

(2003) 06 MAD CK 0089

In the Madras High Court

Case No : Habeas Corpus Petition No. 2259 of 2002

K. Marimuthu

APPELLANT

Vs

The District Collector and District Magistrate and The
Secretary to Government, Prohibition and Excise Department

RESPONDENT

Date of Decision : 25-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 06 MAD CK 0089

Hon'ble Judges : S.R. Singharavelu, J;R. Jayasimha Babu, J

Bench : Division Bench

Advocate : S. Anbalagan, for the Appellant; A. Navaneethakrishnan, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—The detention order dated 17.07.2002 against one Chinnamma, wife of Marimuthu directing her detention under the Tamil Nadu Act 14 of 1982 on the ground that she is a bootlegger and her activities are prejudicial to the maintenance of public health and maintenance of public order, has been called into question on two grounds.

2. The first ground is that in the detention order the detenu had not been informed that any representation that she may make to the detaining authority shall be placed before the Advisory Board although she had been informed that it was open to her to make a representation to the detaining authority before that detention order was approved by the State Government - the approval being required to be made within a period of 12 days.

3. Counsel in support of his submission relied upon the decision of the Constitution Bench of the Supreme Court in the case of Kamalesh Kumar Ishwardas Patel v. Union of India, 1995 SCC 643, wherein it was, inter alia, held that the failure to inform the detenu about his right to make a representation to

the officer making the detention order would vitiate the order of detention. The Acts considered in that case were COFEPOSA Act, PIT NDPS Act.

4. The Court also held that the Government which specially empowers the officer to make order of detention under the aforementioned Acts does not become the detaining authority on the analogy that the order passed by such officer acquires deemed approval by the Government from the time of its issue. Counsel submitted that in this case, the detention order having been made by the delegate of the Government, namely the District Collector and District Magistrate, Trichy, the detenu had a right to make a representation to that authority in addition to make a representation to the Government as also to the Advisory Board and therefore, the representation that could be made to the detaining authority was required to be placed before the Advisory Board besides placing before it the representation, if any, made to the State.

5. Counsel invited our attention to the decisions of the apex Court in the case of *State of Maharashtra v. Santosh Shankar Acharya* 2000 SCC 1400, wherein it was held that the detenu will have a right to make a representation to the detaining authority so long as the order of detention has not been approved by the State Government and consequently, non communication of the fact to the detenu that he has a right to make a representation to the detaining authority would constitute an infraction of the valuable constitutional right guaranteed to the detenu under Article 22(5) of the Constitution of India.

6. In that case, the apex Court also observed, after referring to the earlier decisions of the Court in the case of *Veeramani v. State of Tamil Nadu* 1994 SCC 482 and in the case of *State of Maharashtra v. Susheela Mafatlal Shah* 1989 SCC 1 "..... As has been stated earlier, it may be difficult to contend that even after the approval of the order of detention by the State Government the detaining authority would still be competent to entertain and dispose of the representation in exercise of the power u/s 21 of the Bombay General Clauses Act, but this decision cannot be said to be an authority to hold that even before the approval of the order of detaining authority the detaining authority does not possess the power u/s 21 of the Bombay General Clauses Act."

7. In the case of *Veeramani* the Court held that the question of detaining authority revoking the order after such approval by the State Government does not arise as the power preserved by virtue of the provisions of the General Clauses Act would no more be available.

8. Section 3 of the Tamil Nadu Act 14 of 1982 reads thus:

3. Power to make order detaining certain persons:-

(1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or forest offender or goonda or immoral traffic offender or slum grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing

that such person be detained.

(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section;

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) 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."

9. As could be seen from that provision when the detention order is made not by the State Government, but by the District Magistrate or the Commissioner of Police, the order made by such officers shall not remain in force for more than twelve days after making thereof, unless, in the meantime, it has been approved by the State Government.

10. A representation made to the District Magistrate or the Commissioner of Police, may be considered by those officers only if prior to such consideration, the State Government has not approved their orders or if a period of 12 days has not expired from the date of order of detention passed by such officers. If a representation is made within that 12 days" period, and before the State Government accords approval, the detaining authority would be duty bound to consider the representation and the fact that the detenu has a right to make a representation to the detaining authority has necessarily to be intimated to the detenu.

11. After the expiry of the period of 12 days from the date of making the order, the detaining authority would have no jurisdiction whatsoever to consider any representation made to him. He would also have no jurisdiction to consider the representation before expiry of 12 days" period, if the State Government, prior to his consideration of the representation has approved the order.

12. The detenu has a right to make a representation to the State Government at any time from the time the detention order is made till the time it expires. The detenu also has a right to make a representation to the Advisory Board as the

whole purpose of constituting an Advisory Board is to advise the State Government whether the detention order should at all be allowed to continue to remain in force. The Advisory Board therefore should be made aware of any representation that the State Government may have received from the detenu or from any person on his behalf.

13. This Court, in the case of *Saraswathy v. Ramaiya Nadar* 1999 1 LW 339, has held that the detenu should be intimated about the fact that any representation he may make to the Government will be placed before the Advisory Board. That can be done only when the representation is given on or before the day on which the Advisory Board meets.

14. As noted by the apex court in the case of *State of Maharashtra*, the right of the detenu to make a representation to the detaining authority and the corresponding duty of that authority to consider that representation, whether the detaining authority is the District Magistrate or the Commissioner of Police, is to be exercised only prior to approval of the detention order by the State Government. While it may be open to the detaining authority in case where a representation is received, to forward the same to the State Government, it is difficult to spell out the obligation on the part of the detaining authority to inform the detenu that any representation made by the detenu to the detaining authority will be placed before the Advisory Board, as the detaining authority to whom the representation is made is powerless to deal with the representation after the approval by the State Government. The power to revoke the order remains available to the State Government at any time after the making of the order and, even after receiving the advice from the Advisory Board. The representation made to the State Government therefore is a representation which is required to be placed before the Advisory Board. If representation is received before the meeting of the Advisory Board, as the Advisory Board which is required to advise the Government with regard to the necessity for the detention should be apprised of all the materials pertaining to such detention including the representation made by the detenu or on his behalf to the Government.

15. The representation, if any, made by the detenu to the detaining authority, however, is not on par with the representation which he may make to the State Government. The failure to intimate the detenu that the representation that the detenu may make to the detaining authority will be placed before the Advisory Board, does not in any way, affect the validity of the order.

16. The duty spelt out by the Courts on the part of the detaining authority to inform the detenu of his right to make a representation to the detaining authority, is based on the fact that the authority is also vested with the power to revoke the order. Once the authority becomes powerless to revoke the order that authority has no further role to play. The authority which is empowered to revoke the order is thereafter the State Government and representation made to the State Government must necessarily be placed before the Advisory Board, if the

same had been received before the meeting of the Advisory Board.

17. In this case, it is also to be noted that no representation, in fact, had been made to the detaining authority.

18. The second point urged was that the detainee had been supplied among other documents, the opinion of handwriting expert who had expressed his inability to offer any opinion with regard to the thumb impression found on the receipt issued to the person who had been convicted in the first adverse case mentioned in the detention order, as the thumb impression on that document was smudged.

19. Counsel submitted that that would indicate that the person who paid the fine in the first adverse case was not the detainee, but someone else.

20. We cannot draw any such inference from the report of the handwriting expert. The other documents supplied to the detenu clearly show the involvement of the petitioner in several adverse cases as also in the ground incident.

21. During the course of the hearing the prosecution placed before us the letter addressed to the detaining authority by the Revenue Divisional Officer, wherein it was mentioned that the detenu was a bootlegger and her reputation as such was well known. Counsel for the petitioner contended that the non furnishing of copy of that document would vitiate the order of detention as that document, in his submission, had been relied upon.

22. The document relied upon by the detaining authority were those placed before him by the sponsoring authority, copies of which have been furnished to the petitioner.

23. The detention is on the ground that the detaining authority was satisfied of the need for the detenu's detention, and not by reason of the RDO's view that he was a bootlegger. The detention is based upon the materials referred to in the detention order and in the records supplied to the petitioner, which show her involvement in the adverse cases as also in the ground case.

24. Both the contentions raised on behalf of the detainee are rejected. The habeas corpus petition is dismissed.