
(1965) 03 MAD CK 0014
In the Madras High Court
Case No : Writ Petition No. 800 of 1965

M. Karunanidhi

APPELLANT

Vs

M. Raman and Others

RESPONDENT

Date of Decision : 19-03-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 22, 226, 226(1)
Criminal Procedure Code, 1898 (CrPC) — Section 491, 491(1)
Defence of India Act, 1962 — Section 3(15)
Defence of India Rules, 1939 — Rule 28
Defence of India Rules, 1962 — Rule 26, 30, 30(1)

Citation : AIR 1968 Mad 54 : (1968) CriLJ 177

Hon'ble Judges : Veeraswami, J;Kunhamed Kutti, J

Bench : Division Bench

Judgement

Veeraswami, J.

(1.) This is petition under Art. 226 of the Constitution and S. 491, CrI. P. C., for a writ in the nature of Habeus Corpus directing release of the

petitioner from detention. He was apprehended at about midnight on 16-2-1965 at his residence at Madras by the first respondent, Assistant

Commissioner of Police (Intelligence), Madras, and has been taken to Palayamcottai and detained at the Borstal School there from the morning of

the 18th. At 9 a.m. on that day, he was served with the order of detention made under R. 30(1)(b) of the Defence of India Rules, 1962. He is a

member of the Madras Legislative Assembly and Deputy Leader of the Opposition. He is a member of the Dravida Munnetra Kazhagam and is

said to be the treasurer and leading member of the working committee of the party. He alleges in his affidavit that he was a signatory to a resolution

passed on 8-1-1965 by the working committee of his party to treat 26-1-1965 as

a day of mourning, because Hindi as the official language would come into operation on that day and the use of the English language would become permissive or optional, and that the party's programme was to hold meetings, condemn the imposition of Hindi as official language, to wear badges and hoist black flags within one's home, but no processions were authorised by the party and no violence has ever been countenanced.

According to him, the Chief Minister of Madras, the 4th respondent, threatened his party with dire consequences if they were to observe 26-1-1965 as a mourning day and the Chief Minister and his partymen made provocative speeches against the D.M.K. party members both on the floor of the Legislative Assembly and outside at public places. The petitioner was to have addressed a meeting at Coimbatore on 26-1-1965. But, the previous night, on his way to Coimbatore, he was arrested at Karur, later taken to Tiruchirapalli sub-jail and released on or about 2-2-1965. He says he is the editor of a paper called ""Murasoli"" and in that paper he published, since 14-2-1965, editorials and a series of cartoons attacking the 4th respondent on his political acts and policies. In this background, says the petitioner, his speeches, cartoons and editorials infuriated the fourth respondent and the order of his detention has been politically motivated and also motivated by the personal animosity and grudge against him of the 4th respondent and is mala fide and constitutes a fraudulent exercise of power. The petitioner further states that the use of Rule 30(1)(b) of the Defence of India Rules, instead of the Preventive Detention Act, constitutes proof of mala fides and that the order of detention could not be considered to be one under that rule, as there could not have been satisfaction to the Governor who passed it and the order itself did not disclose the individual person who was satisfied before making it. The petitioner, in short, urges that the detention order is mala fide and illegal.

(2) The 4th respondent has personally sworn to a counter-affidavit totally refuting and denying the petitioner's allegations and maintaining that the detention order was passed only on the basis of information duly received by Government through its official channels, regarding the activities of the petitioner, which, in the opinion of the Government, rendered his detention necessary to prevent him from acting in a manner prejudicial to public safety and maintenance of public order. He also has specifically denied

that the detention order was mala fide, or was made out of political vindictiveness or personal ill-will or fury against the petitioner. He says that, in fact, there was nothing personal either in his speeches or exchanges between him as the head of the Government and the petitioner as the Opposition leader in the Legislative Assembly and that the detention order was made only after being satisfied on the basis of materials and reports officially received by the Government.

The petitioner, in his second affidavit by way of a reply to the first counter-affidavit of the 4th respondent, reiterated some of his earlier allegations and contentions and pointed out that the 4th respondent did not, in his counter-affidavit, specify the individual on whose satisfaction the order of

detention was made and stated that for these reasons also the detention order was illegal. He also added that his detention was in relation to

disturbances in regard to the language issue and had nothing to do with the purpose of the Defence of India Act and the rules made thereunder and

to the security of India threatened by external aggression, the basis of the Proclamation of the President under Art. 352 of the Constitution and that

further at the time of his apprehension and until he was served with the order of detention three days later, he was not even informed of the grounds

of his arrest. In his further affidavit, the 4th respondent categorically stated that he, as Minister in charge of the portfolio, after carefully studying the

reports and considering the information and the recommendation of the Special Branch, C.I.D., Madras, was satisfied that the detention of the

petitioner was necessary to prevent him from acting in a manner prejudicial to the public safety and the maintenance of public order, and then

passed the order of detention. After once again traversing some of the petitioner's allegations, the 4th respondent concluded by stating that the

order of detention was passed only on the strength of materials and information before Government and after he, as Chief Minister, and Minister in

charge of the portfolio, and Public Department, was satisfied of the necessity to detain the petitioner.

(3) Before we consider the submission made to us on behalf of the petitioner, it is necessary to direct out attention first to the ambit and nature of

enquiry permissible or open in this petition in the context of Art. 359(1) of the Constitution and the Order of the President made thereunder.

Consequent on the aggression on 8-9-1962, by the Chinese on the northern border of India, the President made a proclamation on 26-10-1962, under Art. 352 of the Constitution. The proclamation declared the existence of a grave emergency whereby the security of India was threatened by external aggression. The Defence of India Ordinance, 1962, was also promulgated which was later replaced by Defence of India Act, 1962. On 3-11-1962, the President, in exercise of his powers under Art. 359(1) made an order suspending for the period the proclamation of emergency is in force, the right of any person to move any Court for the enforcement of the rights conferred by Arts. 21 and 22 of the Constitution. By a later order, Art. 14 also was added. At an earlier stage, of the arguments before us, it was suggested for the respondents that in view of the President's order, the petitioner cannot have from this Court the relief he has prayed for and that his petition should be dismissed in limine. Learned counsel for the petitioner urged, however, that the ban imposed by the Presidential Order is but confined to enforcement of fundamental rights under those articles and that his petition being both under Art. 226 of the Constitution and S. 491(1)(b), CrI. P.C., he is entitled to urge other grounds in support of the petition. The precise question thus raised as to the scope and effect of the Presidential Order in relation to Art. 359(1) and the extent to which the bar affects an applications under S. 491(1), CrI. P.C., has been decided recently by a Special Constitutional bench of the Supreme Court in *Makhan Singh Vs. State of Punjab* (and connected appeals), , and we are, therefore, relieved of the necessity of ourselves deciding it. There it has been held:--

If any relief cannot be granted to the citizen without determining the question of the alleged infringement of the said specified fundamental rights, that is a proceeding which falls under Art. 359(1) and would, therefore, be hit by the Presidential Order issued under the said Article.....That being so, we fell no difficulty in holding that proceedings taken by a citizen either under Art. 32(1) or under Art. 226(1) are hit 359(1) and the Presidential Order issue under it.....The prohibition contained in the said article and the Presidential Order will apply as much to proceedings under Sec. 491(1)(b) as to those under Art. 226(1) and Art. 32(1).

It is well settled, therefore, that any claim or relief involving in substance a determination or enforcement of the specified fundamental rights cannot

be considered and granted by Courts, be it under Art. 32 or 226 of the Constitution or S. 491(1)(b), Crl. P.C. and is hit and covered by the ban

under the Presidential Order. That being the limited scope of the ban, any relief or claim which does not in any way depend on enforcement of the

specified fundamental rights, is not affected by the ban. This has been recognised by the Supreme Court in that case:--

If in challenging the validity of the detention order, the detenu is pleading any right outside the rights specified in the order, his right to move any

Court in that behalf is not suspended, because it is outside Art. 359(1) and consequently outside the Presidential Order itself.

As pointed out by the Supreme Court, pleas like a detention order being in violation of the mandatory provision of the Defence of India Act, or

being made mala fide or under a provision of law which suffers from the vice of excessive delegation, are not pleas relatable to the specified

fundamental rights and are, therefore, outside the purview of the Presidential Order and are not inhibited. It follows, therefore, that we cannot

permit the petitioner to urge before us any ground based on his fundamental rights covered by the Presidential Order; but at the same time, we

cannot dismiss the petition in limine in so far as it contains pleas not involving such rights.

(4) The first submission for the petitioner, is that the detention order against him was made mala fide. A plea like that, which is of course open to

the petitioner as it is outside Art. 359(1) has, however, to be proved by him. As observed by the Supreme Court, in Makhan Singh Vs. State of

Punjab (and connected appeals), , a mere allegation that the detention is mala fide would not be enough. We have already referred to the

allegations of the petitioner in his affidavits on which he has relied to show that his detention order is mala fide. These allegations amount in effect to

nothing more than this: the petitioner belongs as he does to a rival political party with his own views on certain matters of policy, has had several

exchanges and encounters on the floor of the Legislative Assembly with the 4th respondent as the head of the State Government and of the ruling

party and has made speeches and published in his newspaper several editorials of his and cartoons attacking the 4th respondent as the Chief

Minister, particularly in the context of the language question. On account of these things, according to the petitioner, the 4th respondent has, out of

political and personal animosity and ill-will, made the detention order mala fide. It may be seen that the imputation in that manner to the 4th

respondent of mala fides is a matter of the petitioner's inference or apprehension from his allegations relating to certain events, speeches, editorials and cartoons. We are of the view that in order to prove mala fides, there must be more than such apprehension or assumption from premises

which do not justify the same. The affidavits and counter-affidavits before us do not show that there was anything personal in the exchanges

between the petitioner and the 4th respondent on the floor of the Assembly or outside, and we are unable to conclude, merely on the basis of the

averments in the petitioner's affidavits, that the 4th respondent, in making the order of detention, was actuated or motivated by personal or political

ill-will or animosity against the petitioner. The 4th respondent in his counter-affidavits has also repeatedly and categorically denied that the order of

detention he made was so actuated or motivated, and stated that on the basis of the materials reported to him through the normal official channels

and their recommendations, he as the Chief Minister and Minister in charge of the concerned portfolio, was, on a careful consideration thereof,

satisfied that the detention of the petitioner was necessary to prevent him from acting in a manner prejudicial to public safety and maintenance of

public order. We have no reason whatever to doubt the truth of the categorical denial and statement of the 4th respondent. Learned counsel for the

petitioner places, however, strong reliance on the following sentence in the first counter-affidavit of the 4th respondent:--

If by this the petitioner meant that I was personally offended by his publication, and I caused his detention for that reason alone, I deny the same.

It is said that word ""alone"" in the sentence indicated that the 4th respondent was admittedly offended personally by the petitioner's publications and

that this element also led the 4th respondent to make the detention order. We are unable to accept this construction of the sentence, if it is read in

the context of the entire paragraph in which it occurs and in the light of the clear denials by the 4th respondent in several places of his counter-

affidavits. The sentence occurs in a paragraph, which is in answer to paragraph 8 in the affidavit of the petitioner. In that paragraph the petitioner

has in detail referred to the several cartoons relating to the 4th respondent as Chief Minister and an editorial of 16-2-1965, in ""Murasoli"" published

by the petitioner against him. In that connection, the petitioner went on to say that this editorial "alone" must have infuriated the 4th respondent.

That appears to be the origin of the word ""alone"" apparently repeated in the sentence extracted above from the counter-affidavit of the 4th

respondent, and we are unable to accept the contention merely on that basis that the 4th respondent had admitted impliedly or otherwise that in

passing the order of detention against the petitioner, he was also actuated by the alleged fact that he was personally offended against him. Even

making full allowance to normal human reaction to criticism, it should be remembered that those who bear the burden of administration have

additional and more onerous responsibilities of Government in its comprehensive implications and that in a democratic form of Government based

on party system and party politics, difference of opinion, outlook, purpose and expression thereto by one or other of the forms or means are not an

unusual phenomenon. It seems to us that it will be neither safe nor sound nor justifiable to impute personal motives to official acts done in the

course of administration merely on the basis of such phenomenon of less or more degree. In our opinion, an allegation of mala fides based on

personal and private motives of an official act, has to be proved like any other fact in issue and only on the basis of materials which clearly bear out

such personal and private motives and not something which in the ultimate analysis is no more than an assumption or apprehension. On a careful

and anxious consideration, we conclude that the petitioner has failed to substantiate that the detention order against him was made by the 4th

respondent mala fide.

(5) It is next argued for the petitioner that the detention order is a fraudulent or colourable exercise of power. His learned counsel urges that

activities for which a man can properly be detained under the provisions of the Defence of India Act, should be related or correlated to external

aggression. he says that as the proclamation of emergency was occasioned by the external aggression of the northern borders of India, any activity

of a detenu other than that affecting the security of India in the context of such external aggression will be irrelevant to a consideration of his

detention under the provisions of the Defence of India Act. He points to the preamble of the Act, which recites that a grave emergency exists

whereby the security of India is threatened by external aggression and, with reference to the petitioner's allegation in his affidavits that he co-

operated with the Government in regard to the Defence efforts, contributed to the defence fund and also collected funds and handed over the same

for purpose, argues that in such circumstances, the detention of the petitioner under the Defence of India Act, 1962, is a fraudulent order and a

colourable exercise of the power. This argument proceeds, in our view, on an incorrect appreciation of the scope and effect of the Defence of

India Act. Under Art. 352(1) of the Constitution, the grave emergency contemplated is one that threatens the security of India or any part of its

territory and such a threat may come from war or external aggression or internal disturbances. Whether it is the one or the other source of threat, it

is in each case a threat to the security of India or any part of it, so that once a proclamation of emergency is made, it is not confined to matters

which directly concern with or relate to external aggression, but extend to all activities which affect the security of India or any part of it.

Merely because the external aggression was the reason for the proclamation of emergency, it does not follow that the whole scope and effect of

the proclamation is governed, controlled and conditioned by that reason in the matter of providing for the security of India. External aggression is of

course an alternative requisite for invoking the emergency power. But once the proclamation is properly made, it extends to all aspects of the

security of India, not merely from the standpoint of external aggression, but also internal disturbances which will cover public safety, maintenance of

public order and all peaceful conditions in any part of area in India. It was said for the petitioner that a breach of the peace by reason of a civil

dispute, as for example, in respect of fishery rights or a piece of land or possession is not a matter to which the provisions of the Defence of India

Act can be applied. That is undoubtedly so. Public order is a totally different matter and is of a wide connotation. As pointed out by the Supreme

Court in *Romesh Thappar Vs. The State of Madras*, , it signifies that state of tranquillity prevailing among the members of a political society as a

result of the internal regulations enforced by the Government which they have instituted, and the concept of public order includes public safety. We

reject the petitioner's contention that it is only in respect of activities of a man which can be related to external aggression, he can be detained

under the provisions of the Defence of India Act.

(6) It is then urged by learned counsel for the petitioner that the non-user of the preventive Detention Act, which would have left some rights for the

petitioner to contest the propriety of his detention, and resort to the provisions of the Defence of India Act, indicates the mala fides of the detention

order. We do not think there is any substance in this connection. Whether it is the power under the one or the other Act that calls for exercise, will

depend on the facts and circumstances of each case and it is for the detaining authority to decide the question. It will be seen that the power of

detention under the Defence of India Act is much wider than that under the Preventive Detention Act, and extends to not merely prejudicial

activities suspected on grounds appearing to the detaining authority to be reasonable, but to cases of persons with respect to whom such authority

is satisfied that their apprehension and detention are necessary for the purpose of preventing them from acting in any such prejudicial manner. The

scope of the more stringent power was described by the Federal Court in AIR 1943 1 (Federal Court) . in these words:--

The Government has only to be satisfied that with a view to preventing him from acting in a particular way it is necessary to detain him. The

Government may come to the conclusion that it would be wiser to take no risks and may, therefore, subject a person to preventive detention

against whom there is no evidence or reasonable suspicion of past or present prejudicial acts or of any actual intention of acting prejudicially.

That is a power much wider than the power of detention under the Preventive Detention Act. As we said, it is the detaining authority that has to

decide in the light of the materials and circumstances before him whether to detain a particular person under the one or the other Act, and the

choice he so makes cannot by itself furnish a basis for an allegation that the order of detention is male fide:--

(7) We have already mentioned that the petitioner was served with the order of detention only on the morning of 18-2-1965 at Palayamkottai. He

has complained that, at the time of his apprehension, he was not even held by what authority he was arrested and taken away from his residence.

But the first respondent swears in his counter-affidavit, that, as a matter of fact, when he apprehended the petitioner, he did tell him by what authority he acted and that he was to be detained under the provisions of the Defence of India Act. In any case, it will be seen that the petitioner cannot successfully urge this point without invoking his fundamental right under Art. 22 of the Constitution. His contention that, because his arrest was initially illegal as he was allegedly not informed at the time of the arrest under what authority he was apprehended, his continued detention is illegal, has, therefore, to be rejected.

(8) Lastly, it is contended that the recent past conduct of the petitioner, as a relevant circumstances, would show the justiciability of the satisfaction claimed by the 4th respondent on 9-3-1965. It was on that day the 4th respondent filed his second counter-affidavit, in which he clearly stated that he had himself carefully studied the reports and recommendations from the concerned officials and was satisfied that the detention of the petitioner was necessary to prevent him from acting in a manner prejudicial to public safety and the maintaining of public order. The petitioner says that this statement of the 4th respondent came belatedly and only after he had pointed out in his reply affidavit that the 4th respondent had in his first counter-affidavit failed to particularly specify the authority which was satisfied to make the order of detention. It is true that in the first counter-affidavit of the 4th respondent there was no clear statement that he had himself applied his mind and was satisfied that the petitioner should be detained. But the 4th respondent did say in that counter-affidavit that the detention order was passed following the usual procedure and the contention that no individual was satisfied about the necessity for detaining the petitioner was incorrect. It would obviously have been better, if, instead of putting the matter in that manner, a clear statement had been made in the first counter itself that the 4th respondent was himself satisfied.

But the failure to do so, which has been strongly relied on by the petitioner, makes, in the circumstances, no difference to the fact that the 4th respondent did satisfy himself before making the order of detention that it was necessary on the facts and circumstances before him. He has stated to that effect in his second counter-affidavit, which we have no hesitation in accepting. The learned Advocate General also produced before us the

original papers relating to the order of detention which show that the 4th respondent, on 16-2-1965, had in his own hand ordered detention of the petitioner on his express view that with reference to the materials before him it was necessary to detain the petitioner. He had also indicated in his order the prison in which he should be detained, which, by his order again the next day, was altered as the Borstal School at Palayamkottai where the petitioner is under detention. In the circumstances, therefore, there is no substance in the petitioner's contention that the 4th respondent had not satisfied himself as to the necessity of his detention when the detention order was made.

(9) It is true, as contended by learned counsel for the petitioner, that satisfaction as to the necessity of detention of a person is a quasi-judicial act.

Satisfaction must necessarily, therefore, involve the process of considering the pros and cons as to necessity of detention of a person and has to be

arrived at bona fide, more especially when the person detained under Rule 30(1) of the Defence of India Rules is deprived, on account of the

proclamation of emergency and of the Presidential Order suspending the remedy to enforce the specified fundamental rights, of his elementary

rights to contest and show cause against his detention, and arrived at also after a reasonable and careful consideration of relevant matters pertaining

to necessity of detention of an individual. But once the satisfaction is expressed to have been reached by the proper authority, the Court's power

or jurisdiction to sit in judgment over or weigh it is very limited. The satisfaction contemplated by S. 3(15) of the Defence of India Act, 1962 and

Rule 30(1) of the Defence of India Rules, 1962. is a subjective process and a subjective satisfaction, not open to judicial scrutiny with reference to

objective tests, standards or considerations. We are not here concerned with the question whether, where a detention order is made under the first

part of Section 3(15) on suspicion based on grounds appearing to the detaining authority to be reasonable, such grounds are open to judicial

review. The power of detention under the second part of this sub-section is wider and more drastic and the condition for its exercise is only that

the detaining authority should be satisfied that the apprehension and detention of a person are necessary for the purpose of preventing him from

acting in any prejudicial manner mentioned.

We have already referred to the scope of the more drastic power as interpreted by the Federal Court in AIR 1943 1 (Federal Court) namely, the Government may come to a conclusion that it would be wiser to take no risks and may subject a person to preventive detention against whom there is no evidence or reasonable suspicion of past or present prejudicial acts or of any actual intention of acting prejudicially". This observation of the Federal Court was as regards the scope of Rule 28 of the Defence of India Rules, 1939, but the language of S. 3(15) second part and of rule 30 of Defence of India Rules, 1962, being for present purposes, practically in pari materia, that observation applies to their interpretation as well. We are aware that the vires of Rule 26 was upheld by the Privy Council later, differing from AIR 1943 1 (Federal Court) . But this did not affect the construction and scope of Rule 26. It follows, therefore, that this Court cannot review the propriety or otherwise of the satisfaction reached by the 4th respondent on its merits. It may be that if the satisfaction of the appropriate authority in making an order of detention of a person is shown to be male fide, dishonest, fraudulent or an abuse of power for ulterior purposes unconnected with those in respect of which alone the power can properly be exercised, the Court, on those limited grounds, may interfere, for, in such cases, it will be an exercise of power outside the purview of the statutory provisions and unauthorised by them. But in this case, as we already mentioned, the petitioner has failed to show that the detention order against him suffers from any such infirmity.

(10) The petition is dismissed.