
(1984) 07 MAD CK 0074
In the Madras High Court

Kannika

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 03-07-1984

Acts Referred:

Citation : (1985) CriLJ 1044

Hon'ble Judges : V. Ramaswami, J;David Annoussamy, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—This is a petition by the wife of the detenu for a writ of habeas corpus to produce the detenu and set him at liberty.

2. The husband of the petitioner, one Gemini alias Lakshmanan was detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities and Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) on the ground that he is a habitual criminal and that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order it was necessary to detain him under the provisions of that Act. He was accordingly detained by an order dt. 30-1-1984, and kept in custody in the central prison. The grounds of detention referred to the main instance as one of murder that took place on 10-1-1984. On that day, it is alleged that the detenu with his associates about six in number formed themselves into an unlawful assembly with the intention of attacking and committing the murder of one Neelakandan and they did commit rioting and ultimately it also happened to be a case of murder. A case was registered in crime No. 16 of 1984 of R-5 Choolaimedu police station for offences under Sections 147, 148, 341, 324 and 309 I.P.C. The detenu surrendered on 13-1-1984, and his associates were arrested on various days. The detenu was remanded by the X Metropolitan Magistrate. On 27-1-1984, he was given to police custody. On 28-1-1984, he was again surrendered back to judicial custody and on (he date when the order of detention was made, he was in remand.

3. The instances which were relied on for treating the detenu as a habitual

criminal and as a Goonda for taking action under the Tamil Nadu Act 14 of 1982, are two in number. The first instance was a case in crime No. 45 of 1978, R-5 Choolaimedu police station, for offences under Sections 324 and 34 I.P.C in which it was stated that on 3-1-1978 he and his associates were convicted and sentenced to pay a fine of Rs. 75 each. The second instance relates to a petty case No. 1132 of 1983 on the file of the same police station u/s 75 of the City Police Act, in which also the detenu was fined.

4. Three grounds are taken by the learned Counsel for the petitioner. The first was that while he was already in detention, there was absolutely no reason for detaining him under the preventive provisions of Tamil Nadu Act 14 of 1982 as a Goonda. In this connection he relied on a passage in Seervai on Constitutional Law, Vol. 1/3rd Edn. 1983, at page 851, wherein the learned author has stated thus -

It has been held that where a person was already detained in jail for awaiting his trial for certain offences alleged to have been committed by him, a warrant u/s 3, Preventive Detention Act, would be illegal. Again, if the main ground of detention be investigation of a crime, the detention of the person under the Preventive Detention Act could be colourable and improper and would amount to a circumvention of important provisions of the Constitution and as such could not be allowed.

In support of this passage, the learned author has cited Mohammed Abdur Rahman v. Hyderabad State AIR 1950 Hyd 66. However, it may be noted that this proposition has certain limitations. In Biru Mahato Vs. District Magistrate Dhanbad, the Supreme Court had occasion to consider the very question. The Supreme Court held:

One can envisage a hypothetical case where a preventive order may have to be made against a person already confined in jail or detained. But in such a situation as held by this Court it must be present to the mind of the detaining authority that keeping in view the fact that the person is already detained a preventive detention order is still necessary. The subjective satisfaction of the detaining authority must comprehend the very fact that the person sought to be detained is already in jail or under detention and yet a preventive detention order is a compelling necessity. If the subjective satisfaction is reached without the awareness of this very relevant fact the detention order is likely to be vitiated. But as stated by this Court, it will depend on the facts and circumstances of each case.

It may be seen from this passage, therefore, that even if the person sought to be detained is already in jail and yet the preventive detention order is passed and if the detaining authority is aware of the fact of detention and still considers that the preventive detention was necessary, he can invoke the provisions of Section 3. In this case in the grounds of detention, after setting out the facts that on 13-1-1984, the detenu surrendered and that he was remanded to custody and

was still in remand, the detaining authority has further stated that though he is aware that the detenu is still in remand and he could be proceeded with under normal law, he was satisfied that the activities of the detenu warrant his detention under Tamil Nadu Act 14 of 1982. In the circumstances, therefore, the order could not be said to be vitiated on the ground that the detenu is already in judicial custody.

5. The next ground raised by the learned Counsel for the petitioner is (hat the first instance of 1978, referred to in the grounds of detention could not form a basis or ground for detention on the ground that was a stale incident. In *Kamlakar Prasad Chaturvedi Vs. State of M.P. and Another*, , the Supreme Court had to consider a similar question. There also the ground for detention related to alleged incidents on 20-3-1978 and 9-8-1980. In that case the ground incident was dt. 25-3-1983. With reference to that the Supreme Court observed that the two incidents of 1978 and 1980 are more than 6 years and 1 year respectively prior to the order of detention and further observed:

There can be no doubt that these grounds especially ground No, 1, relating to an incident of 1978, are too remote and not proximate to the order of detention. It is not open to the detaining authority to pick up an old and stale incident and hold it as the basis of an order of detention u/s 3(2) of the Act. Nor it is open to the detaining authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention. Now there is no provision in the National Security Act, 1980, similar to Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, which says that where a person has been detained in pursuance of an order of detention under Sub-section (1) of Section 3, which has been made On two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in Sub-section (d) of Section 3 with reference to the remaining ground or grounds and made the order of detention and (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said Sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds. Therefore, in the present case, it cannot be postulated what view would have been taken by the detaining authority about the need to detain the petitioner u/s 3(2) of the Act if he had not taken into account the stale and non-proximate grounds 1 and 2 into consideration in arriving at the subjective satisfaction.

In this decision, the Supreme Court noted the earlier decisions on the question.

However, we may refer to the decision in Shiv Parsad Bhatnagar Vs. State of M.P. and Another, , where the Supreme Court had observed:

It is now well settled that grounds of detention must be pertinent and not irrelevant, proximate and not stale, precise and not vague. Irrelevance, staleness and vagueness are vices any single one of which is sufficient to vitiate a ground of detention. And, a single vicious ground is sufficient to vitiate an order of detention. In the present case, we are satisfied that the second ground of detention suffers both from the vice of staleness, because of the passage of time since the happening of some of the incidents and the vice of irrelevance because they relate to "law and order" and not "to the maintenance of public order.

Thus, though the past conduct of a person is a relevant factor in making a detention order, it must be proximate and it must also have a rational connection with the necessity of detention. In the instant case, as already stated, the incident noticed for adverse notice being one of 1978 with reference to an offence u/s 324 I.P.C., in respect of which he was fined a sum of Rs. 75, more than five years have passed from that incident till the groan d incident on 10-1-1984, which was one for an offence u/s 307 I.P.C. and which was later altered into one u/s 302 I.P.C. We are satisfied that the prior commission of the crime in 1978 could not have been taken into account because of the long lapse of time and could not have formed to proximate ground for considering the detenu as a Goonda. Though the learned Counsel for the petitioner seriously contended that the instances or criminal activities alleged against the detenu in the grounds of detention are instances which could be dealt with in the normal procedure under the criminal law and they did not involve any question of maintenance of public order and that therefore the preventive detention in this case is illegal, in view of the fact that even in the grounds, the detaining authorities have taken into account stale grounds, the detenu is entitled to be released and, therefore we are .not going into the other question raised by the learned Counsel. In view of the fact that the incident referred to in 1978 could not have formed the proximate ground for detention and also the fact that the proceedings u/s 75 of the City Police Act should not be taken into account for considering a person as a habitual criminal, we think the order of the detention is liable to be set aside and accordingly we set aside the order of detention and direct that the respondents shall set the detenu, Gemini alias Lakshmanan, at liberty forthwith.