

(1994) 04 MAD CK 0011
In the Madras High Court
Case No : H.C.P. No. 419 of 1994

M. Sivanathan

APPELLANT

Vs

The Assistant Collector/Executive Magistrate, Pollachi,
Coimbatore District and The Inspector of Police, West Police
Station, Pollachi, Coimbatore District

RESPONDENT

Date of Decision : 07-04-1994

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226
Criminal Procedure Code, 1973 (CrPC) — Section 110

Citation : (1994) 04 MAD CK 0011

Hon'ble Judges : S.M. Ali Mohamed, J;Mishra, J

Bench : Division Bench

Advocate : M. Karpagavinayakam, for Mr. C. Prakasam, for the Appellant; I. Subramaniam, Additional Public Prosecutor, for the Respondent

Judgement

Mishra, J.

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1. The case in hand is a glaring example of abuse of power by the respondents herein and their administrative fiat and over-reaching the

constitutional guarantees under Arts. 21 and 22 of the Constitution of India.

2. M. Sivanathan, who has described himself as a clerk of one A.K. Balasubramaniam has moved this Court under Art. 226 of the constitution of

India and brought to the notice of this Court that Balasubramaniam and his wife Chandramani were taken to the office of the Assistant

Collector/Executive Magistrate, Pollachi (the first respondent) by two police constables attached to the second respondent police station (West

Police Station, Pollachi) at 7.30 a.m. on 7.3.1994 from their residence. They disclosed however that Balasubramaniam and his wife Chandramani

were involved in transport of rice to the neighbouring Kerala State. They (Balasubramaniam and his wife Chandramani) were kept at the office of the first respondent from 11 a.m. to 4.30 p.m. on the said day and the first respondent allegedly remanded them to Pollachi Sub Jail. On enquiry, the petitioner learnt that the first respondent had allegedly remanded them to custody in Sub-Jail, Pollachi for the alleged offence under S.110 of the Code of Criminal Procedure. Balasubramaniam and his wife were thus detained in Sub-Jail, Pollachi when on 9.3.94 the petitioner presented the instant petition and this Court on 10.3.94 ordered notice to respondents 1 and 2 herein returnable by 15.3.94. There has been no substantial progress, however, in the instant application as it stood adjourned from time to time until 5.4.94 on which day when we first heard learned counsel for the petitioner and learned Additional Public Prosecutor, it appeared quite intriguing to us how the Inspector of Police, West Police Station, Pollachi, found in connection with the allegation that Balasubramaniam and his wife Chandramani were involved in transporting rice to Kerala State that the provisions of S.110 of the Code of Criminal Procedure were attracted and had any authority under which he could produce them before the Assistant Collector-cum-Executive Magistrate, Pollachi and how the Assistant Collector-cum-Executive Magistrate found himself empowered to order for remand of Balasubramaniam and his wife Chandramani to a Sub-jail (judicial-custody), and how the Superintendent of Sub-Jail, of all the persons, found a valid remand order to keep Balasubramaniam and his wife in prison.- We accordingly directed that besides the two respondents, the Superintendent, Sub-Jail, Pollachi should also be treated as a respondent and they should be directed to appear before the Court this day.

3. The Assistant Collector, the Inspector of Police and the Superintendent, Sub-Jail, Pollachi have appeared with a counter-affidavit by the first respondent, who had set out the facts as follows:

Thiru Balasubramaniam and his wife Tmt. Chandramani have been indulging in clandestine movement of paddy and rice to the neighbouring Kerala State under bogus bills and purchase vouchers. The Food cell CID functioning at Pollachi, is maintaining a record of the illicit and clandestine activities of movement of paddy indulged in by the aforesaid two persons.

I respectfully state that on the basis of a complaint lodged by the Special Tahsildar, Pollachi against Tmt. Chandramani and her husband Thiru

Balasubramaniam for their continued illicit movement of paddy and rice to the neighbouring Kerala State, a case was registered in Crime No.

73/94, under S.10(d) and (e) of the Cr.P.C. Both these persons were produced before me on 7.3.94. On their appearance, I read out the

contents of the FIR concerning their illegal activities and both of them admitted the allegations contained therein. However, since the proceedings

commenced only at 4 p.m. on 7.3.94, and the same could not be concluded on the same day, I remanded them to judicial custody till 15.3.94. On

15.3.94 both these persons were released from custody.

I have since realised that in proceedings initiated under Chapter VIII of the Cr.P.C. the persons concerned in the proceedings can neither to be

arrested nor remanded to custody. However, I was under the bona fide impression that these proceedings were in the nature of a trial by a

Magistrate for an offence and that under S.309 of the Cr.P.C. such remand could be made.

As submitted earlier, the action on my part in remanding the accused is not in accordance with law and the same was done under a bonafide

misconception of the provisions of the Cr.P.C.

I most respectfully state that I have no personal malice against either Thiru Balasubramaniam or his wife Tmt. Chandramani. I am merely interested

in the welfare of the general public whose normal life is affected by the illicit and clandestine movement of rice from the locality to the neighbouring

states.

4. Although a reference have been made to a complaint lodged by the Special Tahsildar, Pollachi against Chandramani and her husband

Balasubramaniam for their continued illicit movement of paddy and rice to the neighbouring Kerala State and that a case was registered in Crime

No. 73/1994, it is not brought to our notice how movement of paddy and rice to the neighbouring Kerala State is illicit, has any Control order

been violated by Chandramani or by her husband Balasubramaniam and how far such alleged acts attracted S.110 (d) and (e) of the Code of

Criminal Procedure. Even if we proceed with the assumption that there has been some Movement Control Order and/or any statutory prohibition

on movement of paddy and rice from the State of Tamil Nadu to the neighbouring Kerala State, we cannot see on the facts and in the

circumstances of the case, any legal arrest of Balasubramaniam and his wife Chandramani by the second respondent and their remand to the prison

at Pollachi by the Assistant Collector-cum- Executive Magistrate, Pollachi. We are not informed of any situation under which the Assistant

Collector-cum-Executive Magistrate could make a remand by the first respondent, the Assistant Collector-cum-Executive Magistrate.

5. Balasubramaniam and his wife Chandramani are not produced before us. It is said that the Assistant Collector/first respondent remanded them

to judicial custody till 15.3.1994 and on 15.3.1994 both of them were released from custody. It is not said, who ordered for their release from

custody. It is, however, said in the counter-affidavit aforementioned by the first respondent.

I remanded them to judicial custody till 15.3.1994. On 15.3.1994, both these persons were released from custody.

6. We have found from the record that the notice pursuant to the order of this court, dated 10.3.1994 was received on behalf of the Assistant

Collector-cum-Executive Magistrate and the Inspector of Police by the Public Prosecutor on 10.3.1994 itself. The two victims of the atrocious

acts of the second respondent and the first respondent, however, are free once again. But, there is no justification for the custody, which

Balasubramaniam and his wife Chandramani have suffered from 7.3.1994 to 15.3.1994. We have reasons to be alarmed when we have found that

officer incharge of a police station has taken two persons in custody without any semblance of the power either under S.41 or under S.151 of the

Code of Criminal Procedure and produced them before the Assistant Collector Executive Magistrate, who cannot exercise any power to remand

any such person to custody even in exceptional circumstances; the Assistant Collector has noted that he acted under S.110 of the Code of

Criminal Procedure, which permitted him to receive information that there was within his local jurisdiction a person, who by habit a robber, house-

breaker or forger, of receiver of a stolen property knowing the same to have been stolen, a protector or harbourer of thieves or aided in the

concealment of disposal of stolen property or who committed or attempted to commit or abetted the commission of offence of kidnapping,

abduction, extortion, cheating or mischief or any offence punishable under Chapter XII of the Indian Penal Code or under S.489-A, S.489-B,

S.489-C, or S.489-D of the Code or committed or attempted to commit or abetted the commission of offence involving a breach of the peace or

committed or attempted to commit or abetted the commission of any offence under the Drugs and Cosmetics Act, 1940 the Foreign Exchange

Regulation Act, 1973, the Employees, Provident Funds Act, 1952, the Prevention of Food Adulteration Act, 1954, the Essential Commodities

Act, 1955, the untouchability (Offences) Act, 1955, the Customs Act, 1962 or any offence punishable under any other law providing for the

prevention of hoarding or profiteering or of adulteration of food or drugs or of corruptio, etc.,

7. Learned Additional Public Prosecutor, however, has fairly stated that the first respondent has acknowledged that he was under the bona fide

impression that Balasubramaniam and his wife Chandramani were produced before him in a proceeding in the nature of a trial by a Magistrate for

an offence and that under S.309 of the Code of Criminal Procedure, he could make an order of remand and that he was since realised that any

proceeding initiated under Chapter VIII of the Code of Criminal Procedure, the persons concerned in the proceeding can neither be arrested nor

remanded to custody. There is no affidavit before us by the second respondent, the Inspector of Police to the said effect. But learned Additional

Public Prosecutor stated that since the Special Tahsildar's report mentioned about movement of alleged illicit movement of food grains, he had

reason to think that the provisions of the Essential Commodities Act were attracted and that is why he produced Balasubramaniam and his wife

Chandramani before the first respondent bona fide but under a mistake of law.

8. The Special Tahsildar's report is not before us and there is no reason for us to wait for the report of the Special Tahsildar because if there has

been some complaint to his mind as respects the conduct of Balasubramaniam and his wife Chandramani and he forwarded such report to the

police, he committed no wrong. Learned Additional Public Prosecutor had advanced, however, no plea except the total ignorance of law on behalf

of the Superintendent, Sub-Jail, Pollachi.

9. We are assured by the Additional Public Prosecutor that the instant case is one

and the solitary act of this kind by the respondents herein and that at least these respondents, since they have been made aware of the provisions of law, are not likely to repeat such acts in future. Yet, we are not"" able to completely dis-associate ourselves with the feeling of alarm as one such act of illegal detention in the manner as afore-mentioned has come to the notice of the Court, can there be no other or more such acts which have not been brought to the notice of the Court. It is indeed necessary that no person, who has committed any cognizable offence or who should be subject to investigation/inquiry and other action in accordance with law, should be allowed to escape and alert police station alone can serve the need to keep the violators of law under check, but all such actions that men in authority may should be within the bounds of law and in no case, there should be transgression of the limitations imposed by the Constitution of India. There should be no violation of the cherished liberty of a person and if such a fundamental right is not respected by the man in authority except in cases where some one who is likely to be deprived of his liberty is so deprived only in accordance with the prescribed procedure, the very basis of a democratic system may be subverted. It is with this concern that we have noticed with anguish the conduct of the respondents and decided to observe that the executive Government of the State should not ignore such blatant violations of law by their officers.

10. On the facts of this case, we are inclined to take a compassionate view in so far as the conduct of the first respondent/Assistant Collector-cum-Executive Magistrate, Pollachi is concerned, who we are informed, has only recently completed his probation and has come in the regular Indian Administrative Service. We however, record our disapproval of his conduct and warn him severely so that in case in future he is found to have indulged in such careless and irresponsible behaviour, proper action will be taken against him.

11. We cannot, however, show the same extent of compassion for the Inspector of Police (the second respondent) and the Superintendent of Sub-Jail, Pollachi, who are experience and seasoned officers and who are expected to know when and how they should act. On the facts of this case, therefore, in our view, the State Government must take appropriate steps

to record the above mentioned conduct on their part in the service

book and treat the same as an adverse entry as and when their cases are considered for any future benefit to them in their service.

12. While noticing serious commissions and omissions of the respondents before us, we have noted that Balasubramaniam and his wife

Chandramani were kept in illegal custody from 7th March, 1994 to 15th March, 1994. They in our view, should be suitably compensated and as

held by this Court in the case of Padmini v. State of Tamil Nadu & others (1993 Writ L.R. 798) and as held by the Supreme Court in the case of

Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the State is duty bound to compensate any such person who has

suffered legal injury at the hands of its officers. Balasubramaniam and his wife Chandramani have suffered violation of their liberty at the hands of

the respondents and they deserve, in our view a fair compensation in terms of money in a sum of Rs. 10,000/- each. The Government of the State

of Tamil Nadu is accordingly directed to pay to Balasubramaniam and his wife Chandramani the abovementioned sum of Rs. 10,000/- each within

one month from to day. The Government, however, shall have the liberty to recover the said amount from any of the three respondents that is to

say (1) the Assistant Collector Executive Magistrate, Pollachi, (2) the Inspector of Police, West Police Station, Pollachi and (3) the Superintendent

of Sub-Jail, Pollachi.

13. We have by our Order above not altogether condoned the acts of Balasubramaniam and his wife Chandramani, who should not be spared if,

as alleged by the Special Tahsildar, they are engaging in clandestine/illegal trade and business. It will be fair on the facts as aforementioned that the

offence, if any, alleged by the Special Tahsildar should be investigated or enquired into in accordance with law. We accordingly direct the first

respondent herein to forward a copy of the complaint of the Special Tahsildar to the Inspector General of Police, CB, CID, Madras. The

Inspector General of Police, CB, CID, shall entrust the Investigation into the allegations against Balasubramaniam and his wife Chandramani to an

officer not below the rank of Deputy Superintendent of Police under his control and instruct the said officer to proceed accordingly in accordance

with law to submit a report to the Court for appropriate action.

14. With the order and directions as above, this petition is disposed of.