel for the respondents, opposing the application, submits that the grounds of detention cannot be seen simpliciter as individual wrongs amenable to ordinary laws. It has

the potential to disturb maintenance of public order. More than one farmer had lodged complaints with regard to the spurious seeds sold to them. Wrongful loss had been caused to the poor farmers, and the detenu had acquired illegal gains at their expense. A

6. We have considered the submissions. The order of preventive detention has been made under section 3 (1) and (2) read with section 2 (a) and (b) of the Act. B

7. Section 3 of the Act empowers the Government if satisfied, *inter alia*, with respect to a “Goonda” to detain such person with the view to preventing him from acting in any manner prejudicial to the maintenance of public order. C

8. Section 2(a) of the Act defines “acting in any manner prejudicial to the maintenance of public order” as follows: D

“2(a) “acting in any manner prejudicial to the maintenance of public order” means when a bootlegger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:

Explanation: - For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health”. E

9. Section 2(g) defines “Goonda” as follows : F

“2(g) “goonda” means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code. G

10. Section 13 of the Act provides for a maximum period of detention for twelve months. If the order of preventive detention is sustainable, the detenu will continue in custody, without the opportunity to move for bail, till 17.10.2017. H

A 11. An order of preventive detention, though based on the subjective satisfaction of the detaining authority, is nonetheless a serious matter, affecting the life and liberty of the citizen under Articles 14, 19, 21 and 22 of the Constitution. The power being statutory in nature, its exercise has to be within the limitations of the statute, and must be exercised for the purpose the power is conferred. If the power is misused, or abused for collateral purposes, and is based on grounds beyond the statute, takes into consideration extraneous or irrelevant materials, it will stand vitiated as being in colourable exercise of power.

B 12. The detenu was the owner of Laxmi Bhargavi Seeds, District distributor of Jeeva Aggri Genetic Seeds. Three FIRs were lodged against the detenu and others under Sections 420, 120-B, 34, IPC and Sections 19, 21 of the Seeds Act, 1966. It was alleged that the chilli seeds sold were spurious, as they did not yield sufficient crops, thus causing wrongful loss to the farmers, and illegal gains to the accused. Whether the seeds were genuine or not, the extent of the yield, are matters to be investigated

C D in the FIRs. Section 19 of the Seeds Act provides for penalty by conviction and sentence also. Likewise, Section 20 provides for forfeiture. Sufficient remedies for the offence alleged were, therefore, available and had been invoked also under the ordinary laws of the land for the offence alleged.

E 13. The order of preventive detention passed against the detenu states that his illegal activities were causing danger to poor and small farmers and their safety and financial well-being. Recourse to normal legal procedure would be time consuming, and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities in the business of spurious seeds, affecting maintenance of public order, and that there was no other option except to invoke the provisions of the preventive detention Act as an extreme measure to insulate the society from his evil deeds. The rhetorical incantation of the words "goonda" or "prejudicial to maintenance of public order" cannot be sufficient justification to invoke the draconian powers of preventive detention. To classify the detenu as a "goonda" affecting public order,

F G because of inadequate yield from the chilli seed sold by him and prevent him from moving for bail even is a gross abuse of the statutory power of preventive detention. The grounds of detention are *ex-facie* extraneous to the Act.

14. The facts in *Munagala Yadamma vs. State of A.P.*, (2012) A 2 SCC 386 under the same Act, were markedly similar as follows:

“2. In the detention order, the detaining authority indicated that the detenu was a bootlegger within the meaning of Section 2(b) of the aforesaid Act and that recourse to normal legal procedure would involve more time and would not be an effective deterrent in preventing the detenu from indulging in further prejudicial activities. It has been mentioned that the detenu was involved in several cases of violation of the provisions of Section 7-A read with Section 8(c) of the Andhra Pradesh Prohibition Act, 1995, involving illicit distillation of liquor.”

15. After noticing **Rekha case** (supra) also, it was observed and concluded as follows:

“7. Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in *Rekha case*, in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land...”

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9. No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial...”

16. In view of the aforesaid discussion, it is not necessary to consider the second submission on behalf of the petitioner with regard to the lack of justification for an order of preventive detention with regard to a

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A detenu already in custody.

17. The appeal is allowed, and the order of preventive detention dated 17.10.2016 is held to be unsustainable and is set aside. The detenu is ordered to be set at liberty forthwith unless wanted in any other case.

B under the ordinary laws of the land.

Nidhi Jain

Appeal allowed.