

(2014) 09 MAD CK 0154

In the Madras High Court

Case No : Habeas Corpus Petition (Md) No. 688 of 2014

Kamalam

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Constitution of India, 1950 — Article 22(5)
General Clauses Act, 1897 — Section 21
Penal Code, 1860 (IPC) — Section 294(b), 341, 380, 384, 392
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 15, 2(f),
3, 3(1), 3(3)

Citation : (2014) 09 MAD CK 0154

Hon'ble Judges : V.S. Ravi, J;S. Manikumar, J

Bench : Division Bench

Judgement

S. Manikumar, J.—Mother of the detenu/Swamidhas @ Charai, branded as a "Goonda" in detention order, P.D. No.06/2014 dated 07.04.2014 by the 2nd respondent/District Collector and District Magistrate, Kanyakumari District, Nagercoil, has sought a Writ of Habeas Corpus.

2. The detenu has come to adverse notice of the police in four cases. The first case has been registered in Vadasery Police Station Crime No. 953/2011, under Sections 457, 380 r/w 511 IPC; second case has been registered in Vadasery Police Station Crime No. 2288/2011, under Sections 457, 380 IPC; third case has been registered in Vadasery Police Station Crime No. 2336/2011, under Section 384 IPC and fourth case has been registered in Vadasery Police Station Crime No. 140/2013, under Sections 341, 294(b), 427, 392 and 506(ii) IPC. In all the cases, charge sheets have been filed and the detenu was released on condition bail. Ground case has been registered on the file of Vadasery Police Station Crime No. 228/2014, under Sections 341, 294(b), 427, 392, 506(ii) IPC, in which, the detenu has been remanded. On being satisfied that the detenu is indulging in activities, which are prejudicial to the maintenance of public order,

the detaining authority, has clamped him with an order of detention. At paragraph 6 of the grounds of detention, the detaining authority has concluded as follows:-

"Hence I am satisfied that Thiru.Swamidhas @ Charai is committing grave crimes and is also acting in a manner jeopardizing public peace and public order and as such Thiru.Swamidhas @ Charai is a "GOONDA" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. As per the material evidences placed before me, I am satisfied that Thiru.Swamidhas @ Charai is a "GOONDA" and there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of peace and public order."

3. Inviting the attention of this Court to paragraph "g" of the counter affidavit filed by the 2nd respondent/District Collector and District Magistrate, Kanyakumari District, Nagercoil, Mr.J.John Jeyakumar, learned counsel for the petitioner submitted that the representation dated 12.04.2014 submitted by the mother, on behalf of the detenu, has been rejected on 23.04.2014 and thus there is a delay in considering the representation.

4. Responding the same, Mr.C.Ramesh, learned Additional Public Prosecutor submitted that the representation submitted on behalf of the detenu, was received on 15.04.2014, and the same has been considered by the 2nd respondent and rejected on 23.04.2014 and thus there is no delay.

5. At this juncture, when we examined the rejection order, dated 23.04.2014, we find that the detaining authority himself has considered the representation of the petitioner dated 12.04.2014 and rejected the same on 23.04.2014.

6. As per sub section (3) of section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982, when any order is made under section 3 of the Act, 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 making thereof, unless in the meantime, it has been approved by the State Government.

7. Reading of the above section makes it clear, that when the detention order has been made by the District Collectors/Commissioners of Police, they should immediately report the fact, with the grounds of detention, to the State Government. The State Government should approve the detention order of the abovesaid detaining authorities, within twelve days from the date of order. If the order of detention is not approved within twelve days of the detention order, the detention order will lapse and immediately thereafter , the detenu has a right of release.

8. It is a settled legal position that within twelve days before the date of approval, the detaining authority is at liberty to withdraw the order of detention, if a case is made out. After the approval of the detention order by the Government, within the statutory period of 12 days, the detaining authority becomes functus officio and he has no jurisdiction to pass any orders on the representation submitted, on behalf of the detenu.

9. Consideration of the representation by the competent authority is one of the constitutional safeguards enshrined in Article 22(5) of the Constitution of India. Therefore, no sooner, the statutory period of 12 days is over, the detaining authority ought to have forwarded the representation dated 12.04.2014 submitted on behalf of the detenu, to the Government, to consider and pass appropriate orders. Thus, by not forwarding the representation to the Government and rejecting the same, the 2nd respondent/detaining authority has curtailed the constitutional right of the detenu, of his representation being considered by the Government and thus there is a violation of Article 22(5) of the Constitution of India, which vitiates the continued detention of the detenu. In this regard, it is worthwhile to extract following decisions:-

(a) In *Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others*, , the Hon"ble Supreme Court at paragraph 8 has observed as follows:-

"8..... The general power of revocation was conferred only on the State Government, that too in writing for reasons to be recorded in that behalf. By necessary implication flowing from Section 3(3) concomitant result is that the the authorised officer has no express power or general power under Section 21 of the General Clauses Act to revoke or rescind or modify the order after the State Government approved of it under sub-section (3) of Section 3 read with Section 3(1). The State Government alone, thereafter has power to revoke or rescind the order of detention either on representation under Article 22(5) or under Section 15 of PASA. The representation should be disposed of accordingly. The reason is obvious that once the order of detention was approved by the State Government within the aforesaid 12 days? period or confirmed by the Advisory Board within the period of seven weeks the exercise of power by the authorised officer would run counter to or in conflict thereof. The State Government has been expressly conferred with powers under Section 15 to revoke, rescind or modify the order of detention at any time during one year from the date of making the order of detention. Therefore, the right of representation guaranteed under Article 22(5) would, thereafter i.e. after approval under Section 3(3) be available to the detenu for consideration by the State Government."

(b) In *Rajeswari vs. The Secretary to Government, Prohibition and Excise Department*, reported in 2006 (2) LW 369, it is held that after passing the detention order, the detaining authority can only forward the representation, to the Government and he has no power to pass orders on the representation of the detenu.

(c) In Sri Anand Hanumathsa Katare Vs. Additional District Magistrate and Others, , the Hon"ble Supreme Court at paragraph 10, has held as follows:-

"Therefore, the Detaining Authority becomes functus officio the moment the approval is accorded by the State Government."

(d) Following the above referred two decisions, a Hon"ble Division Bench of this Court in Muruggavalli Vs. State, , set aside the detention order.

10. In view of the above discussion and decisions, cited supra, continued detention of the detenu is rendered illegal. We, therefore, direct that the detenu, Swamidhas @ Charai, be released forthwith, unless his presence is required in connection with any other case.

11. In the result, the Habeas Corpus Petition is allowed.