
(2012) 10 MAD CK 0053
In the Madras High Court
Case No : H.C.P. (MD) No. 678 of 2012

Ansaye

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates (Amendment) Act, 2006 — Section 3(1)

Citation : (2012) MLJ(Cri) 584

Hon'ble Judges : R. Mala, J;K. Suguna, J

Bench : Division Bench

Advocate : K.M. Karunakaran, for the Appellant; C. Ramesh, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Ms. R. MALA, J.—The petitioner, who is the wife of the detenu, has filed this Petition challenging the order of detention passed by the 2nd

Respondent in P.D. No. 18/2012, dated 1.5.2012, branding her husband as a ""Goonda"" and ordering his detention at Central Prison,

Tiruchirappalli, u/s 3(1) of Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral

Traffic Offenders, Sand Offenders, Slum grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). The detenu has been termed as a

Goonda on the ground that he is involved in seven adverse cases and in one ground case. Even though the learned counsel for the petitioner raised

so many grounds in assailing the impugned order of detention, he confined his arguments to the only one ground of delay in considering the

representation of the detenu, dated 18.5.2012. According to the learned counsel for the petitioner, the representation, dated 18.5.2012, has been received by the Government on 22.5.2012 and remarks have been called for from the detaining authority on the next day, i.e. 23.5.2012 but, however, remarks have been received by the Government only on 5.6.2012, after a delay 13 days. It is his further submission that though, as per the Proforma submitted by the learned Additional Public Prosecutor, there were four intervening holidays and even after giving concession as to the intervened holidays, still there is a delay of 9 days, which remains unexplained and the unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, he relied on the judgment of the Hon''ble Apex Court in Rajammal Vs. State of Tamil Nadu and Another, .

2. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government has received the representation on 22.5.2012 and that has been forwarded to the Detaining Authority, calling for remarks, on the next day, who in turn received the same on 24.5.2012 and that has been forwarded to the sponsoring authority on the same day, which has been received by the sponsoring authority on 26.5.2012 and remarks have been received by the detaining authority on 1.6.2012 and the same has been received by the government on 5.6.2012. Even though the above date particulars have not been mentioned in the pro-forma furnished to the Court, the learned Additional Public Prosecutor furnished those particulars after getting clarification from the respondents. Therefore, according to the learned Additional Public Prosecutor, there is no delay in considering the representation of the detenu and therefore he prayed for dismissal of the petition.

3. We have considered the rival submissions and perused the materials available on record.

4. As per the proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu, dated 18.5.2012, which was received by the Government on 22.5.2012, remarks have been called for from the detaining authority on 23.5.2012. But, remarks have been received by the Government only on 5.6.2012 and thereafter the representation has been considered by the authorities concerned and rejected on

8.6.2012. From the above, it is clear that in between 23.5.2012 and 5.6.2012, there is a delay of 13 days. Even if we give concession to the four

intervening holidays, namely 26.5.2012, 27.5.2012, 2.6.2012 and 3.6.2012, still there is a delay of nine days.

5. As per the version of the learned Additional Public Prosecutor, as soon as the Government received the representation, remarks have been

called for from the detaining authority and in turn the detaining authority has called for para 1½ war remarks from the sponsoring authority on

26.5.2012 and the sponsoring authority, though had received the same on 26.5.2012, sent the remarks only on 1.6.2012. Even as per the

submission of the learned Additional Public Prosecutor, there is a delay of five days delay between 26.5.2012 and 1.6.2012. Though there were

two intervening holidays, i.e. 26.5.2012 and 27.5.2012, still there is a delay of four days between 26.5.2012 and 1.6.2012 and this delay of four

days has not been explained in the counter affidavit. At this juncture, it is pertinent to quote relevant paragraph from the judgment of the Hon"ble

Supreme Court in Rajammal v. State of Tamil Nadu (supra), which read as follows:

8. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will

adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the

representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or

range of delay, but how it is explained by the authority concerned.

9. What happened in this case was that the Government which received remarks from different authorities submitted the relevant files before the

Under-Secretary for processing it on the next day. The Under-Secretary forwarded it to the Deputy Secretary on the next working day thus there

is some explanation for the delay till 9.2.1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The

Minister passed the order only on 14.2.1998. Though there is explanation for the delay till 9.2.1998, we are unable to find out any explanation

whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on

14.2.1998 is not justifiable explanation when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the

Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases

involving the vitally important fundamental right of a citizen.

6. As per the dictum laid down by the Supreme Court in Rajammal v. State of Tamil Nadu (supra) case, number of days of delay is immaterial and

what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here four days delay has not

been properly explained by the detaining authority. Hence applying the dictum laid down by the Supreme Court in Rajammal v. State of Tamil

Nadu (supra) case, we are inclined to quash the detention order. Accordingly, the habeas corpus petition is allowed and the detention order, dated

1.5.2012, passed by the 2nd Respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in

connection with any other case or cause.