

(2002) 04 MAD CK 0071
In the Madras High Court
Case No : H.C.P. 1330 of 2001

Kumar @ Punk Kumar, Chennai

APPELLANT

Vs

State and The Commissioner of Police, Greater Chennai,
Egmore, Chennai

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Citation : (2002) 04 MAD CK 0071

Hon'ble Judges : S. Jagadeesan, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Swamidoss Manoharan, for the Appellant; A. Navaneethakrishnan, Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

S.Jagadeesan, J.—The petitioner is the detenu who was detained as "Goonda" as contemplated under the Tamil Nadu Prevention of

Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982

(Tamil Nadu Act 14 of 1982) pursuant to the order of the second respondent dated 28.8.2001.

2. Even though the learned counsel for the petitioner raised several grounds and argued elaborately, since the order of detention has to be set aside

on a sole ground, viz., failure on the part of the detaining authority to consider the pre-detention representation sent by the mother of the detenu,

there is no necessity for us either to discuss the facts elaborately or to consider the other points raised by the counsel for the petitioner.

3. So far as this ground is concerned, admittedly the mother of the detenu sent a representation to the detaining authority on 13.8.2001, much

earlier to the passing of the detention order. The grievance of the detenu is that the said pre-detention representation was not considered by the

detaining authority and as such the same vitiates the impugned order of detention.

4. On the contrary, it is contended by the learned Additional Public Prosecutor that the pre-detention representation was considered by the

detaining authority which is clear from the grounds of detention, since the detaining authority has specifically stated that he had gone through the

petition and the relevant records against the detenu and the entire contention in the said petition was not correct and the petition was given with

ulterior motive to use the same as defence document after some time. When the detaining authority has specifically mentioned about the

consideration of the pre-detention representation sent by the mother of the detenu, it cannot be said that the detaining authority has not considered

such representation. Hence the impugned order is not vitiated.

5. We gave our anxious consideration to the above contentions of both the counsel. In the pre-detention representation sent by the mother of the

detenu, she had specifically stated that the detenu was detained under the Tamil Nadu Act 14 of 1982 in the year 2000 and was confined in jail for

ten months and thereafter he was released. He is not involved in any of the criminal cases and false cases have been foisted against him. The police

advised him not to come out and also requested him to hide himself. Having said so the police have foisted the case. On coming to know about the

same, the detenu surrendered before the Judicial Magistrate, Saidapet on 19.7.2001 and represented that he did not commit any crime. Taking

advantage of his surrender, once again the police is trying to foist the case against the detenu and further is trying to detain him under the Tamil

Nadu Act 14 of 1982. The said representation was received by the Chief Minister's Cell on 13.8.2001 and forwarded to the detaining authority.

The detaining authority also received the same.

6. The question for consideration is whether the said pre-detention representation has not been properly considered as contended by the learned

counsel for the petitioner or the reference made by the detaining authority in the grounds of detention can be construed as consideration of such

representation.

7. Before considering this question, it is worthwhile to refer the judgment of this court in T.M. Syed Ali and another Vs. State of Tamil Nadu and five others, to which one of us (S. Jagadeesan, J) was a party. In the said judgment, an identical question was considered. In the said case, the detaining authority received the representation earlier to the order of detention. The detaining authority made an endorsement on 11.8.1998, directing the representation to be filed and a further endorsement was made on 18.8.1998 directing that the representation to be closed. Thereafter the order of detention was passed on 22.8.1998. The contention in that case was that the pre-detention representation was not considered. This court has held that the question that has to be decided is as to whether the said representation is a relevant material to consider before arriving at the subjective satisfaction whether to or not to issue an order of detention. Further it was held that the aforesaid material is a crucial material which has to be taken into consideration for deciding as to whether to pass or not to pass the order of detention. Hence there is no doubt that the pre-detention representation is a relevant document to be considered before ever the order of detention is being passed. It is better to extract the relevant portion of the judgment which reads as follows:

The question that has to be decided is as to whether this is a relevant material to consider before arriving at subjective satisfaction whether to or not to issue an order of detention. In our considered view, the aforesaid material is a crucial material which has to be taken into consideration for deciding as to whether to pass or not to pass an order of detention. It may be that the detaining authority may after due consideration of the aforesaid material still comes to a conclusion that this is a fit case for passing an order of detention after finding that the case made out in the representation and the telegram as concocted and false. However, it cannot be said that the said documents are immaterial for arriving at the aforesaid subjective satisfaction. It may be that the detaining authority; might have been persuaded on consideration of the aforesaid documents to hold that the presence of the petitioners at the time of the alleged offence on 2.8.1998 becomes doubtful and might have been persuaded not to pass an order of detention. As a consequence we are constrained to hold that the order of detention issued by the 2nd respondent suffers from

vice of non-application of mind on account of the failure to consider the material piece of evidence and hence the same is liable to be set aside on the ground.

8. On the basis of the above principles, we have to consider whether in this case the said representation was considered by the detaining authority or not?

9. As stated already in the pre-detention representation, the mother of the detenu has stated that the detenu was detained under the Tamil Nadu

Act 14 of 1982 in the previous year and he was in prison for ten months. Immediately after his release once again the police are attempting to foist

false case against him, even though the detenu was not involved in the criminal activities. When such averments are vital to form the subjective

satisfaction with regard to the passing of the impugned order of detention, it is for the detaining authority to consider the said representation in detail

and pass an order whether the averments made in the said representation is correct or not? When such is the requirement to establish his

application of mind in considering the said representation, it is for the detaining authority to furnish the basis on which he comes to the conclusion as

to the correctness or otherwise of the averments made in the representation. The allegations were made against the police. In such a case, it is for

the detaining authority to get a detailed report from the sponsoring authority as to the averments made in the pre-detention representation.

10. In paragraph 3 the grounds of detention, the detaining authority has stated as follows:

The Inspector of Police also produced a copy of the representation of Tmt. Saroja, mother of Tr.Kumar @ Punk Kumar dated Nil addressed to

the Hon'ble Chief Minister of Tamil Nadu. I have gone through the said petition and the relevant records against Tr.Kumar @ Punk Kumar and

the entire contention in the said petition is not correct. The petition is given with ulterior motive to use the same as defence document after some

time and I am not giving any importance to the said petition.

11. From the above extracted portion of the grounds of detention, it is clear that the pre-detention representation was produced by the sponsoring

authority before the detaining authority only at the time of filing the affidavit. Hence there is no possibility for the detaining authority to call for any

remarks on the said representation. When the sponsoring authority has produced the said representation, at least the detaining authority could have enquired the sponsoring authority and recorded his statement with regard to the averments made in the pre-detention representation. There is nothing on record to show that the detaining authority had followed such procedure. Apart from that, the detaining authority has stated that he had gone through the petition, the relevant records and found that the entire contention is not correct.

12. Even assuming that it can be taken for granted that there was some application of mind by the detaining authority, the next sentence throws a doubt with regard to such application of mind, since the detaining authority has specifically mentioned that the said representation was given with ulterior motive to use the same as defence document after some time and as such he has not given any importance to the said representation. This statement makes it clear that the detaining authority has not shown any importance to the pre-detention representation sent by the mother. When such is the statement and such is the consideration by the detaining authority, we have no hesitation to come to the conclusion that there is no proper consideration of the said pre-detention representation. This conduct of the second respondent would naturally vitiate the impugned order of detention, as held by the earlier Division Bench in SYED ALI's case referred to above.

We are of the view that the impugned order of detention cannot be sustained.

13. Accordingly the order of detention is set aside and the H.C.P is allowed. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.