

(1999) 12 MAD CK 0071
In the Madras High Court
Case No : H.C.P. No. 194/99

Mani

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Citation : (2000) 1 LW(Cri) 452

Hon'ble Judges : S. Jagadeesan, J;A. Raman, J

Bench : Division Bench

Advocate : S. Swamidoss, Manoharan, for the Appellant; S. Anbalagan, Assistant Public Prosecutor, for the Respondent

Judgement

S. Jagadeesan, J.—Petitioner is the uncle of the detenu Chinnakutti. Who had been detained as "bootlegger" pursuant to the impugned order of detention, date 30.12.1998, passed by the second respondent herein.

2. The impugned order of detention is being challenged on the ground that the wife of the detenu had sent a representation to the Detaining Authority as well as to the District Collector, the Government and the District Superintendent of Police stating that her husband has been illegally detained by the police from 20.12.1998 and they are trying to foist a case against him. The said representation had been received by the Detaining Authority on 28.12.1998 and the same has not been considered by the Detaining Authority while passing the order of detention. Further, the said representation has not been forwarded to the Government along with the order of detention is vitiated.

3. The learned Public Prosecutor contended that the detenu was remanded on 23.12.1998 and before the Judicial Magistrate, the detenu has not made any complaint with regard to his illegal detention by the police authorities. The representation of the wife of the detenu being subsequent to the order of remand, it is not necessary for the Detaining Authority to consider the same and further, as the representation did not have any bearing on the order of detention,

there is no obligation on the part of the Detaining Authority to forward the same to the Government.

4. We carefully considered the above contentions of both the counsel.

5. The question for consideration is whether the Detaining Authority ought to have considered the representation of the wife of the detenu dated 24.12.1998, which was received by the Detaining Authority prior to the passing of the impugned order of detention.

6. In the representation, it has been clearly stated that the police came to the house of the detenu on 20.12.1998 and took him to custody. When enquired about the whereabouts of the detenu, the family-members of the detenu were not given any information. However, the wife of the detenu came to know that the police officials are contemplating to foist a case against her husband for an offence under the prohibition Act. Hence necessary steps have to be taken to make an enquiry and render justice.

7. From the above representation of the wife of the detenu, it is clear that she had averred that the detenu was taken by the police from his house on 20.12.1998 and a case has been foisted against him. This representation had been received by the Detaining Authority on 28.12.1998 i.e., two days prior to the date of passing of the impugned order of detention. When the Detaining Authority, while passing the order of detention, has to satisfy himself with regard to the involvement of the detenu with regard to the alleged offence, the representation sent by the wife of the detenu will have a bearing in arriving of the conclusion with regard to the involvement of the detenu in the ground case. Hence, it is for the Detaining Authority to consider the representation of the wife of the detenu and find out as to whether there is any bona fides. If the Detaining Authority, on consideration of the representation of the wife of the detenu, comes to the conclusion that there is some basis for such representation then, there is no possibility for Detaining Authority to arrive at the subjective satisfaction of the involvement of the detenu in respect of the ground case. Hence, the non-consideration of the same would naturally vitiate the impugned order of detention.

8. In fact, in T.M. Syed Ali and another Vs. State of Tamil Nadu and five others, , a Division Bench of this Court has held that the representation sent prior to the order of detention would be a relevant material to consider before arriving at the subjective satisfaction whether to or not to issue an order of detention in the following terms:

According to the prosecuting agency, the incident in question had taken place on 2.8.1998 and the petitioners were involved in the said incident. The case of the prosecution is that the petitioners were arrested only on 2.8.1998 in respect of the offence committed by them on that day. As against this, in the representation as also in the telegram sent on behalf of the petitioners, which has been duly received in the office of the Director General of Police and form

part of the records of the case, it has been alleged that no incident as alleged had taken place on 2.8.1998 and the petitioners had already been taken into custody on 25.7.1998 and 31.7.1998 respectively. 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 vide 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 that Ground.

9. Following the above principle, we have no hesitation to hold that the failure on the part of the Detaining Authority to consider the representation received from the wife of the detenu prior to the passing of the impugned order of detention would certainly vitiate the impugned order of detention and as such, the same cannot be sustained.

10. Accordingly, the H.C.P. is allowed, the impugned order of detention is set aside. The detenu is directed to be set at liberty forth-with unless his presence is required in respect of any other case.