

(1987) 12 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No. 5640 of 1987

Kumari

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 22-12-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 2(d), 2(f), 3, 3(1)

Citation : (1988) LW(Cri) 117

Hon'ble Judges : S.A. Kader, J; Bellie, J

Bench : Division Bench

Advocate : N. Sundaramurthi, for the Appellant;

Final Decision : Allowed

Judgement

Bellie, J.—This petition is by one Kumari under Article 226 of the Constitution of India for release of her husband, S. Kannan, who is detained under a detention order passed by the second respondent-Commissioner of Police. The said detention order has been passed under S. 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act 1982 (Tamil Nadu Act 14 of 1982) (hereinafter referred to as the Act). The reason for the detention, as seen from the grounds of detention order, appears to be that on 21st February, 1987 at about 8 p.m. at Eswaradas Lala Street, one Ranganathan and the detenu Kannan as Goondas asked one, Pugazendran for time, and in the guise of looking at his "watch, they snatched the watch both of them threatening him with knives, and ran away. Pugazendran chased them along with some others who joined him. While running, Ranganathan and the detenu Kannan again threatened Pugazhendran and others with knives creating terror and panic, in the locality. On seeing this the shop-keepers and others in the locality got frightened. Two police constables who came from the opposite side caught hold of them. Upon this, a case was

registered and it was investigated. With this incident, two other incidents of offences of theft with crime numbers which are said to have occurred earlier, one on 24.1.1987, and the other on 15th February, 1987, have been cited as offences committed by the detenu. It is stated in the grounds of detention that the detaining authority is satisfied that if the detenu is let to remain at large, he will indulge in further activities prejudicial to the maintenance of public order and it is necessary to make the detention order.

2. In the affidavit filed in support of the petition, it is denied that the detenu committed any offence is alleged in the grounds of detention and the detenu was engaged in any activities prejudicial to the maintenance of public order. It is further contended that the detenu has been implicated" in false cases.

3. The learned counsel for the petitioner contends that the order of detention against, the detenu has been passed on the basis of allegations that he is a Goonda and with a view to prevent him from acting in any manner prejudicial to the maintenance of public order it is necessary that he is detained, but there are no material to show that, in fact, the detenu is a goonda and therefore, the order of detention is illegal. In order to appreciate this contention of the learned counsel, it is necessary to note here the relevant portions of S. 3(1) of the Act.

3. Power to make orders detaining certain persons:-(1) The State Government may, if satisfied with respect to any bootlegger or drug offender or goonda or immoral traffic offender or slum grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2).....

(3).....

A reading of this will show, according to us, that in respect of a goonda, like bootleggers, drug offenders, immoral traffic offenders, and slum grabbers, (with whom we are not now concerned) if the State Government is satisfied that to prevent him from acting in any manner prejudicial to the maintenance of public order, it may make an order of detention of that goonda. Therefore as a premises, for the satisfaction of the State Government that it is necessary to pass an order of detention with a view to prevent the person concerned from acting in any manner prejudicial to the maintenance of public order, that person must be a goonda. It is apparent, therefore, that firstly there must be a materials for objective satisfaction that the person concerned is a goonda. It is not like subjective satisfaction of a detaining authority of necessity to pass an order of detention to prevent the person concerned from acting in any manner prejudicial to the maintenance of public order. Therefore, if the person concerned is not a goonda, the question of satisfaction of, necessity for detention order will not arise. As to who is a goonda has been defined in S. 2(f) of the Act. It reads-

"goonda" means a person, who either by himself or as a member of or leader of

a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter 16 or Chapter 17 or Chapter 22 of the Indian Penal Code (Central Act 45 of 1860).

We have to see whether the detenu can be said to be a goonda within the meaning of this definition. Now, according to the respondents, the detenu has committed three offences shown in the grounds of detention and therefore, it can be rightly said that he, "habitually commits offences" and therefore, he is a goonda. But as seen from the affidavit filed in support of the petition, it is the contention of the petitioner that the detenu has not committed any offence and the allegation of offences against the detenu in the grounds of detention are all false. The alleged offences are admittedly in the investigation stage. In this situation, the question is whether on the said allegations of offences made in the grounds of detention alone, can it be taken that the detenu is a goonda.

4. In our view, merely stating that the detenu has committed offences and they are being investigated is not sufficient to hold that he habitually commits offences. Something more is necessary, and that may be proof of convictions or something else. As to what is something else is not for the Court to suggest. What we say is, there shall be materials enough to show by way of convictions or otherwise that the detenu habitually commits offences and merely alleging that he has committed offences and they are being investigated, or for that matter charge-sheets have been filed, is not enough. In this connection, the learned Public Prosecutor relied on an unreported Full Bench decision of this Court in *Rakkamma v. State of Tamil Nadu and others* W.P. 814 of 1986 order dt. 2.5.1986 (F.B), wherein it has been held that a conviction is not necessary to hold a person as a goonda under the Act. The above writ petition came before the full Bench upon a point of reference made by a Division Bench for decision by a Full Bench as an earlier Division Bench had found in a number of cases that to classify a person as a goonda there must be at least two previous convictions and they (later Division Bench) did not agree with that view. The question formulated for reference reads as follows:--

Whether in order to attract the definition of "goonda" in S. 2(f) of the Act one must have been convicted at least twice by a criminal court or whether it is sufficient that he is found to have committed repetitive similar acts proximate in point of time which are prejudicial to the maintenance of public order.

It appears to us, if we may say so with respect, even the very question of reference is vague. The words in the reference "...whether it is sufficient that he is found to have committed repetitive similar acts..." are, in the context, not clear at all. Are we to mean by these words as mere "allegations of repetitive commission of offences?" As stated above, we do not say that to brand a person "a goonda" proof of convictions are absolutely necessary but we do say that without proof of convictions it will be very difficult to hold a person "a goonda".

5. In this context, we think, we may refer to a decision of the Supreme Court in

Vijay Narain Singh Vs. State of Bihar and Others, , in which a similar enactment in the State of Bihar has been considered. The Said Act is, "Bihar Control of Crimes Act 1981". S. 12 of this Act gives power to detain certain persons and it, so far as it is necessary for us, reads thus;--

12. Power to make order detaining certain persons. The State Government may:

(1) If satisfied with respect to any person that with a view to preventing him from acting any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social element cannot be prevented otherwise than by the immediate arrest of such person make an order directing that such antisocial element be detained.

(2).....

S. 2(d) defines the expression "anti-social element" and the material portion reads as follows:-

2. (d)"Anti-social element" means a person who is-

(i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter 16 or Chapter 17 of the Indian Penal Code, or

(ii)

(iii)

(iv)

(v)

Venkataramiah, J. who is one of the three Judges who constituted the Bench observed thus--

It is seen from S. 12 of the Act that it makes provision for the detention of an anti-social element. If a person is not an anti-social element, he cannot be detained under the Act. The detaining authority should, therefore, be satisfied that the person against whom an order is made under S. 12 of the Act, is an anti-social element as defined in S. 2(d) of the Act.

The learned Judge has further observed--

Under Sub-clause (i) of S. 2(d) of the Act, a person who either by himself or as a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter 16 dealing with offences affecting the human body or Chapter 17 dealing with offences against property, of the Indian Penal Code is considered to be an anti-social element.

In that case, the District Magistrate who passed the detention order has relied on three incidents of offences to hold the detenu as an anti-social element. One incident is of the year 1975, the next is of the year 1982 and the third is of the

year 1983. In all the three cases, charge-sheets have been filed. Referring to these incidents Venkataramiah, J., has observed--

The first incident is of the year 1975. It is not stated how the criminal case filed on the basis of that charge ended. The next incident relates to the year 1982. The detaining authority does not state how the criminal case filed in that connection terminated. If they have both ended in favour of the petitioner finding him clearly not guilty, they cannot certainly constitute acts or omissions habitually committed by the petitioner. Moreover the said two incidents are of different kinds altogether. Whereas the first one may fall under Sub-clause (i) of S. 2(d) of the Act, the second one falls under sub-Cl. (iv), thereof. They are, even if true, not repetitions of acts or omissions of the same kind. The District Magistrate does not appear to have applied his mind to the above aspects of the case. The third ground which, is based on the pending sessions case is no doubt of the nature of acts or omissions referred to in Sub-clause (i) of S. 2(d) but the interval between the first ground which falls under this sub-clause and this one is nearly eight years, and cannot, therefore, make the petitioner a habitual offender of the type falling under sub-Cl. (i) of S. 2(d) when I say so, I do not certainly minimize the gravity of the offence alleged to have been committed by the petitioner which is still to be tried by the Sessions Court. If the petitioner is found guilty by the court, he will have to be awarded appropriate punishment. But the point for consideration now is whether the filing of the charge sheet is sufficient to bring the petitioner within the mischief of the Act (underlining ours.)

The learned Judge has then observed:

It is well settled that the law of preventive detention is a hard law and therefore it should be Strictly constructed. Care should be taken that the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention.

Then, the learned Judge has held thus:

Having given my anxious consideration to the case, I am of the view that it is not possible to hold that the petitioner can be called an "antisocial element" as defined by S. 2(d) of the Act. The order of detention impugned in this case, therefore could not have been passed under S. 12(2) of the Act which authorizes the detention of anti-social elements only.

Chinnappa Reddy, J. has concurred with this view of Venkataramiah, J. while Sen, J. has dissented. However, the learned Public Prosecutor brought to our notice a later decision of the Supreme Court in Raj Kumar Singh Vs. State of Bihar and Others, in which case also the detenu was detained under S. 12(2) of

the Bihar Control of Crimes Act 1981, wherein also three incidents of offences, in all of which only charge sheets have, been filed and no case has ended in conviction, were cited against the detenu to show that he was an anti-social element. It. was held that if the appropriate authority charge with the implementation of the Act comes to the satisfaction that the detenu is one who is habitually committing or abetting the commission of offences such a conclusion is neither irrational nor unreasonable. Referring to the above mentioned earlier Supreme Court decision, Vijay Narain Singh Vs. State of Bihar and Others, the learned Judges have stated that the facts in that case are distinguishable and there is no analogy between the two cases. Whatever may be the case, neither of the said two Supreme Court decisions. have been rendered under the Tamil Nadu Act with which we are now concerned. We do not think that there is no difference at all between the Tamil Nadu Act and the Bihar Act. For instance, S. 3 of the Tamil Nadu Act which gives power to make detention orders begins, as follows:

(1) The State Government may if. satisfied with respect to any bootlegger of drug offender or goonda or immoral traffic offender...

Whereas S. 12 of the Bihar Act which gives power to make detention orders commences in these words:

...The State Government may: If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order...

In this connection, we may state that in the decision on Vijay Narain Singh Vs. State of Bihar and Others, , a number of decisions had. been cited before the Bench in which it has been. held that an order of detention based on a criminal charge which is still to be tried may not be invalid and that an order granting bail by a criminal Court cannot be a bar to the passing of an order of detention. Referring to this, Venkataramiah, J. has stated in para 34 of the judgment--

But I have not found it necessary to deal with them here as they would have become relevant only if 1 had been satisfied that the petitioner was antisocial element. Moreover the orders of detention questioned in these cases were governed by the provisions of the statutes under which they had been issued.

emphasis applied)

We are dealing with the provisions of Tamil Nadu Act and not of the Bihar Act. Coming back to the facts of our case, as seen above, all the three incidents of offences said to have been committed by the detenu are only in the investigation stage, and we do not see any material on which we can say that we are satisfied that the detenu has committed those alleged offences. In this view of the matter, we are unable to agree with that the detenu habitually commits or attempts to commit or abets the commission of offences. Therefore he cannot be said to be a goonda. who can be dealt with under S. 3(1) of the Act. Hence, we hold that the

order of detention cannot be sustained.

6. In the result, the petition is allowed and the detenu is directed to be set at liberty forthwith.