

(2003) 03 MAD CK 0255

In the Madras High Court

Case No : Habeas Corpus Petition No. 1767 of 2002

Arasan

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 03 MAD CK 0255

Hon'ble Judges : P. Shanmugam, J; K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : R. Sankara Subbu, for the Appellant; A. Navaneethakrishnan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—This HCP is filed by the friend of the detenu Arasan who has been detained as a Goonda by detention order dated 6.7.2002.

2. The detenu is alleged to have been involved in two previous cases registered as Crime No. 670 of 2001 and Crime No. 679 of 2001. Apart from the said two cases, on 23.6.2002, when the Sub-Inspector of Police, Andimadam was present in his Police Station, one Murugan appeared before him and filed a complaint stating that on 11.6.2002 himself and others went to the Shandy and boarded in a town bus at Andimadam. When the bus stopped at Moonkikattai, the detenu dashed against a lady passenger and had a wordy altercation within the bus. The witness and his friend intervened and questioned about the conduct of the detenu. Therefore, the detenu had a grudge against him. On 23.6.2002, about 5.30 a.m., while the witness was sleeping inside his house, the detenu and his five associates came to the house of the witness and enquired his wife. The wife of the witness stated that her husband was not present in the house. The detenu and five of his associates forcibly trespassed into the house with intention to kidnap the said witness. The witness raised alarm and tried to escape from their clutches. The detenu after abusing the witness, tried to cut him with his aruval

over his neck. The witness warded off the cut injury. The associates of the detenu beat him with wooden logs. On seeing this, the wife of the witness cried and some villagers gathered. The detenu and his associates fled away from the place. The Sub-Inspector took up the investigation and visited the place of crime and prepared a mahazar, observation mahazar, rough sketch and also examined the witnesses and recorded their statements. The detenu was arrested on 23.6.2002 and his voluntary statement was recorded. He was also produced before the Judicial Magistrate, Jeyankondam on 24.6.2002 for remand. Thereafter on the request by the sponsoring authority and on being satisfied that the conduct of the detenu amounted to violation of public order, ordered the detention.

3. Mr. R. Sankara Subbu, learned counsel for the petitioner has raised the following points for consideration which are considered one after the other.

4. According to the learned counsel, the representation given by the petitioner dated 9.8.2002 was rejected only on 20.8.2002 and hence there was unexplainable delay. We have considered the submissions of the learned counsel and also the details relating to the process of disposal of the representation. Though the representation is dated 9.8.2002, the same had been received only on 13.8.2002 and the file was submitted to the Under Secretary on 16.8.2002. The file was passed on to the Deputy Secretary on the same day and the Minister for Law on 19.8.2002. Thereafter the representation was rejected on 20.8.2002. Considering the aforesaid particulars, we are inclined to hold that the application had been disposed of expeditiously and there is no question of any delay in the disposal.

5. Learned counsel further submits that as regards the time of arrest and the recovery of aruval under mahazar, there was contradiction between the timings mentioned in the Form 95, mahazar and also the arrest report. The learned counsel contends that in terms of the FIR, the occurrence was said to have taken place at 15 hrs. The timing given in the mahazar for recovery of the aruval is mentioned as 18.15 hrs. The arrest report also mentioned the time of arrest as 18.15 hrs on 23.6.2002. However, in the Form 95, the time of recovery of the aruval is shown as 12.15 hrs. Therefore, the said contradiction is vital and according to the learned counsel, the detention order is vitiated. In support of his contention, learned counsel relies on the following judgments:-

1. V. Kaluvan vs. The District Collector and District Magistrate Dindigul District etc., and another 1998 2 L.W. (CrI.) 490 .

2. Mangalam vs. The District Magistrate and District Collector of Karur District, Karur and Another 1999 (2) MWN (CrI.) 258.

6. We have considered the submissions of the learned counsel. There is no dispute over the fact that the First Information Report has been given at 15 hrs., on 23.6.2002. This was followed by arrest and investigation of the accused. The accused was arrested at about 18.15 hrs. and immediately he had been taken to

the place of occurrence and recovered the aruval. Therefore the timing in the arrest report as well as mahazar are given as 18.15 hrs. However, in Form 19, the timing of recovery of aruval has been given as 12.15 hrs. The learned Public Prosecutor states that it is only a typographical error and no significance need be attached. We are inclined to accept the contention of the learned Public Prosecutor, considering that the very FIR has been given only at 15 hrs. The timings mentioned in the arrest card in the mahazar are also consistent with the case of the respondents and it is only in Form-95, which had been prepared later for submission before the Judicial Magistrate, the timing has been given as 12.15 hrs., instead of 18.15 hrs. This is apparently a typing mistake considering that the Form 95 had been prepared only much later, on 1.7.2002. Therefore, we are not able to attach any significance to the said mistake.

7. Learned counsel further contends that having regard to the allegations against the detenu, the charges relate only to personal enmity between the petitioner and the witnesses and the charges taken even on the face of themselves, are purely based on personal motives and even otherwise would amount only to law and order issue and will not amount to an issue of public order. The charges against the petitioner in the ground case as well as in the adverse cases are only personal and individual nature and hence the respondents have erred in treating the conduct of the detenu as amounting to violation of public order. In this context, learned counsel relies on the judgment of the Supreme Court in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, : It may be pointed out here that the said judgment did not deal with the definition of "goonda" as occurring in Act 14/82. The Supreme Court was dealing with the provisions under Defence of India Rules 1962 whereunder, the expression "prejudicial to public safety and maintenance of law and order" were given strict meaning, in the context of the object and purpose of Defence of India Rules. We are unable to apply the reasonings mentioned in the said judgment to a case under Tamil Nadu Act 14/82.

8. Reference was also made to the judgment of the Supreme Court in *Arun Ghosh vs. State of West Bengal* 1970 SCC (Crl.) 67 which arose under Prevention of Detention Act, 1950. In that case the Supreme Court has pointed out that the question whether the charge against the detenu amounts to disturbance of current life of the community so as to amount to disturbance of public order, in the light of the facts of the case. There can be no fixed formula by which one case can be distinguished from the other.

9. Reference was also made to the judgment of the Supreme Court in *Pushkar Mukherjee and Others Vs. The State of West Bengal*, : The Supreme Court held that a line of demarcation has to be drawn between serious forms of disorder directly affecting the community and relatively minor breaches of peace of a purely local significance.

10. Further reference is made to the judgment in *Mustakmiya Jabbarmiya Shaikh vs. M. M. Mehta, Commissioner of Police and Others* 1995 SCC (Crl.) 454 . The

Supreme Court held that in order to bring the activities of a person within the expression of acting in a manner prejudicial to the maintenance of the public order, the alleged activities must be of such a nature that they go beyond the capacity of the law to deal with the offender and to prevent his subversive activities affecting the community at large.

11. We have considered the submissions of learned counsel as well as the facts relating to the charges against the detenu. A perusal of the adverse cases as well as the ground case reveal that the detenu has been acting as a local dadha and frequently indulging in creating terror in the area by resorting to violence. In Crime No. 670 of 2001 one Veeramuthu is alleged to have demanded money as due to him from Ezhil an associate of the detenu. Aggrieved by the said demand, the detenu and his associates armed with aruval had cut the tyres of the bullock cart belonged to Veeramuthu and thereby caused a loss of Rs.10,000/- and also warned Veeramuthu and his men that they would be murdered. A complaint was filed by the said Veeramuthu.

12. Subsequently on 31.10.2001, the detenu and his associates came in a Tata Sumo Car and all of them with aruval in their hand questioned one Shivakumar about his supporting a rival and is also alleged to have spoken ill about the organisation to which the detenu belonged to. The detenu used unparliamentary words and caused cut injuries to Shivakumar. Thereafter they left the place. A case was registered in Crime No. 679 of 2001. He was remanded to custody and later released on bail.

13. This was followed by the ground case on 23.6.2002, the facts relating to the same have already been mentioned above.

14. The above three cases illustrate the aggressive conduct of the detenu which cannot be classified merely as personal or individual. He has been repeatedly indulging in conduct which is intended to cause a threat to the members of the society. In fact, even in cases of commissions and omissions against individuals, the frequency may suggest that the conduct would amount to violation of public order. In fact, in the very judgment relied on by the learned counsel for the petitioner in Arun Ghosh vs. State of West Bengal 1970 SCC (CrL) 67 the Supreme Court has observed that a large number of acts directed against individuals also may total up into a breach of public order. The question of degree of the resulting harm and its effect upon the community have to be considered.

15. Therefore the manner in which the detenu has been behaving and the successive instances are sufficient to establish that the behaviour of the detenu amounted to violation of public order.

16. Learned counsel further contends that with reference to an allegation contained in the grounds of detention, the respondent has made reference to an alleged undesirable activity on the part of the detenu which was very vague. The following is the passage in the detention order, which is relied on by the learned counsel:-

"Investigation reveals that Thiru Elumalai @ Siva @ Cuddalore Siva is also affiliated to a terrorist organisation to mask his undesirable activities. The general public of the village are afraid of his atrocious activities. It is clear from the above said circumstances that the act of the individual is not only affecting other individuals but also it creates panic in the minds of the public of the locality in which the occurrences take place, and thereby the public order is also disturbed".

17. Learned counsel contends that though it is alleged that the detenu belongs to a terrorist organisation, no details have been furnished as regards the terrorist organisation or the involvement of the detenu in the activities of such terrorist organisation. The vagueness of the said charge would render the detention order invalid. In this context, learned counsel relies on the judgment of the Supreme Court *Pushkar Mukherjee and Others Vs. The State of West Bengal*, : in which the Supreme Court has held that even one vague ground was enough to vitiate the detention order. Further reference is made to another judgment of the Supreme Court in *Mohd. Yousuf Rather vs. State of Jammu and Kashmir* 1979 SCC (Crl.) 999 Reliance is placed on the observation that the description of the detenu as a "die-hard Naxalite" was a vague ground sufficient to justify violation of Article 22(5) of the Constitution of India.

18. In this context, it is pertinent to note that the detention order does not conclusively allege that the petitioner belongs to a terrorist organisation. There is no conclusion to the effect that the petitioner is a member of the terrorist organisation. The above extract will show that the detaining authority has only stated as a fact that the investigation revealed that the detenu was also affiliated to a terrorist organisation. The contention of the learned counsel for the petitioner that the said observation was not based any material cannot be sustained having regard to the statements recorded by the sponsoring authority from various witnesses. The statements which have been furnished to the detenu at pages 31, 33, 34, 35, 36, 37 and other statements also spell out that according to those individuals who have given the statement, the petitioner was a member of Tamil Liberation Front. The learned Public Prosecutor also relies on the confession statement of the detenu himself at page No. 67 of the booklet whereunder he is alleged to have confessed that he was involved in the said organisation.

19. Therefore, there are sufficient materials to state that the investigation revealed the involvement of the detenu in a terrorist organisation. As stated earlier, the detaining authority has not recorded any conclusive finding on the said issue. He has merely stated what was revealed in the investigation which is shown by the various statements recorded in the investigation. The copies of the said statements have been furnished to the detenu in the booklet.

20. Therefore, we do not find that the said allegation is vague so as to vitiate the order of detention.

21. In the result, we do not find any ground in the various points raised by the learned counsel for the petitioner. HCP is dismissed.