
(2014) 04 MAD CK 0099
In the Madras High Court
Case No : H.C.P. No. 2538 of 2013

Kalaiselvi

APPELLANT

Vs

The Principal Secretary to Govt., Home, Prohibition and
Excise Department and The District Collector and District
Magistrate, Thiruvarur District

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Constitution of India, 1950 — Article 22(1)

Penal Code, 1860 (IPC) — Section 294(b), 307, 34, 342, 352

Citation : (2014) 04 MAD CK 0099

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner is the wife of the detenu and challenge is made to the order of detention dated 08.10.2013 made in C.O.C. No. 30 of 2013, passed by the 2nd respondent under which the detenu has been branded as a Goonda and detained under 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, hereinafter referred to as Tamil Nadu Act 14 of 1982.

2. As per the grounds of detention dated 08.10.2013, the detenu came to the adverse notice in the following case:-

Sl. No.

Police Station & Crime No.

Section of Law

1.

Peralam Police Station Cr. No. 14 of 2011

Sections 294(b), 307 IPC 3(1) of TNPPD Act, 1992 (amended 1994) r/w 34 IPC

2.

Peralam Police Station Cr. No. 326 of 2013

Sections 294(b) & 307 IPC

3.

Peralam Police Station Cr. No. 332 of 2013

Sections 387 & 506(ii) IPC

4.

Peralam Police Station Cr. No. 488 of 2013

Sections 294(b), 342, 352 and 307 and 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002

3. In para-3 of the grounds of detention, it is stated that among other things that the detenu is also involved in the commission of the offence, which took place on 21.09.2013 at 10.00 hours, which led to the registration of a case by Inspector of Police, Peralam Police Station in Crime No. 490 of 2013 for offences under Sections 387 and 506(ii) IPC. The detaining authority, on being satisfied upon the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention. Challenging the said order, petitioner is before this Court in this habeas corpus petition.

4. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focussed his argument that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo in a proper manner to the family members, relatives or friends of the detenu and there was no proof to show that the intimation of arrest was given, as the arrest was communicated through phone to the wife of the detenu, which clearly shows non-application of mind on the part of detaining authority.

5. Per contra, Mr. M. Maharaja, learned Additional Public Prosecutor submits that acts committed by the detenu are prejudicial to the maintenance of public order and peace and the arrest was communicated by way of cell phone to the wife of the detenu, which is an effective and speedy way of communication available with the authorities and therefore, there is no illegality in making such intimation.

6. We have considered the rival submissions and perused the materials available on record.

7. A close reading of the arrest memo, which is annexed at page no. 83 of the booklet shows that the arrest of detenu was intimated to the wife of detenu over phone. But at the same time, it is to be remembered that in order to meet

fairness, justness and reasonableness, after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him. In the case on hand, detaining authority has stated that the arrest of the detenu had been communicated through phone to the wife of the detenu, but, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, on the failure of the same, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India.

8. The Hon"ble Division Bench of this Court in the case of Shanmugam and Another Vs. State of Tamil Nadu and Another, , while issuing some suggestions and guidelines to the Government of Tamil Nadu in this regard, set aside the order of detention, by observing as under:

19. Despite clear instructions given by the Government after touching upon the legal position, the officer, who arrested the detenus informed the said arrest to the wife and friend of detenus over cell phone , by simply stating that the date of arrest being Sunday, no telegraphic service was available, which is a matter of ignorance on the part of arresting authorities, as in our country, telegraphic services are available even on Sundays. The mode of communication adopted by the authorities, which was not even looked into by the detaining authorities is not only unknown to the settled principles, but also is an attempt to cast aside the instructions given by the Government.

9. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely, Dhandapani, S/o. Sambandam, made in C.O.C. No. 30 of 2013 dated 08.10.2013, is quashed and the habeas corpus petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.