

SUPREME COURT OF INDIA

Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department

Vs.

Kamala

Crl.A.No.507 of 2018

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

10.04.2018

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP(Crl) No 1600 of 2018

1. The High Court has set aside an order of detention issued under Section 3(1)(ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 on the ground that the period of detention was not specified. In arriving at this conclusion, the High Court has relied upon a decision of this Court *Commissioner of Police v Gurbux of the High Court¹ in S Santhi v The Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Chennai²* .

2. The Government of Tamil Nadu is in appeal.

3 . The submission which has been urged is that though the period of detention has come to an end, it is necessary for the Court to correct the statement of legal position contained in the decision of the High Court. Learned counsel has drawn the attention of the Court to the fact that the earlier decision of a Bench of two judges in Bhiryani (supra) was overruled by a Bench of three judges in *T Devaki v Government of Tamil Nadu⁴*.

4. In *T Devaki v Government of Tamil Nadu⁵*, a Bench of this Court has held that since the legislation does not require the detaining authority to specify the period for which a detainee is required to be detained, the order of detention is not rendered invalid or illegal in the absence of such specification. This Court held thus:

“13. This Court has consistently taken the view that an order of detention is not rendered illegal merely because it does not specify the period of detention. A Constitution Bench of this Court in *Ujagar Singh v. State of Punjab [(1952) 3 SCR 756: AIR 1952 SC 350: 1953 Cri LJ 146]* , while considering validity of detention order made under Section 3 of the Preventive Detention Act, 1950 held that non-

specification of any definite period in a detention order made under Section 3 of the Act was not a material omission rendering the order invalid. In *Suna Ullah Butt v. State of Jammu & Kashmir* [(1973) 3 SCC 60: 1973 SCC (Cri) 138: (1973) 1 SCR 870] , validity of detention order made under Jammu and Kashmir Preventive Detention Act, 1964 was under challenge on the ground that the State Government while confirming the detention order under Section 12 of the Act had failed to specify the period of detention. The court held that since the State Government had power to revoke or modify the detention order at any time before the completion of the maximum period prescribed under the Act, it was not necessary for the State Government to specify the period of detention. In *Suresh Bhojraj Chelani v. State of Maharashtra* [(1983) 1 SCC 382: 1983 SCC (Cri) 202] , while considering the validity of the detention order made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 this Court rejected similar submission made on behalf of the detenu that order of detention was vitiated as the government had failed to mention the period of detention while confirming the order of detention. The court held that the COFEPOSA Act did not require the detaining authority to mention the period of detention in the order of detention. When no period is mentioned in an order, the implication is that the detention is for the maximum period prescribed under the Act.” (Id at page 464)

The decision in *Bhiryani*’s case has been overruled.

5. In the circumstances, the High Court was not justified in quashing the order of detention on the basis that no period of detention was provided in the order. The High Court has proceeded on the basis of the decision of this Court in *Bhiryani* which is no longer good law in view of the subsequent decision of a larger Bench in *Devaki*. The decision of the High Court in *Santhi*, to the extent that it adopts the same position as in *Bhiryani*, will not reflect the correct legal position.

6. Accordingly, the impugned judgment of the High Court of Judicature at Madras dated 24 February 2016 in H.C.P. No. 2442/2015 is set aside. As a consequence, the detention order dated 31 August 2015 bearing G.O. No. SR.1/63-5/2015 Public (SC) Department shall stand revived. However, since the period of detention has come to an end, nothing further remains except for this Court to clarify the true legal position as we have done in the above terms.

7. The criminal appeal is accordingly disposed of.

Judgment Referred.

¹*The COFEPOSA Act 1974*

²*(1988) Supp SCC 0568*

³*(2010) 3 MWN (Cr.) 42 (DB)*

⁴*(1990) 2 SCC 0456*