

(1982) 08 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No. 4982 of 1982

Lalitha Ramaswamy

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-08-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 11, 20, 20(1)
National Security Act, 1980 — Section 3, 3(2), 3(3)
Penal Code, 1860 (IPC) — Section 153(a)

Citation : (1983) LW(Cri) 274

Hon'ble Judges : Natarajan, J;M.N. Moorthy, J

Bench : Division Bench

Advocate : N. Ganapathy and A. Thirumoorthy, for the Appellant;

Final Decision : Allowed

Judgement

Natarajan, J.—This petition has been filed for the issue of a writ of habeas corpus for causing the production of the body of Thiru M. Ramaswamy, Editor of a Tamil fortnightly journal Called "Hindu Marumalarchi", who is in custody and for his being set at liberty. The petitioner is the wife of the abovesaid Ramaswamy.

2. Ramaswamy was taken into custody on 18th June, 1982 pursuant to an order of detention passed by the second respondent (District Magistrate and District Collector (in-charge), Salem), earlier that day under S. 3(2) of the National Security Act, hereinafter referred to as the Act. He was served with the grounds of detention on 20th June, 1982. On 25th June, 1982 the detenu sent his representations and they were rejected by the Government on 6th July, 1982. The case of the detenu was placed before the Advisory Committee and they sustained the order of detention passed, and thereupon the Government passed an order of confirmation of the detention on 3rd August, 1982. It is thereafter the petitioner has moved this Court under Art. 226 of the Constitution of India.

. 3. In the grounds of detention, it is set out that in the issue, dt. 15th March,

1982 of the journal "Hindu Marumalarchi", the detenu had criticised the incidents that took place at Mandaikkadu Village in Kanyakumari District in favour of the Hindus and condemning the Christians, and the publication was "likely to create religious hatred among the people of Salem and other places in Tamil Nadu and affect communal harmony". It is also stated that with reference to the publication, a case was registered against the detenu in Salem Town, P.S. CrI. No. 511/82 under S. 153(a) of the I.P.C. on 7th April, 1982. After extracting the relevant passages which are said to be inflammatory in nature, it is stated in the grounds that when there is communal upheaval in Tirunelveli District and the consequent tension in other parts of the State, the publication by the detenu of the inflammatory article was likely to create religious hatred among the people of Salem and other places in Tamil Nadu and affect communal harmony and as such, the permitting of the detenu to remain at large would prove a hazard to security. The second respondent has, therefore, stated that he was subjectively satisfied that the detenu had been acting in a manner prejudicial to the maintenance of public order and hence, his detention under the Act was considered imminent and necessary.

4. In the writ petition, the validity and correctness of the detention order is challenged on various grounds. They are as set out below:

1. The second respondent is not a competent authority to pass the detention order because, under S. 3(3) of the Act, only the District Magistrate notified as such is empowered to pass an order of detention and that being so, neither a District Magistrate in-charge nor an Additional District Magistrate is empowered to exercise the power of the District Magistrate.

2. In the grounds of detention, there is no reference to any communal disturbances having taken place within the limits of Salem District, but there is reference only to communal upheaval in Tirunelveli District and in such circumstances, the District Magistrate of Salem who is empowered to take steps for maintenance of public order within the limits of Salem District alone, is not entitled to pass the impugned order of detention.

3. The delegation of powers on the District Magistrate of Salem by the Government under S. 3(3) of the Act has been mechanically done at regular intervals of three months from 23rd December, 1980 onwards and as such, the power conferred on the District Magistrate by the last Government Order, dt. 23rd March, 1982 was not a valid order of delegation.

4. The instance complained of against the detenu is a solitary instance and on the basis of this slender material, no reasonable person could reach a subjective satisfaction for passing an order of detention under the Act. In any case, the detenu was enlarged on bail in the criminal case filed against him, subject to certain conditions and one of the conditions was that he should not publish similar articles and in view of that interdiction, there could be no apprehension in the mind of the District Magistrate that the detenu was likely to write further

inflammatory articles and pose a hazard to the maintenance of public order.

5. There was no proximity of the instance complained of to the detention order, because the article was written on 15th March, 1982 whereas the detention order was passed on 18th June, 1982. Therefore, the instance quoted suffers from staleness.

6. Between 23rd December, 1982 and 23rd March, 1982, the Government have passed numerous orders conferring powers of the District Magistrate to pass orders of detention, but the detenu had not been supplied copies of those orders and hence, the proceedings are vitiated on account of withholdment of full materials to the detenu.

5. Respondents 1 and 2 have filed separate counter-affidavits and the order of detention is sought to be justified on various grounds.

6. In the view we propose to take of the matter, it is not necessary for us to consider the various contentions put forth by the petitioner's counsel, except the first ground of attack. This ground it may be pointed out, relates to the competency of the second respondent to pass the order of detention. Admittedly, the second respondent was not the District Magistrate of Salem at the time of passing the order. The District Magistrate had been transferred and therefore, the second respondent was the District Magistrate and District Collector-in-charge of Salem District. The question, therefore, arises as to whether the District Magistrate-in-charge can take the place of the District Magistrate and pass an order of detention under the Act.

7. S. 3(3) of the Act reads as follows :

3. Power to make orders detaining certain persons...

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-S.(2) exercise the powers conferred by the sub-section.

There is a proviso to the sub-section, but it is not necessary to extract it. From the words used in the sub-section, it may be seen that the Government can empower only a District Magistrate or a Commissioner of Police to exercise the powers of detention conferred by sub-S.(2) of S. 3 of the Act. The words "District Magistrate" have not been defined in the Act itself. Consequently, we have to refer to the Code of Criminal Procedure for a definition of the words. Under S. 20 of the present Code, corresponding to Ss. 10 and 11 of the CrI.P.C , 1898, the State Government should appoint one of the Executive Magistrates in every district and in every metropolitan area to be the District Magistrate of the area in question. This is provided for in sub-S.(1) of S. 20. Sub-S.(2) provides for the

appointment of an Additional District Magistrate and sub-S.(3) provides for an officer succeeding temporarily to the executive administration of the district on account of the office of the District Magistrate becoming vacant to exercise powers under the Code and perform all the duties as well as enjoyed by the Crl. P.C., on the District Magistrate. Even on a reading of sub-Ss.(2) and (3), it may be seen that an Additional-District Magistrate or a District Magistrate in-charge cannot be equated with a District Magistrate as such.

8. A question whether an Additional District Magistrate placed in-charge of a District after the transfer of a District Magistrate, can pass an order of detention under the Defence of India Act came up for consideration before the Supreme Court in *Ajaib Singh v. Gurbachan Singh* A.I R. 1965 S.C. 1619. The Supreme Court, in categorical terms answered the question in the negative and held as follows:

...even if an officer is exercising the powers of the District Magistrate on there being a vacancy in the office of the District Magistrate under S. 11, Crl. P C., he is still not the District Magistrate until he is appointed as such under S. 10(1) of the (old) Code.

The ratio has been applied by a Division Bench of Allahabad High Court in *vashistha Narain Karvaria Vs. State of Uttar Pradesh and Others*, . That was a case which arose under the National Security Act and it was held that an Additional District Magistrate even though he may for the time being be empowered to exercise the powers and functions of a District Magistrate, cannot direct the detention of a person under S. 3 of the Act.

9. The ratio in the above two cases will directly apply to the facts of this case. It may be that the second respondent was the District Magistrate-in-charge of the district at the time the detention order was passed and was exercising all the powers which were exercised by the District Magistrate of the district prior to his transfer. Even so, without a specific order of appointment in that behalf under S. 20(1) of the Crl. P.C., the second respondent cannot derive the status of the District Magistrate of the district. Once this position emerges, then it automatically follows that the second respondent is not entitled to pass the order of detention as it can be passed only by a District Magistrate of the district. On this short-ground the writ petition has to succeed. In view of this conclusion, it becomes unnecessary to go into the merits of the other contentions of the petitioner.

10. In the result, the writ petition is allowed and the rule is made absolute. The detention order will stand quashed and the detenu is directed to be set at liberty forthwith.