
(2002) 04 MAD CK 0047
In the Madras High Court
Case No : H.C.P. No. 1684 of 2001

Gobi	Vs	APPELLANT
State of Tamil Nadu		RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Madras Prohibition Act, 1937 — Section 3(3), 3(4), 4(1)
Penal Code, 1860 (IPC) — Section 328

Citation : (2002) 04 MAD CK 0047

Hon'ble Judges : S. Jagadeesan, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Swamidoss Manokaran, for the Appellant; A. Navaneethakrishnan, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioner, husband of the detenue by name Tmt. Simla, has challenged the detention order passed by the second

respondent dated 24.9.2001 in BDFGIS No.124/2001 as bootlegger under the provisions of the Tamil Nadu Act 14 of 1982 and seek for a

consequential direction to set the said detenue at liberty.

2. During a prohibition raid conducted by the Inspector of Police, Shankar Nagar Police Station along with his party in Anagaputhur at

Ayothimman Koil Street on the evening of 17.8.2001, the detenue was found in possession of three black coloured plastic cans each containing 35

litres of arrack, and a case was registered in Crime No.589/2001 u/s 4(1)(aaa) of the Tamil Nadu Prohibition Act and u/s 328 of IPC. The

detenue was arrested and produced before the Judicial Magistrate, Tambaram on 17.8.2001 and was remanded to judicial custody. Since the

detenue involved herself in similar offences earlier and acted in a manner prejudicial to the maintenance of public health and public order, the detention order was passed on 24.9.2001.

3. Mr. S. Swamidoss Manokaran, learned counsel for the petitioner would challenge the order of detention on the following grounds, viz., (1) even prior to the order of detention, a pre-detention representation was made by the detenue on 22.9.2001 and the same was not considered by the detaining authority and the said representation was also not forwarded to the Government. Hence, the order of detention is vitiated for non-consideration of the pre-detention representation. (2) Secondly, there was a delay in the disposal of the representation made by the detenue on 18.10.2001 as the same was rejected only on 16.11.2001 by the detaining authority. (3) Thirdly, even though the remand order dated 17.8.2001 was in English, the same was not furnished to the detenue in Tamil, the language known to her.

4. Heard the learned Additional Public Prosecutor for the respondents.

5. Insofar as the first submission of the learned counsel for petitioner as to the non-consideration of the pre-detention representation by the detaining authority, it is seen that the pre-detention representation dated 22.9.2001 was received by the detaining authority only on 27.9.2001.

Even much prior to the receipt of the pre-detention representation, the detaining authority had passed the orders of detention on 24.9.2001.

Hence, the contention of the learned counsel for petitioner that the pre-detention representation was not considered by the detaining authority

cannot be accepted as obviously on the date when the detention order was passed, the said representation was not before the detaining authority

for his consideration. Insofar as the contention that the detaining authority has not forwarded the said pre-detention representation to the

Government and, therefore, the detention order is vitiated, the learned counsel relied upon the judgments of this Court in H.C.P.No.656 of 1998

dated 17.9.98 and in T.M. Syed Ali and another Vs. State of Tamil Nadu and five others, "".

6. Sub-section 3 of Section 3 of the Act reads as under:-

When any order is made under this section by an officer mentioned in sub-section 2 he shall forthwith report the fact to the State Government

together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no

such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State

Government.

As per the said section, any pre-detention representation, even if it is received by the detaining authority, could be forwarded to the State

Government only if it is in the opinion of the detaining authority that it has a bearing in passing the order of detention. In the absence of the said

representation before the detaining authority, there was no question of the detaining authority either considering or forwarding the same to the

Government for its consideration. That apart, after the orders of detention was passed, there is nothing for the detaining authority to consider the

said representation as if the same having any bearing for the subjective satisfaction and as such it cannot be said that such representation will have a

bearing in passing the order of detention. When the representation was not available before the detaining authority at the time detention order was

passed, it is not a relied document and there was no consideration of the same by the detaining authority to form an opinion to pass the order of

detention, and as such the said representation need not be forwarded to the State Government for its consideration. The judgment relied upon by

the learned counsel for petitioner in H.C.P.No.656 of 1998 dated 17.9.98 was passed entirely on a different context. In that judgment, the

question of the representation having any bearing in the matter of passing detention order was not argued and considered. In the present case, it is

not contended before us that the said representation has any bearing in passing the order of detention. The facts of the case in the judgment

reported in T.M. Syed Ali and another Vs. State of Tamil Nadu and five others, are also entirely different to the facts of the present case. In that

case the detention order was passed on 2.8.98 and it was alleged that the petitioners were involved in the incident that took place on 2.8.98. A

telegram and a representation were sent alleging that no such incident had taken place on 2.8.98 and the petitioners never involved in the incident

as they were arrested on 25.7.98 and 31.7.98 respectively and were in custody. In that context, the Court held that both the representation and

the telegram are crucial materials and therefore, those materials ought to have been forwarded to the State Government by the detaining authority.

As earlier noticed, the pre-detention representation made in this case is not a relevant material piece of evidence for the State Government to

consider and take decision u/s 3(4) of the said Act. Further, the learned Additional Public Prosecutor contended that the said representation had

no bearing in passing the order of detention and therefore, the non forwarding of the said representation to the State Government will not vitiate the

order as the detaining authority is under the obligation to forward the representation only if in its opinion the said representation has any bearing on

the subject matter.

7. The said point came up for consideration before yet another learned Division Bench in H.C.P.No.542 of 1999 and this Court by order dated

25.10.99 has also taken a similar view by holding that the detaining authority is under obligation to forward the pre-detention representation to the

State Government only if in its opinion the said representation has a bearing on the subject matter. We do not also find any such materials in the

pre-detention representation warranting the detaining authority to form its opinion on the detention order thereby to forward the same to the State

Government. Hence, we are of the considered view that non forwarding of the pre-detention representation to the State Government which has no

bearing on the subject matter cannot be a ground to vitiate the order of detention. Accordingly, we reject the said submission of the learned

counsel for petitioner.

8. Insofar as the submissions on delay in consideration of the representation of the petitioner, it is to be seen that the representation dated

18.10.2001 was received by the Government on 22.10.2001. The Government has called for remarks from the District Collector on 23.10.2001

and the same was received by him on 29.10.2001. The District Collector forwarded his remarks on 2.11.2001 and the files were received by the

Government on 7.11.2001 and were circulated on 8.11.2001. The same was dealt with by the Under Secretary, Deputy Secretary and Secretary

to the Government on 9.11.2001 and by the Hon"ble Minister on 13.11.2001. The order rejecting the representation of the petitioner was

communicated on 16.11.2001. The learned counsel for petitioner submitted that

when the copy of the representation was forwarded on

23.10.2001, it was received after a period of nearly six days by the Collector on 29.10.2001 due to delay in postal transit. For the delay in postal

transit, the respondents ought to have produced the postal acknowledgment to satisfy this Court as to the date on which the District Collector had

actually received the representation and in support of the same, the learned counsel relied upon the Division Bench judgments of this Court in

H.C.P.No.1738 of 1995 dated 17.4.96 and in H.C.P.No.818 of 1995 dated 27.10.95. In both the judgments, this Court has held that in the

event of any unexplained delay in postal transit, the respondents shall produce the envelopes to sustain their stand as to the date on which the

remarks were received by the District Collector. The Supreme Court in the judgment in "" Rajammal Vs. State of Tamil Nadu and Another, "" while

considering the delay in consideration of the detenu's representation has held as follows:-

It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is

prescribed by Art. 22 of the Constitution for the decision to be taken on the representation the words ""as soon as may be"" in cl.(5) of Art. 22

convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-

empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the

delay was occasioned due to permissible reasons or unavoidable causes.

If delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of

the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that

the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by

the authority concerned.

The Supreme Court in the judgment in Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, "" while considering the delay has held as

follows:-

The time imperative can never be absolute or obsessive. The occasional

observations made by the Supreme Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu.

The Supreme Court in yet another judgment in "" K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, "" while considering the delay in disposal of the representation, has held as follows:-

It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation

and dispose of the same as expeditiously as possible. But the time imperative for consideration of representation can never be absolute or

obsessive. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation

should be dealt with. It depends upon the facts and circumstances of each case, upon the necessities and the time at which the representation is

made. The requirement is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any

unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention

impermissible and illegal.

A survey of the law laid down by the Supreme Court on the question of delay in disposal of representation, reveals that in the absence of any

period prescribed either under the Constitution or under the concerned detention law, facts and circumstances of each case to be considered to

arrive at a conclusion as to whether there was in fact an unexplained delay in disposal of the representation. The time imperative can never be

absolute or obsessive. While considering the question, the Court has to take note of the fact as to whether there was any supine indifference,

slackness or callous attitude in considering the representation. The order of detention is not vitiated only on the ground that there was a delay in

disposal of the representation when such delay is explained. Even the Supreme Court has considered that due to the delay which may be shorter or

longer, is not a ground to hold that the order of detention is vitiated in the event

the delay is properly explained.

9. Coming to the facts of the present case, remarks were called for by the Government from the District Collector on 23.10.2001 and he received

the same on 29.10.2001. The Collector has forwarded his remarks on 2.11.2001 to the Government. It has to be now considered as to whether

there was a delay in transit. 25.10.2001 and 26.10.2001 were holidays for Ayutha Pooja and Vijayadasami and 27.10.2001 and 28.10.2001

being Saturday and Sunday, the Collector has received the same on 29.10.2001 and has forwarded his remarks to the Government on 2.11.2001.

From the dates furnished by the learned Additional Public Prosecutor, we are satisfied that there was no delay in disposal of the representation as

the State has explained the movement of the files. Therefore, we do not find any delay in the transit and therefore, the question of producing the

envelopes to sustain the date of receipt of the remarks does not arise. Hence, we reject the said submission also.

10. Insofar as the last contention urged on behalf of the learned counsel for petitioner that a copy of the remand order was not furnished to the

detenue, it is not in dispute that the copy of the order extending the remand was furnished to the detenue and we have also held in H.C.P.No.1311

of 2001 dated 8.4.2002 that when the copy of the order of extension of remand is furnished, non-furnishing of the initial remand order will not in

any way prejudice the detenue and consequently will not vitiate the order of detention. In view of the said order, we do not find any force in the

said contention of the learned counsel for petitioner also. Accordingly, we reject the said submission.

11. For all the above reasons, we do not find any merit in the habeas corpus petition and the same is dismissed.