

(2008) 08 MAD CK 0036

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 239 of 2008

E. Raja

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 380, 397, 506
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(2),
3(3)

Citation : (2008) 08 MAD CK 0036

Hon'ble Judges : M. Sathyanarayanan, J;D. Murugesan, J

Bench : Division Bench

Advocate : M. Ravi Shankar, for the Appellant; P.N. Pandithurai, Additional Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner is the friend of the detenu by name Ravi Kumar @ Dog Ravi, who has been detained by the orders of the

Commissioner of Police, Madurai City in his reference No. 15/BDFGISSV/2008, dated 13.2.2008 in exercise of the power conferred under Sub-

section 3 of the Section 3 of the 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) read with the order issued

by the Government in G.O.(D) No. 9, Home, Prohibition and Excise (XVI) Department, dated 18.1.2008 under Sub-section (2) of Section 3 of

the said Act.

2. Though several grounds were raised in questioning the detention order, for the

purpose of disposal of this petition, we are inclined to refer only the challenge to the non-supply of the petition to surrender and the remand order. In paragraph 3 of the grounds of detention, the detaining authority has stated as follows:

The activities of general public was paralysed in that area. At that time, Tr. Ravikumar @ Dog Ravi, S/o. Guberadoss escaped from the place.

Thereafter, Tr.Pandi came to C4 Thilagarthidal Police Station and preferred a complaint, based on that a case in C4 Thilagarthidal PS Cr. No.

34/2008 under Sections 397, 506(ii) IPC was registered. On 11.01.2008 at about 10.00 hrs, Tr. Ravikumar @ Dog Ravi, S/o. Guberadoss, had surrendered before the J.M. Thirumangalam in the case B10 Thilagarthidal P.S. Cr. No. 290/2001 u/s 380, 302 IPC and remanded to judicial custody at Central Prison, Trichy.

3. The learned Counsel appearing for the petitioner would submit that in the absence of any bail application filed by the petitioner, the petition to surrender and the consequential remand warrant of the Magistrate are not only vital documents, but also relied upon documents. The failure to furnish those documents are fatal to the detention order. Further, in spite of the two representations made for supply of those documents, not only the documents were not furnished, but also an evasive reply was given without proper application of mind. Hence for the above reason, the detention order is vitiated.

4. The learned Additional Public Prosecutor on the other hand would submit that the detenu was supplied with the order of the Judicial Magistrate, Thirumangalam, wherein the fact of surrender and remand have been mentioned and the copy of the said proceedings of the Judicial Magistrate finds a place at page No. 170 of the booklet and hence, the contention of the learned Counsel appearing for the petitioner is untenable and consequently liable to be rejected.

5. We have considered the above submissions made by the Counsel on either side and perused the materials available on record.

6. In the event the detaining authority relying upon documents to clamp the order of detention, those documents should be furnished to the detenu and non-furnishing of those documents would certainly affect the detention order and consequently such order is liable to be quashed. On the facts

of the present case, there is no dispute that the detenu, after the remand, has not moved any bail application. In fact in paragraph 5 of the grounds of detention, the detaining authority has stated ""I am also aware that he has not moved any bail application in the above ground case and adverse case."" While making the above reference, the detaining authority satisfied himself that the detenu may move a bail application and there is a real possibility of his coming out on bail. As a necessary corollary, the detaining authority was aware of the fact that the detenu was on remand on the date of the detention order. The satisfaction of the detaining authority recorded in para 5, if read along with his reliance on the surrender petition as well as the remand order made in paragraph 3, it is apparent that the relied upon documents are also vital documents. It is true that the detenu has been supplied with the copy of the proceedings of the Judicial Magistrate, Thirumangalam, which is found at Page No. 170. No doubt that is the communication of the Judicial Magistrate, Thirumangalam dated 11.01.2008 addressed to the Judicial Magistrate No. II, Madurai, wherein it is stated that the detenu had surrendered before him on 11.01.2008 at 10.00 a.m. and thereafter, the said surrender petition was accepted and the remand was extended till 25.01.2008. From the above communication, we are unable to see any of the grievances expressed by the detenu before the Magistrate at the time when he surrendered and observation made by the Magistrate at the time of remand.

7. A Full Bench of this Court in the judgment in G. Kalaiselvi v. The State of Tamil Nadu, rep. by Secretary to Government, Fort St. George,

Chennai-600009 and Anr. 2007 5 CTC 657, after quoting the judgment of the Supreme Court in Pownammal v. State of Tamil Nadu 1999 SCC

(Cri) 231 had observed that the copies of the relied upon documents along with the grounds of detention should be furnished to the detenu and

non-furnishing of the relied upon documents has the effect of vitiating the order of detention. However, though the Full Bench had made a slight

deviation on the above law by observing that when the documents asked for, though on the face of it irrelevant, non-furnishing of the documents is

immaterial, ultimately held that in any event, the document is not only relied upon, but also relevant for the detaining authority to arrive at a

satisfaction and failure to supply such documents would vitiate the order of detention. Therefore, we are of the considered view that both the

documents, namely, the surrender petition as well as the remand order are not only relied upon documents, but also vital documents and failure to furnish such documents would certainly vitiate the order of detention.

8. However Mr. P.N. Pandithurai, the learned Additional Public Prosecutor would submit that in view of the supply of the document at page 170,

merely because, the copies of the surrender petition as well as the remand order were not furnished, that would not vitiate the order of detention.

We are not inclined to accept the said submission. In fact the very same argument was advanced on behalf of the State in the case reported in

(2004) M.L.J. (Cri.) 945, Karuppalagu v. The State of Tamil Nadu, represented by Secretary to Government, Prohibition and Excise

Department, Madras and Anr. before a Division Bench of this Court, the Division Bench had observed as follows:

...Though copy of the remand warrant was supplied to the detenu, as rightly argued, it does not contain the statement of the accused said to have

been made by him before the learned Magistrate at the time of passing of the order....

The Division Bench has also quoted yet another judgment reported in Chinna Ponnu v. The Secretary, Prohibition and Excise Department,

Government of Tamil Nadu (2002) 2 M.W.N. (Cri.) 52.

9. The furnishing of the surrender petition as well as the remand order especially in a case, where there is no bail application is filed, assumes

importance, as the petitioner could make an effective representation only in the event of those documents are furnished. The non-furnishing of such

documents will have an adverse effect on the right of the detenu to make an effective representation as to any of the observations made in the

remand order by the learned Judicial Magistrate. Hence, a communication of one Judicial Magistrate to another Judicial Magistrate before whom

also some cases are pending against the detenu cannot be considered to be a compliance of furnishing the relied upon documents, namely, the

remand order as well as the surrender petition. On this ground, the petition must succeed. Accordingly, the detention order is quashed. The

Habeas Corpus Petition is allowed. The petitioner is set at liberty if not his detention/remand is required in any other case.