
(2006) 02 MAD CK 0269

In the Madras High Court

Case No : Habeas Corpus Petition No. 1161 of 2005

Kasthuri

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Citation : (2006) 02 MAD CK 0269

Hon'ble Judges : P. Sathasivam, J;J.A.K. Sampath Kumar, J

Bench : Division Bench

Advocate : M. Rajavelu, for the Appellant; Abudukumar Rajarathinam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The petitioner herein is the mother of the detenu by name Ramesh (@) Perumal. She challenges the impugned order of the detention dated 26.08.2005, detaining her son as Goonda as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner as well as learned Government Advocate for the respondents.

3. At the foremost, learned counsel for the petitioner by drawing our attention to the reference made in paragraph 3 of the grounds of detention, namely, "...Later they were produced before the XVIII Metropolitan Magistrate Court, Saidapet, Chennai and lodged them at Central Prison, Chennai as remand prisoners till 30.08.2005...." and the remand extension order dated 17.08.2005, wherein the learned XVIII Metropolitan Magistrate passed an order, "...remanded till 31.08.2005", would submit that in the light of the variation and the mistake in the date mentioned in the ground, which is contrary to the remand order, the impugned detention order is liable to be quashed on the ground of non-

application of mind. In support of the above contention, he relied on Division bench decision of this Court *M. Kuppusamy v. The Public V.O.C. Nagar* rep. by A. Palanisamy and Anr. reported in 2000 2 LW 544.

4. We verified the relevant paragraph in the grounds of detention. In the grounds, the detaining authority has stated that "Their statements were recorded. Later, they were produced before the XVIII Metropolitan Magistrate Court, Saidapet, Chennai and lodged them at Central Prison, Chennai as remand prisoners till 30.08.2005." On the other hand, the remand extension order dated 17.08.2005 passed by the XVIII Metropolitan Magistrate, Saidapet, Chennai, shows that the accused 1 and 2 were produced before him at 11.30 a.m. Accusation explained both the accused had stated that they were beaten by the police and they were arrested by the police on 10.08.2005 remanded till 31.08.2005. There is no explanation on the side of the respondents regarding the above said variation. In the Division Bench decision referred above, in the grounds of detention, the detaining authority has stated that the detenu is being produced before the remand Court on 23.06.1999, the court remanded him till 5.7.1999. After finding variation in the grounds of detention and the remand extension order, the Division Bench has concluded that there has been a series of judgments of this Court that when a statement made by the detaining authority in the grounds of detention is contrary to the records available, then it would amount to non-application of mind on the part of the Detaining Authority." As a matter of fact, similar objection, namely, it is only a typographical error, was taken into consideration even before the said Division Bench. Rejecting the said contention and following the earlier order of this Court reported in 1992 1 Crimes 271, this Court quashed the detention order on the ground of non-application of mind. Considering the factual position in our case and the Division Bench decision, we are in respectful agreement with the view expressed and we also take the similar view.

5. In the result, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody, unless he is required in some other case or cause.