

(2000) 03 MAD CK 0090
In the Madras High Court
Case No : H.C.P. No. 1435 of 1999

Kanniappan

APPELLANT

Vs

District Magistrate and District Collector and Another

RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 307, 314

Citation : (2000) CriLJ 3105 : (2001) 1 LW(Cri) 196

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

Bench : Division Bench

Advocate : S.E. Victor, for the Appellant; S. Ambalagan, Special Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R. Balasubramanian, J.—The petitioner's son is detained as a "goonda" under Tamil Nadu Act 14 of 1982 by detention order dt. 10-7-99. That order is successfully challenged before this Court in this writ petition on one ground and that is as follows:-

While arriving at the subjective satisfaction on the imminent possibility of the detenu coming out on bail, the detaining authority had applied his mind to the offences registered against the detenu for the offences punishable under Sections 147, 148 and 307 of the IPC in the ground case in Crime No. 857/ 99. There are two adverse cases noticed against the detenu. The first adverse case was on 20-8-98 for an offence punishable u/s 379 of the IPC and the second adverse case was on 4-6-99 for the offences punishable under Sections 147, 148 ,307 and 302 of the IPC. The learned counsel for the petitioner is correct in stating that the detaining authority had not applied his mind, while he arrived at the subjective satisfaction on the imminent possibility of the detenu coming out on bail, with reference to the offences registered against the detenu for the second adverse case, which stands registered, among other offences, for the offence punishable u/s 302 of the IPC. While arriving at the subjective

satisfaction on the imminent possibility of the detenu coming out on bail, the detaining authority had not applied his mind to the offence registered against the detenu in the second adverse case namely, 302, IPC. The sum and substance of the argument of the learned counsel for the petitioner is that, such non-application of mind on the part of the detaining authority would definitely vitiate the order of detention. For this purpose the learned counsel for the (petitioner) relies upon a judgment of this Court in the case reported in *Dharmar v. State of Tamil Nadu*, 1995 (1) MLW (Cri) 333. The learned Additional Public Prosecutor brought to our notice, on this point, a recent judgment of this Court, dt. 31-1-2000 in HCP No. 1043/ 99.

2. In the light of the arguments advanced by the learned counsel on either side, we perused the entire materials available on records as well as the case laws brought to our notice by the learned counsel on either side. The fact remains that the detenu is shown to have involved himself in an offence of murder, besides other offences. The records do show prima facie the alleged involvement of the detenu in the ground case, which is stated to have taken place on 5-6-99 for the offences punishable under Sections 147, 148 and 307 of the IPC. In 1995 (1) Mad LW (Cri) 333, there were two adverse cases namely, one for the offence punishable under Sections 323, 324, 326 and 452 of the IPC and the later one for the offences punishable under Sections 147, 148, 341, 314, 506(II) and 302 of the IPC. The ground case in that decided judgment was registered for the offences punishable under Sections 341, 342, 427 and 506-511 of the IPC. Going by the offences registered in the adverse cases as well as in the ground case, the learned Judges in that case went on to hold that the detaining authority should not only apply his mind to the facts available with reference to the ground case but also with reference to the facts available in the second adverse case, since the second adverse case in that case disclosed an offence of 302, IPC and when compared, the offence registered in the ground case were only minor in nature. We extract here under the conclusion of the learned Judge in that judgment:

8. It is thus clear that the second respondent-detaining authority had not at all adverted to the factum of the detenu being lodged in prison as a remand prisoner in a serious offence of murder covered by adverse case No. 2, while considering the imminent possibility of his coming out on bail and his further indulging in prejudicial activities affecting the maintenance of public order.

9. In such state of affairs, we are of the opinion that there was utter non-application of mind on the part of the second respondent-detaining authority as regards the imminent possibility of the detenu coming out on bail and further indulging in prejudicial activities affecting the maintenance of public order. In this view of the matter, as rightly contended by learned counsel for the petitioner, the impugned order of detention is liable to be set aside and the same is accordingly set aside. The detenu is therefore ordered to be set at liberty forthwith unless and until he is required to be detained in connection with any other case. The HCP is thus allowed.

3. The learned Additional Public Prosecutor's argument based on the recent judgment of this Court dt. 31 -1 -2000 in HCP No. 1043 of 1999 can be distinguished on the facts available in the case extracted above. In the latter judgment of this Court, the learned Judges have also adverted their mind to the judgment of this Court in 1995 MLW (Cri) 333. On facts the learned Judges found that in the earlier decided case, as against the offences registered namely 341, 342, 323, 427 and 506-11 of the IPC in the ground case, an offence of 302, IPC was shown in the adverse case. That case was decided on the basis of the facts and circumstances available in that case. However, while deciding the latter case, the learned Judges took note of the fact that the ground case offence was 387, IPC and the adverse case offence was 307, IPC. and more or less both offences stand on the same footing in the manner of punishment. The learned Judges in that case were of the opinion that the failure to refer to the adverse case would not by itself show non-application of mind. In our opinion, both the judgments referred to above stand on the facts and circumstances available in each of those cases. But we find that the facts available in HCP No. 1043/99 referred to above so far as to registration of the offence is concerned, are not available in the case on hand. In fact the nature of the offences registered in the case on hand is more or less on par with the nature of the offences registered in the case decided by the earlier Division Bench of this Court namely 1995 (1) MLW (Cri) 333.

4. Under these circumstances we are of the opinion that the earlier judgment of this Court, on facts, squarely applies to the case on hand and since the latter judgment did not doubt that earlier judgment at all, we have no hesitation in holding that the earlier judgment of this Court more aptly applies to the case on hand. If the grounds of detention is tested in the light of the earlier judgment of this Court referred to supra, then it is clear that the detaining authority's failure to apply his mind to the offence registered in the second adverse case would definitely show non-application of mind. This definitely vitiates the order of detention. However the learned Additional Public Prosecutor would argue that once the subjective satisfaction of the detaining authority on the imminent possibility of the detenu coming out on bail is reflected in the grounds of detention, then the sufficiency or otherwise of the same shall not be gone into by this Court. We are afraid, we cannot agree with the same. If there are materials to support the subjective satisfaction arrived at by the detaining authority on the imminent possibility of the detenu coming out on bail, then the learned Additional Public Prosecutor would be right. But if there are no materials at all to arrive at the subjective satisfaction on the imminent possibility of the detenu coming out on bail, then this Court would have every power to interfere with the order of detention. Inasmuch as we have found, following the judgment of this Court in the case reported in 1995 (1) MLW (Cri) 333, that the subjective satisfaction was arrived at by the detaining authority in this case by non-application of mind, we are inclined to quash the order of detention and it is accordingly quashed. The HCP is allowed and the detenu is directed to be set at liberty forthwith, if he is not required in any other case.