

(2017) 01 MAD CK 0094
In the Madras High Court
Case No : 1337 of 2016

Kaliyammal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

Constitution of India, Article 21, Article 22 -
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum

Citation : (2017) 01 MAD CK 0094

Hon'ble Judges : R. Subbiah, Nisha Banu

Bench : DIVISION BENCH

Advocate : R. Subbiah, Nisha Banu

Judgement

1. This Habeas Corpus Petition is filed by the wife of the detenu - Murugesan, S/o.Rajamani Nadar, aged about 53 years, who is under detention,

pursuant to the order passed by the second respondent dated 22.09.2016, in Cr.M.P.No.13/2016 (Boot-Legger), under Section 2(b) of the

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug-offenders, Forest-offenders, Goondas, Immoral

Traffic Offenders, Sand Offenders, Sexual 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.163, Home, Prohibition & Excise (XVI) Department, dated 18.07.2016, under Sub-Section (2)

of Section 3 of the said Act, branding him as ""Boot-Legger"".

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused

the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument

on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities,

submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the

representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no

prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the

Constitution of India.

5. The Detention Order in question was passed on 22.09.2016. The petitioner made a representation dated 03.10.2016. Thereafter, remarks

were called for by the Government from the Detaining Authority on 05.10.2016. The remarks were duly received on 13.10.2016. Thereafter, the

Government considered the matter and passed the order rejecting the representation on 21.10.2016.

6. It is the contention of the petitioner that there was a delay of 3 days in submitting the remarks by the Detaining Authority and thereafter, there

was again a delay of 6 days in considering the representation.

7. In *Rekha v. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon"ble Supreme Court has held that the procedural safeguards are required to be

zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged

activities undertaken by the detenu.

8. In *Sumaiya v. The Secretary to Government*, [2007 (2) MWN (Cr.) 145], a Division Bench of this Court has held that the unexplained delay of

three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In *Tara Chand v. State of Rajasthan and others*, [1980 (2) SCC 321], the Hon"ble Supreme Court has held that any inordinate and

unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 3 days in submitting the remarks by the Detaining Authority and

6 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Detention Order, passed by the second respondent, in his proceedings in Cr.M.P.No.13/2016 (Boot- Legger), dated

22.09.2016, is quashed. The detenu, namely, Murugesan, S/o.Rajamani Nadar, aged about 53 years, is ordered to be set at liberty forthwith, if he

is not required for detention in connection with any other case.

12. In the upshot, we allow the Habeas Corpus Petition. H.C.P. allowed.