
(2000) 04 MAD CK 0048
In the Madras High Court
Case No : H.C. Petition No. 1723 of 1999

K. Jayakumaran

APPELLANT

Vs

The District Collector District Magistrate and Others

RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Citation : (2000) CriLJ 5008 : (2002) 2 LW(Cri) 656

Hon'ble Judges : V. Kanagaraj, J;R. Balasubramanian, J

Bench : Division Bench

Advocate : A.D. Jagadish Chandra, for the Appellant; S. Anbalagan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R. Balasubramanian, J.—The Petitioner's brother is detained as a goonda by detention order dated 22-5-1999 under the Tamil Nadu Act

14 of 1982. Mr. Jagadish Chandra, learned counsel mainly advanced only one point before us in challenging the order of detention and that is as

follows :

On 11-6-1999 the detenu gave a representation to the Superintendent, Central Prison, where he was confined, to be forward to the Government.

The jail authority refused to receive the same since it was in Malayalam language and he insisted that unless the representation is given in Tamil

language it shall not be forwarded. Ultimately, according to him, lawyer's notice dated 17-6-1999 was issued to the jail authority as well as to the

concerned Secretary to the Government. In that notice it is stated that on 11-6-1999 the jail authority refused to receive the representation given

by the detenu in Malayalam. The notice also contains a further statement that a

copy of the refused representation is again sent as an enclosure to the letter and the jail authority can take the signature of the detenu in that representation at least and forward the same to the appropriate authorities. It is further stated in the affidavit that by such refusal to receive the representation dated 11-6-1999 and not forwarding it to the appropriate authority, the detenu was denied an opportunity to make an effective representation before the Advisory Board which met on 14-6-1999. We heard the learned Additional Public Prosecutor on this aspect.

2. We perused the lawyer's notice dated 17-6-1999. It contains all the averments as noted by us above. A copy of the notice forwarded to the concerned jail authority is also available in the file, which is in the custody of the learned Additional Public Prosecutor. The fact remains that the representation of the detenu was forwarded by the jail authority only subsequent to the lawyer's notice and it was received by the Government on 21-6-1999. The Advisory Board had met on 14-6-1999 itself. The learned Additional Public Prosecutor relying upon the parawise remarks submitted by the jail authority would contend that the statement made on behalf of the detenu that a representation was given to the jail authority on 11-6-1999 is false. We are not inclined to agree with the submission of the learned Additional Public Prosecutor which he made based on the parawise remarks. If really the statement found in the lawyer's notice dated 17-6-1999 regarding the detenu presenting a representation in person on 11-6-1999 and the jail authorities refusing the same is false, then the jail authority should have immediately responded to the notice. The refusal to receive the representation on 11-6-1999 as set out in the lawyer's notice dated 17-6-1999 is also confirmed by a telegram dated 12-6-1999 sent on behalf of the detenu to the concerned Secretary to the Government.

3. In view of the overwhelming documentary evidence available in this case in the form of telegram; lawyer's notice dated 17-6-1999 and the specific statement in the affidavit filed in support of the writ petition to that effect, we are not inclined to accept the submission made by the learned Additional Public Prosecutor that no such representation was ever given to the jail authority on 11-6-1999. Therefore going by the fact that a representation was in fact given on 11-6-1999 to the jail authority and noticing that the jail authority had refused to receive the same since that

representation was in Malayalam, we are of the opinion that a valuable time of more than seven or eight days has been lost in considering the representation of the detenu, which was sent by the jail authority to the Government only after the receipt of the lawyer's notice. The detenu has been told in the grounds of detention that he has a right to make a representation and if he chooses to do so, he must send it as expeditiously as possible through the Superintendent of Central Prison, in which he is confined. The detenu has acted strictly in accordance with the directions and he need not do anything further. When such is the position in law, the jail authority cannot refuse to receive the representation in whatever language it may be and he is duty bound to forward the same to the concerned authority without even a minute's delay. It is the jailer, according to us, who has deliberately failed in performing the duty cast upon him.

4. The judgment in *Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others*, is brought to our notice wherein the Honourable Supreme

Court has held that the unexplained delay of seven days on the part of the jail superintendent in transmitting the representation to the Central

Government as a result of which the representation had reached the Government 11 days after it was handed over to the jail superintendent, would

vitate the order of detention. Inasmuch as we have held that the representation given by the detenu was refused to be received by the jail authority,

the judgment will definitely apply in all fours to the case on hand.

5. All the above noted facts lead us to the only conclusion that the detenu had been considerably prejudiced in his representation not being

considered as early as possible. This vitiates the order of detention and accordingly the habeas corpus petition is allowed. The impugned order of

detention is quashed. The detenu is ordered to be set at liberty forthwith unless his detention is required in connection with any other case.