
(2010) 06 MAD CK 0266
In the Madras High Court
Case No : H.C.P. (MD) No. 185 of 2010

Ambika

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 07-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 341, 379, 380, 385

Citation : (2010) 06 MAD CK 0266

Hon'ble Judges : M. Chockalingam, J;A. Arumughaswamy, J

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; P.N. Pandidurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This Writ Application challenges an Order of Detention made by the second respondent on 25.2.2010 whereby the husband of the petitioner, by name, Avinash @ Manikandan, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Boot-Leggars, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "Goonda".

2. The Court heard the learned Counsel appearing for the petitioner and looked into all the materials available, in particular, the order under challenge.

3. The detenu was involved in seven adverse cases as follows:

SI Police Station Section of law

No. Cr. No. & Date

1 Thoothukudi Central Crime Branch 454 and 380 Police Station IPC Cr. No. 260/09 dt. 12.06.2009 2 Sipcot Police Station 454 and 380 IPC

Cr. No. 273/2009 dt. 15.09.2009 3 Thoothukudi Central 457 and 380 P.S.Cr. No. 585/09 IPC dt.29.10.09 4 Vilathikulam Police Station 454 & 380 Cr. No. 323/09 IPC dt. 30.11.2009 5 Thoothukudi North Police Station 379 IPC Cr. No. 1296/09 dt. 03.12.09 6 Thoothukudi South Police Station 454 and 380 IPC Cr. No. 12/10 dt. 05.01.10 7 Thoothukudi South Police Station 454 and 380 IPC Cr. No. 13/10 dt. 05.01.10

Apart from that, the detenu was involved in one ground case registered by Thoothukudi Centrtal P.S. Crime No. 29/10 under Sections 341, 385, 307 and 506(ii) IPC. It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the detenu was involved in seven adverse cases and in one ground case referred to above, on scrutiny of the materials, the detaining authority has made the order under challenge branding him as a "Goonda" after recording its subjective satisfaction that the activities of the detenu was prejudicial to the maintenance of public order and the same is the subject matter of challenge before this Court.

4. Advancing the arguments on behalf of the petitioner, learned Counsel for the petitioner Mr. R. Alagumani, made the following submissions:

(i) According to the learned Counsel, the detenu was involved in seven adverse cases and one ground case and insofar as the ground case was concerned, he moved for bail before this Court in CrI.O.P. (MD) No. 1501/2010 and the same was also dismissed by this Court on 12.2.2010 and when the order came to be passed on 25.2.2010, there was no bail application pending insofar as the ground case or in any one of the adverse cases but the detaining authority has mentioned in the order that there was a real possibility of the detenu coming out on bail. Thus, it was without any basis or material whatsoever.

(ii) Added further the learned Counsel that the detenu has not moved any bail application in any one of the adverse cases and that has not been considered by the detaining authority.

(iii) The learned Counsel would further add that the original order of detention has been subsequently amended by an order dated 2.3.2010 and the order of detention was approved by the State Government on 5.3.2010 but the amended order was not actually placed before it was being approved. Thus, what was approved was only the original order of detention and not the amended order and under the circumstances, it has also vitiated the order under challenge. Therefore, on these three grounds, the order of detention has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor on the above contention.

6. Concededly, the order of detention invoking the provisions of Tamil Nadu Act 14 of 1982, came to be passed by the detaining authority on the recommendation made by the sponsoring authority that the detenu had involved in seven adverse cases and in one ground case. It is also not in controversy that

he moved Bail Application in the ground case in Crime No. 29/2010 registered by Thoothukudi Central P.S. and the Bail Application in Criminal O.P.(MD) No. 1501 of 2010 filed before this Court was also dismissed on 12.2.2010. It is also indicated very well in the order of detention. Apart from that, the detenu has not moved any bail application in any one of the adverse cases but Paragraph No. 4 of the order of detention reads as follows:

4. ...I am aware that he has filed a bail application for Thoothukudi Central P.S. Cr. No. 29/10 before the Hon"ble High Court Madras, Madurai Bench in Crol.O.P. No. 1501/10 and the same has been dismissed on 12.2.2010. But there is a real possibility of his coming out on bail by filing another bail application before the same Court or higher Court....

7. The very reading of the above would indicate that the detaining authority has observed that there was a real possibility of the detenu coming out on bail when there was not even a bail application was pending before a Court of Criminal law and thus, it was an anticipation passing in the minds of the authority and such an observation was only the impression that was passing in the minds of the detaining authority without any materials muchless cogent materials. Under the circumstances, the order cannot be stated to be passed on the valid grounds.

8. Apart from that, insofar as the order under challenge is concerned, the Court is able to see serious lacunae. Admittedly, the detenu was served with an amended order. According to the department, the original order under challenge came be passed on 25.2.2010 but the order was subsequently amended on 2.3.2010 and the same was not actually placed before the Government. What was placed before the Government and approved was only the original order order of detention dated 25.2.2010 and thus, it would be quite clear that not only the amended order of detention was not placed before the Government for the purpose of approval but also no opportunity of being heard was accorded to the detenu. Under the circumstances, it would be quite clear that this would also go to the root of the matter and thus, both the grounds are available to the petitioner for setting aside the order of detention.

9. Accordingly, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case. The Habeas Corpus Petition is allowed.