
(2002) 03 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No. 7313 of 2002 and W.P.M.P. No. 10120 of 2002

Dr. L. Prakash

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Constitution of India, 1950 — Article 21
Indecent Representation of Women (Prohibition) Act, 1986 — Section 4, 6
Information Technology Act, 2000 — Section 67
Penal Code, 1860 (IPC) — Section 120B

Citation : (2002) CriLJ 2596

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R.C. Paul Kanagaraj, for the Appellant; I. Subramaniam, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Dr. L. Prakash, a detenu under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,

Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), has filed the above writ petition to issue a Writ

of Mandamus directing the Superintendent, Central Prison, Chennai - 2nd respondent herein to give him all the facilities as a "Special Class

Prisoner" even when he is undergoing detention under Tamil Nadu Act 14/1982 in Central Prison, Chennai.

2. The case of the petitioner is briefly stated hereunder:- According to him, he was arrested by the Inspector of Police, R8 Vadapalani Police

Station, Chennai for various offences, particularly Section 67 of the Information Technology Act, 2000, Section 4 read with Section 6 of the

Indecent Representation of Women (Prohibition) Act, 1986 and Section 120-B of the Indian Penal Code. He is a Medical Doctor by profession.

After securing M.B.B.S., degree, he obtained a degree in M.S. Orthopedic. He also did other post graduate degrees and have done serious

research in the lower limb and deformities in Polio patients. He has contributed more than 120 research articles which have all been published in

prestigious medical journals. After the remand to judicial custody on 24-12-2001, he filed an application before the 17th Metropolitan Magistrate,

Saidapet, Chennai-15 in CrI.M.P.No. 3077 of 2001 for grant of special class treatment in Central Prison. The said application was made as per

Rule 815 of the Tamil Nadu Prison Manual. He assessed to Income Tax for the last several years and for the last 3 years, he has paid by way of

tax only more than Rs.3 lakhs under the Income Tax Act. He is also a Post Graduate in Medicine. Such persons are entitled to be classified as a

special prisoner. The special prisoner according to Rule 815 of the said Manual consists of those who by their special status, education and habit

of life have been accustomed to a superior mode of living. By order dated 28-12-2001 in CrI.M.P.No. 3077 of 2001, the 17th Metropolitan

Magistrate, Saidapet recommended special class treatment in Central Prison for the petitioner. Pursuant to the said order, the petitioner was being

given facilities as a "special class prisoner". While so, the Commissioner of Police, Greater Chennai has made an order of detention in 146/2002

dated 18-2-2002, directing the detention of the petitioner under Tamil Nadu Act 14/82. Thereafter, the second respondent abruptly has

withdrawn the facilities given to him (petitioner). The entire action of the second respondent is unauthorised and without authority of law.

Thereafter, the petitioner gave a representation through his counsel to the first respondent-Secretary to Government, Prohibition and Excise and

requested to continue to give special class facility to him. There is no response from the higher authorities. Since the action of the second

respondent is clearly illegal and is violative of Article 21 of the Constitution of India, having no other alternative remedy, filed the above writ

petition under Article 226 of the Constitution of India.

3. Considering the issue raised in the writ petition, this Court directed notice to the Public Prosecutor.

4. Heard the learned counsel for the petitioner as well as learned Public Prosecutor for respondents.

5. The only point for consideration in this writ petition is whether the petitioner is to be given special class prisoner facilities even as a detenu under

Tamil Nadu Act 14 of 1982.

6. In view of the narration of the facts in the earlier part of my order and also the question in issue, it is unnecessary to refer the reasons and other

details relating to the cases filed against the petitioner. However, it is not disputed that the petitioner is an accused u/s 67 of the Information

Technology Act, 2000 read with Section 41 read with Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986 read with

Section 27 of the Arms Act, 1959 and 120-B(ii) of the Indian Penal Code. He filed a petition before the 17th Metropolitan Magistrate, Saidapet,

Chennai seeking permission to treat him as a special class prisoner, since he is a doctor and Income Tax assessee. Before the learned Magistrate,

he produced Tax Chalan for the assessment year 2001-2002 and Advance Tax Chalan for the Assessment year 2002-2003 along with Permanent

Account card. The learned Magistrate, after holding that since the petitioner/accused is an Income Tax assessee recommended for special class

treatment in Central Prison, Chennai during his custody period subject to confirmation by the Collector of Chennai as per Section 815 of The

Prison Manual.

7. It is not disputed that thereafter, that is on 18-2-2002, the Commissioner of Police, Greater Chennai, after satisfying himself that the petitioner is

an immoral traffic offender as contemplated u/s 2(g) of the Tamil Nadu Act 14/1982 and with a view to preventing him from acting in any manner

prejudicial to the maintenance of public order, by virtue of power conferred on him by sub-section (1) of Section 3 of Tamil Nadu Act 14 of 1982,

passed an order detaining him in custody at the Central Prison, Chennai. Accordingly, as on date, particularly on the date of filing of the petition,

the petitioner is a detenu under Tamil Nadu Act 14 of 82.

8. Learned Public Prosecutor by drawing my attention to the relevant provisions from Tamil Nadu Act 14 of 1982 and the Rules framed by the

Government of Tamil Nadu in G.O.Ms.No. 1273, Prohibition and Excise (XII) Department, dated 13-10-1986, would contend that the petitioner

being a detenu under Tamil Nadu Act 14/82, the said Rules alone are applicable to all the detenus detained under Tamil Nadu Act 14/1982 and

the petitioner cannot claim all facilities as a special class prisoner. The following provisions in Tamil Nadu Act 14/1982 are relevant for our

consideration:-

Section 2. Definitions.-

(a) ""acting in any manner prejudicial to the maintenance of public order"", means -

(i) xx xx

(ii)xx xx

(iv) in the case of an immoral traffic offender, when he is engaged, or is making preparations for engaging, in any of his activities as an immoral

traffic offender, which affect adversely, or likely to affect adversely, the maintenance of public order;

Explanation.- For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be

affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause (a) directly or indirectly, is causing or calculated

to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to

life or public health or ecological system.

(g) ""immoral traffic offender"" means a person who commits or abets the commission of, any offence under the Suppression of Immoral Traffic in

Women and Girls Act, 1956 (Central Act 104 of 1956);

Section 5. Power to regulate places and conditions of detention.--Every person in respect of whom a detention order has been made shall be liable

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(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline, and punishment for breaches of

discipline as the State Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, within the State by order of the State Government.

Under Clause (a) of Section 5 referred above, the Governor of Tamil Nadu framed an order called ""The Tamil Nadu Prevention of Dangerous

Activities of Bootleggers, Drug-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers (Conditions of Detention) Order, 1986 (in

short "Conditions of Detention Order, 1986") (G.O.Ms.No. 1273, Prohibition and Excise (XII)a Department, dated 13-10-1986. Since the

petitioner being an immoral traffic offender and his activities are prejudicial to the maintenance of public order, the competent authority detained

him at Central Prison, Chennai. As I have already referred to, clause (a) of Section 5 of Tamil Nadu Act 14 of 1982 enables the State

Government to frame Rules and the Government have also framed an order relating to conditions of detention. Undoubtedly, the petitioner being a

detenu is bound by various provisions of the Conditions of Detention Order, 1986. The said order refers about accommodation, diet, clothing,

bedding, toilet articles, private property, interview and communications, supply of newspapers and magazines, withdrawal of privileges,

representation by detenu, offences and punishments while under detention, prohibited articles, powers of Superintendent, security, imposition of

cellular or separate confinement, hand cuffing, removal of detenus to hospitals, exercise and games, visits etc. The Annexure to the order refers

about food and other eatables to be given to detenus on 4 occasions. The type of food, quantity etc., are also prescribed. After going through all

those details, I am satisfied that minimum comforts are provided and in the absence of any statutory provision or Government Order, the petitioner

being a detenu under Tamil Nadu Act 14 of 1982, cannot be granted facilities as a special class prisoner than that of the facilities provided under

the Conditions of Detention Order, 1986.

9. Learned counsel appearing for the petitioner by relying on a decision of the Supreme Court in Francis Coralie v. Union Territory of Delhi,

reported in AIR 1981 S C 746, contended that petitioner is entitled to facilities as a special class prisoner. After going through the said decision

and in the light of the various facilities provided under the Conditions of Detention Order, 1986, I am of the view that the said decision is not

helpful to his case. He also relied on a Division Bench decision of this Court rendered in W.P.No. 8586 of 1995 dated 13-11-95 (F. Thomim v.

The Superintendent, Central Prison, Madras). Herein again, the Division Bench has rejected several claims made by the petitioner therein, who

was confined in Central Prison, Madras in pursuance of preventive orders clamped either under COFEPOSA and PIT N.D.P.S.Act. No doubt, in the same order the Division Bench has directed the jail authorities to provide certain facilities in accordance with the Rules applicable. There is no quarrel with regard to the application of Conditions of Detention Order, 1986 to the petitioner. It is not the grievance of the petitioner that the facilities provided under the said Order are not being given. His request is that inasmuch as the learned Magistrate has recommended for special class treatment in Central Prison, the same may be continued even when he is undergoing detention under Tamil Nadu Act 14 of 1982. In the light of the above discussion and in view of the fact that petitioner detained under Tamil Nadu Act 14 of 1982 is an immoral traffic offender and his activities are being prejudicial to the maintenance of public order, he cannot be given facilities as a special class prisoner as claimed, though he is entitled to facilities in terms of Conditions of Detention Order, 1986. Regarding the representations said to have been made by him to the higher authorities, it is made clear that any representation is made, the same has to be disposed of then and there in accordance with the Rules/Order applicable to him.

10. In the light of what is stated above, I do not find any merit in the writ petition; consequently the same is dismissed. WPMP No. 10120 of 2002 is also dismissed.