

(2004) 12 MAD CK 0070

In the Madras High Court

Case No : Habeas Corpus Petition No. 1150 of 2004

D. Mohana

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 1 LW(Cri) 39

Hon'ble Judges : M. Karpagavinayagam, J;C. Nagappan, J

Bench : Division Bench

Advocate : T.K. Sampath, for the Appellant; E. Raja, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The petitioner is the wife of the detenu, who has been detained by the order dated 25.9.2004 branding him as a "Goonda".

2. The learned counsel for the petitioner would submit that the pre-detention representation dated 22.9.2004 was sent and the same was received by the Detaining Authority on 23.9.2004 and the remarks were called for and without waiting for the remarks and without considering the pre-detention representation, the Detaining Authority passed the order of detention on 25.9.2004 and the same would amount to non-application of mind on the part of the Detaining Authority.

3. We have considered the submissions made by the learned counsel on either side and gone through the papers.

4. The pre-detention representation dated 22.9.2004 is available in the booklet at page No. 62. It is also admitted by the learned Additional Public Prosecutor that the pre-detention representation was received on 23.9.2004 and the remarks were called for from the Authorities concerned by the Detaining Authority. Moreover, the pre-detention representation sent on 22.9.2004 had also

been placed before the Detaining Authority and that is how the said pre-detention representation is found available at page No. 62 of the booklet.

5. Having considered the pre-detention representation dated 22.9.2004 and having called for the remarks on it, we are at loss to understand as to how the Detaining Authority hastened to pass the detention order dated 25.9.2004 without getting the remarks and without taking a decision on the pre-detention representation. This shows that the Detaining Authority has not taken a decision on the pre-detention representation and he has not chosen to reflect the same in the grounds of detention and as such, it is an illegality as held by this Court in the decisions in MANI V. THE STATE OF TAMIL NADU, REP. BY THE SECRETARY TO GOVERNMENT, PROHIBITION & EXCISE DEPT., FORT ST.GEORGE, CHENNAI-9 & ANOTHER 2000(1) MWN (Cri.) 279 And SURESH KUMAR V. STATE (2004) M.L.J. (Cri) 733.

6. The relevant portion in Suresh Kumar's case (cited supra) is as follows:

"Even though the Detaining Authority on the basis of the report filed by the Sponsoring Authority passed an order of detention on 4.10.2003 he has not chosen to refer to the pre-detention representation in the detention order. Admittedly, the pre-detention representation has not been disposed of by the Detaining Authority. It is the duty of the Detaining Authority to consider the representation of the niece of the detainee and find out as to whether there are any bona fides. While arriving at a subjective satisfaction, the Detaining Authority has to consider the pre-detention representation sent by the niece of the detainee and shall come to the conclusion with reference to the basis of such representation and if he finds that there is no basis, then the Detaining Authority may accept the report of the Sponsoring Authority and subsequently, he can arrive at a subjective satisfaction to detain the detainee as a Bootlegger. Admittedly, this has not been done. Therefore, non-consideration of the pre-detention representation dated 27.9.2003, which was received by the Detaining Authority on 29.9.2003 would naturally vitiate the impugned order of detention."

7. The above observation, in our view, squarely applies to the facts of the present case in all fours. Here also, the pre-detention representation dated 22.9.2004 was received by the Detaining Authority on 23.9.2004, as admitted by the learned Additional Public Prosecutor and the remarks were called for on it and without passing any order on the pre-detention representation, the Detaining Authority passed the order of detention dated 25.9.2004. Therefore, in our view, the detention order is liable to be quashed.

8. The habeas corpus petition is allowed. The impugned 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.