
(2003) 12 MAD CK 0120

In the Madras High Court

Case No : Habeas Corpus Petition No. 1443 of 2003

Mariammal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 12 MAD CK 0120

Hon'ble Judges : R. Banumathi, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : S. Swamidoss Manokaran, for the Appellant; A. Navaneethakrishnan, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The detention order dated 10.09.2003 branding the detenu as a goonda is under challenge in this Habeas Corpus Petition on the ground that the copies of the statements of the detenu as an accused made to the sponsoring authority have not been furnished, in spite of the fact that the documents were asked for.

2. The learned Additional Public Prosecutor on the strength of SLP (Crl.) No.2059/95 dated 04.08.1995 and also HCP No.1839/94 dated 06.04.1995 would state that those documents have not been relied upon and as such, the non- furnishing of documents cannot be a ground for vitiating the detention order.

3. Learned counsel for the petitioner, on the strength of the decision rendered by this Court in Chandran ..vs.. The Commissioner of Police, Madras City and another 1996 1 L.W.(Cri.)267, would point out that the very same SLP order has been considered in the said judgment and this Court distinguished the same and held that the detention order is vitiated, since the statements of other co-accused alone have been furnished and the statement of the detenu has not been furnished, in spite of his asking for. The said decision would be applicable to

the facts of the present case in all fours.

4. The case cited by the Additional Public Prosecutor would merely refer to the fact that the documents, which were asked for, have not been relied upon and hence the same were not supplied. But, in this case, it cannot be said that it was not relied upon in view of the fact that the statements of other accused have been furnished in the booklet and since the statement of detenu was not made available, he was prevented from making an effective representation.

5. As pointed out by the Division Bench of this Court, the litmus test about reliance having been placed on the statement of the detenu is highlighted by the supply of the confession statement of other accused. Instead of supplying the statements of the detenu, the detaining authority supplied other documents such as the statements of other accused. Probably a mistake had been committed by the Detaining Authority or those in charge of supply of documents. However, such mistake cannot be allowed to prejudice the case of the detenu. Once we are satisfied that reliance was in fact placed by the Detaining Authority on the statement of other accused, non-supply of the said statement given by the detenu would suffice to infer prejudice which had prevented the detenu from making an effective and purposeful representation.

6. Even assuming that it is not a relied upon document, when there is no dispute in the fact that this is the document referred to, the same shall be furnished to the detenu, when asked for as per the dictum laid down by the Supreme Court in *Powanammal Vs. State of Tamil Nadu and Another*, .

7. Therefore, in our view, the detention order would get vitiated. Consequently, the impugned order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.