

(2014) 03 MAD CK 0202
In the Madras High Court
Case No : H.C.P. No. 2138 of 2013

C. Ramesh @ Harish

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Constitution of India, 1950 — Article 22(1)

Immoral Traffic (Prevention) Act, 1956 — Section 3(2)(a), 4(1), 5(1)(a), 5(I)(a), 6(1)

Penal Code, 1860 (IPC) — Section 292(a)

Citation : (2014) 2 MLJ(Cri) 515

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner/detenu has been branded as an "Immoral Traffic Offender" under the Tamil Nadu Act 14 of 1982 and detained under order of the 2nd respondent passed in BDFGISSV No. 830 of 2013 dated 28.08.2013. The detenu came to adverse notice in the following case:

Sl. No.

Police Station and Crime No.

Section of Law

1

Anti Vice Squad Police Station Crime No. 72 of 2012

Section 3(2)(a), 4(1) and 5(I)(a) of ITP Act

2. The ground case alleged against the detenu is one registered on 21.08.2013 by the Inspector of Police, Anti Vice Squad Police Station in Crime No. 89 of 2013 for offences under Sections 3(2)(a), 4(1), 5(1)(a), 6(1) and 7(1) of ITP Act and Section 292(a) IPC. Aggrieved by the order of detention, the present petition has

been filed.

3. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focussed his argument on the ground that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo in a proper manner to the family members, relatives or friends of the detenu and there was no proof to show that the intimation of arrest was given, as the arrest was communicated through cell phone to the wife of the detenu, which clearly shows non-application of mind on the part of detaining authority and therefore, on this sole ground, the detention order is liable to be quashed.

4. Per contra, Mr. P. Govindarajan, learned Additional Public Prosecutor submits that acts committed by the detenu are prejudicial to the maintenance of public order and peace and the arrest was communicated by way of cell phone to the wife of the detenu, which is an effective and speedy way of communication available with the authorities and therefore, there is no illegality in making such intimation.

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

6. A close reading of the arrest memo as well as special report, which are annexed at page nos. 65 & 66 of the booklet shows that the arrest of detenu was intimated to his wife over Mobile No. 91785793398, which has only 9 digits on exclusion of "91". But at the same time, it is to be remembered that in order to meet fairness, justness and reasonableness, after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him. In the case on hand, detaining authority has stated that the arrest of the detenu had been communicated through cell phone to the wife of the detenu, but, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, on the failure of the same, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India.

7. The Hon"ble Division Bench of this Court in the case of Shanmugam and Another Vs. State of Tamil Nadu and Another, , while issuing some suggestions and guidelines to the Government of Tamil Nadu in this regard, set aside the order of detention, by observing as under:

19. Despite clear instructions given by the Government after touching upon the legal position, the officer, who arrested the detenus informed the said arrest to

the wife and friend of detenus over cellphone, by simply stating that the date of arrest being Sunday, no telegraphic service was available, which is a matter of ignorance on the part of arresting authorities, as in our country, telegraphic services are available even on Sundays. The mode of communication adopted by the authorities, which was not even looked into by the detaining authorities is not only unknown to the settled principles, but also is an attempt to cast aside the instructions given by the Government.

Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained.

Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely C. Ramesh @ Harish, S/o. Chinnaiah, made in BDFGISSV No. 830 of 2013 dated 28.08.2013, is quashed and the habeas corpus petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.