
(2013) 04 MAD CK 0245
In the Madras High Court
Case No : H.C.P. (MD) No. 414 of 2008

Mariammal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2013) 3 CTC 1 : (2013) 3 RCR(Criminal) 117

Hon'ble Judges : S. Palanivelu, J;S. Nagamuthu, J;K.N. Basha, J

Bench : Full Bench

Advocate : S. Manoharan, for the Appellant; S. Shanmugavalayutham, Public Prosecutor, for the Respondent

Judgement

K.N. Basha, J.—This Habeas Corpus Petition is preferred by the mother of the detenu challenging the detention order dated 4.5.2008 passed by the second respondent branding her daughter as "Drug-Offender" u/s 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act (Tamil Nadu Act 14/1982). In the Petition mainly two grounds were raised, namely, (1) No material was placed before the Detaining Authority to come to the conclusion that on the date of clamping the order of detention, the detenu was in remand; and (2) the Application for bail was opposed by the sponsoring authority on the ground that action is contemplated to detain the detenu under Tamil Nadu Act 14/1982 and since the Sponsoring Authority had acted in a pre-determined mind, the detention order is vitiated.

2. The Division Bench before which the Writ Petition came up for hearing accepted the first ground and accordingly quashed the order of detention. Before the Division Bench, in support of the second ground, an order of a Division Bench in *Sarala v. The Commissioner of Police, Greater Chennai* and another, 2005 MLJ (Crl.) 1004, order of a Division Bench in *Chinnathambi Vs. The State of Tamil Nadu* 2008 (1) MLJ (Crl.) 953, were cited, wherein, the said Division Benches

have taken the view that in the event of the Sponsoring Authority had represented before the Court while opposing the Bail Application that the detenu were likely to be detained under Tamil Nadu Act 14 of 1982, it would show the pre-determined mind on the part of the Sponsoring Authority, which would vitiate the orders of detention.

3. The Division Bench, which heard the present case, found it difficult to accept the said view taken by the earlier Division Benches in *Sarala v. The Commissioner of Police, Greater Chennai and another*, 2005 MLJ (Crl.) 1004 and *Chinnathambi Vs. The State of Tamil Nadu*. Therefore, the Division Bench comprising of Hon"ble Mr. Justice D. Murugesan (as he then was) and Hon"ble Mr. Justice M. Sathyanarayanan, directed the Registry to place the papers before the Hon"ble The Chief Justice for constitution of a Full Bench to answer the following question:

Whether a detention order is vitiated on the ground that the Sponsoring Authority while opposing Bail Application had stated as to the contemplation by invoking preventive detention laws against the individual and thereby he had acted in predetermined mind?

4. Accordingly, the Hon"ble The Chief Justice constituted a Full Bench consisting of Hon"ble Mr. Justice Elipe Dharma Rao, Hon"ble Mr. Justice K. Raviraja Pandian and Hon"ble Mrs. Justice Prabha Sridevan and as Hon"ble Mr. Justice K. Raviraja Pandian and Hon"ble Mrs. Justice Prabha Sridevan had demitted their office, the Hon"ble The Then Chief Justice had reconstituted this Full Bench and that is how the matter is placed before us.

5. We have heard Mr. S. Manoharan, learned Counsel for the Petitioners and Mr. S. Shanmugavelayutham, learned Public Prosecutor, in respect of the issue involved in this matter.

6. The learned Counsel appearing for the Petitioner would contend that the pre-determination of the Sponsoring Authority has the tendency to influence the mind of the Detaining Authority. Therefore, such predetermination on the part of the Sponsoring Authority will vitiate the detention order. The learned Counsel for the Petitioner would submit that the said view taken by the Division Benches in *Sarala v. The Commissioner of Police, Greater Chennai and another*, 2005 MLJ (Crl.) 1004 and *Chinnathambi Vs. The State of Tamil Nadu* is the correct view.

7. Per contra, Mr. S. Shanmugavelayutham, learned Public Prosecutor, would contend that merely because the Bail Application was opposed by the Sponsoring Authority on the ground that there is a Contemplation for detaining the detenu under the Act 14 of 1982, it cannot be contended that the Detaining Authority was having any pre-determined mind for passing the detention order. It is contended that the Detaining Authority has to apply its independent mind to the other factors for arriving at the subjective satisfaction for passing the order of detention. It is pointed out by the learned Public Prosecutor that in both the decisions it was held that the representations made by the Sponsoring Authority,

while opposing the Bail Application to the effect that it was in contemplation to detain the detenu under Act 14 of 1982, shows the pre-determined mind of the Sponsoring Authority and the Detaining Authority in turn had failed to consider the same and accordingly, according to the Division Benches, the detention order is vitiated. He would further point out that it was not pointed out in those decisions that the Detaining Authority had pre-determined mind. The learned Public Prosecutor would also contend that it is the subjective satisfaction arrived at only by the Detaining Authority by Application of its mind independently which culminates in the detention order. Thus, according to the learned Public Prosecutor, the view taken in *Sarala v. The Commissioner of Police, Greater Chennai* and another, 2005 MLJ (Cri.) 1004 and *Chinnathambi Vs. The State of Tamil Nadu*, is not the correct view.

8. We have given our careful and anxious consideration to the rival contentions put forward by either side and perused the earlier decisions rendered by this Court by the Division Benches as well as the referral order of the Division Bench in this matter.

9. Preventive detention is not by way of punishment on full-fledged trial, but it is by way of preventing the detenu from indulging in certain prohibited activities as are dealt with in the Act itself. Under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of except by following the procedure established by law. This provision came to be considered by the Hon'ble Apex Court as well as almost all the High Courts in the country on several occasions. The law on the subject of preventive detention is now well-settled leaving behind no doubt at all. It is also well-settled that the law of preventive detention will be Constitutional provided, the Act contains procedure which is fair, just and reasonable ensuring the life and liberty guaranteed under Article 21 of the Constitution of India. The Tamil Nadu Act 14 of 1982 contains procedure to be followed by the Detaining Authority in tune with Article 21 of the Constitution of India. It is needless to point out that that procedure, as envisaged in Article 21, is both substantive law and procedural law. In Tamil Nadu Act 14 of 1982, there is substantive provision u/s 3 which states that an order of detention could be clamped on an individual only in the event the Detaining Authority is satisfied with the compelling necessity for passing such an order to prevent the detenu from indulging in illegal activities as reflected in the act itself. u/s 3(1) of the Act, the State Government is the Detaining Authority and u/s 3(2) of the Act, the State Government may empower the District Collector of the District concerned/Commissioner of Police to pass an order of detention u/s 3(1) of the Act. It is needless to point out that the State Government has authorized the District Collector of every district to be the Detaining Authority except in the cities, like Chennai, Coimbatore, Salem, etc., where the Commissioner of Police concerned is the Detaining Authority.

10. As per the procedure, the Sponsoring Authority, on noticing the antecedents of the detenu and his likelihood of involvement in any illegal activity in future and

to protect the public order may sponsor the case to the Detaining Authority. While sponsoring, the Sponsoring Authority is required to place all the materials before the Detaining Authority. Here we would like to mention that if only the Sponsoring Authority is of the view that the case of the detenu should be sponsored to the Detaining Authority and if only he determines to do so, he will thereafter sponsor the case for the Detaining Authority. The determination on the part of the Sponsoring Authority to sponsor the case of the detenu is quite obvious.

11. The Detaining Authority, in turn, has to apply its independent mind into all the materials including the reasons cited by the Sponsoring Authority justifying the need for passing the detention order. The Detaining Authority, if it is satisfied that such an order is absolutely necessary, then he will pass the order of detention u/s 3(1) of the Act. Here, the essential element is the subjective satisfaction of the Detaining Authority. While arriving at such satisfaction, the Detaining Authority is not at all influenced by any irrelevant materials. When a challenge is made under Article 226 of the Constitution of India to such an order of detention, among other things, this Court is required to examine as to whether there was Application of mind on the part of the Detaining Authority and whether the subjective satisfaction arrived at by the Detaining Authority is based on materials and on sound reasons. Once this Court finds anything lacking on the part of the Detaining Authority in this respect, then this Court will proceed to quash the detention order as it does not satisfy the fair, just and reasonable procedure guaranteed under Article 21 of the Constitution of India.

12. The earlier two Division Benches in *Sarala v. The Commissioner of Police, Greater Chennai* and another, 2005 MLJ (CrL.) 1004 and *Chinnathambi Vs. The State of Tamil Nadu* have held that the Detaining Authority while passing the order of detention had failed to take notice of the predetermination on the part of the Sponsoring Authority. Here, we regret, we are unable to agree with the said view of the Division Benches. The word "determination" means a "final decision"; Pre-determination means a decision arrived at sometime before. The Detaining Authority for the first time looks into the materials placed before him, applies his independent mind into the same, arrives at a subjective satisfaction that detention is absolutely necessary and then for the first and last time takes a final decision (determination) to pass the order of detention. There is no pre-determination (pre-decision) on the part of the Detaining Authority at all. The determination of the Sponsoring Authority is one thing which means decision to sponsor the case to the Detaining Authority. There is no pre-determination on the part of the Sponsoring Authority as well. There is only one determination on the part of the Sponsoring Authority determining to sponsor the case to the Detaining Authority. Similarly, there is only one determination on the part of the Detaining Authority to detain the detenu. Thus, neither in the case of the Detaining Authority nor in the case of the Sponsoring Authority, there is any pre-determination. The determination (final decision) of the Sponsoring Authority is recommendatory in nature which has got nothing to do with the determination

(final decision) of the Detaining Authority as the Detaining Authority is not bound by such determination of the Sponsoring Authority. The final outcome of passing the detention order is construed to be the sole and independent decision of the Detaining Authority on the basis of the perusal of the materials placed before him and Application of his independent mind by arriving at the subjective satisfaction.

13. In view of the aforesaid reasons, we are of the view that the view taken by the Division Bench of Hon''ble Mr. Justice D. Murugesan (as he then was) and Hon''ble Mr. Justice M. Sathyanarayanan disagreeing with the view taken by the Division Benches in Sarala and Chinnathambi cases (cited supra) is the correct exposition. Thus, we agree with the Division Bench of Hon''ble Mr. Justice D. Murugesan (as he then was) and Hon''ble Mr. Justice M. Sathyanarayanan and we regret to disagree with the view taken by the earlier Division Benches in Sarala and Chinnathambi cases (cited supra). Therefore, we are constrained to overrule the judgments in Sarala v. The Commissioner of Police, Greater Chennai and another, 2005 MLJ (Crl.) 1004; and Chinnathambi Vs. The State of Tamil Nadu . Accordingly, we answer the question referred to us that the detention order shall not stand vitiated on the ground that the sponsoring authority while opposing the Bail Application had stated as to the contemplation of invoking preventive detention laws against the individual and thereby he had acted in pre-determined mind.