

(2004) 09 MAD CK 0167

In the Madras High Court

Case No : Habeas Corpus Petition No. 499 of 2004

Mrs. Sargunamarri

APPELLANT

Vs

The District Collector and District Magistrate, Cuddalore
District, Cuddalore and The Secretary to Government,
Prohibition and Excise Department, Fort St. George, Chennai
- 600 009

RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:

Citation : (2005) 1 LW(Cri) 380

Hon'ble Judges : P. Sathasivam, J;M. Chockalingam, J

Bench : Division Bench

**Advocate : R. Srinivas, for the Appellant; Abudukumar Rajarathinam, Govt.,
Advocate (Crl. Side), for the Respondent**

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Petitioner is the mother of the detenu who challenges the detention order dated 18.03.2004 detaining her son Dhanislas as a Goonda under Tamil Nadu Act 14 of 1982. The ground case on which the detention has been made relates to an occurrence which had taken place on 10.03.2004 for which a case was registered in Crime No. 102/2004 of Chozhatharam Police Station under Sections 294, 324, 506 (ii) and 307 I.P.C. The detenu has four adverse cases, all relate to various offences under Indian Penal Code and SC/ST Act, 1989. The said order of detention was passed in order to prevent the detenu from indulging in an activity prejudicial to the maintenance of public order.

2. Heard Learned Counsel for the petitioner and the learned Government Advocate for the respondents.

3. Though several contentions have been raised questioning the impugned detention order, at the foremost, Learned Counsel for the petitioner attacked the detention order on the ground that the same is liable to be set aside on the

ground of non-application of mind on the part of the detaining authority. He also contended that certain material documents were considered and taken note of by the detaining authority after filing of an affidavit of the sponsoring authority dated 15.3.2004 without a covering letter or additional affidavit.

4. It is brought to our notice that the District Magistrate and District Collector of Cuddalore District, first respondent herein, passed the impugned detention order branding the detenu as a Goonda based on the affidavit of the sponsoring authority, namely, Inspector of Police, Srimushnam Circle. The said affidavit is dated 15.3.2004. The original affidavit of the sponsoring authority which finds a place in the records produced would show the date as 15.3.2004. However, in para 4 of the affidavit, the sponsoring authority has stated that Dhanislas (detenu) was received at about 18.00 Hours on 10.03.2004 in connection with Crime No. 102/2004 of Srimushnam Police Station and he was duly produced before the Judicial Magistrate No. 1, Chidambaram on 10.03.2004 and remanded to judicial custody upto 24.03.2004. It is further stated that he has already filed a bail application before the Court of District Sessions Judge, Cuddalore on 16.03.2004 and it is pending in C.M.P. No. 2847/2004. It is not in dispute that these details are available in para 4 of the affidavit of the sponsoring authority dated 15.3.2004. As rightly argued by the Learned Counsel for the petitioner, if the affidavit of the sponsoring authority, duly sworn on 15.3.2004, it would not be possible for him to state the statement of fact, namely, filing bail application by the detenu before the Court of the District Sessions Judge on 16.03.2004 and pendency of the said petition. Though the learned Government Advocate has stated that the affidavit of the sponsoring authority was sworn only on 17.3.2004, as said earlier, the original affidavit bears the date only 15.3.2004. Even if it is an error or wrongly stated as 15.3.2004, nothing prevented the respondents from filing a counter affidavit explaining the same before this Court. In the absence of such a counter affidavit, it is presumed that the affidavit of the sponsoring authority is dated 15.3.2004 and not 17.3.2004, as claimed by the learned Government Advocate. If that is so, the statement of the sponsoring authority in para 4 of his affidavit cannot be accepted as true. This vital aspect has not been noticed by the detaining authority while passing the order of detention on 18.03.2004.

5. Another important factor is that the detaining authority has referred to a remand order dated 10.03.2004 passed by the Judicial Magistrate No. I, Chidambaram. A perusal of the said order shows that it contains both English and Tamil versions and find place at page Nos. 115 and 116 of the booklet supplied to the detenu. It also shows that the true copy was made ready by the Office of the Judicial Magistrate No. I, Chidambaram only on 17.3.2004. In other words, it is clear that after the affidavit of the sponsoring authority dated 15.3.2004, the detaining authority has received Remand Report and Remand Order which were supplied on 17.03.2004 and after considering the same the detaining authority passed the order of detention on 18.03.2004. As rightly argued by the Learned Counsel for the petitioner, it is not clear as to how those

documents, namely, remand report and remand order were received by the detaining authority without a covering letter or additional affidavit of the sponsoring authority. In the absence of the same or information as to non-sending of covering letter or additional affidavit before this Court, how those documents were entertained and considered by the detaining authority, hence the detention order has to be set aside. In this regard, it is worthwhile to refer a Division Bench decision of this Court in *Alagar Vs. The State of Tamil Nadu, etc.*, and another, reported in 2000-2-L.W. (Crl.) 684. In the case before the Division Bench, the affidavit of the sponsoring authority is dated 15.6.1998. The order extending the remand is dated 24.6.1998 and the same was relied on by the detaining authority. In the absence of any affidavit or covering letter, the Bench has observed that, (para 4)

4. ...We are unable to understand as to how the sponsoring authority who forwarded the materials on 15.6.98 with his affidavit was able to forward the document dated 24.6.98 prior to its coming into existence. Learned Additional Public Prosecutor submits that the said document was forwarded by the sponsoring authority to the detaining authority prior to the date of order of detention. In support of his plea, he drew our attention to an endorsement of the file in which it is found noted that the sponsoring authority appeared before the detaining authority on 26.6.98 and hence on that day, the sponsoring authority could have possibly produced this document before the detaining authority. But unfortunately the said endorsement in the file does not contain that the sponsoring authority produced the said document on 26.6.98 and it is silent as to when the document was produced before the detaining authority. If the document was subsequently produced before the detaining authority by the sponsoring authority, it is but natural for the sponsoring authority to have produced it with a covering letter or by filing an additional affidavit. There is no such document produced before us to hold that the document dated 24.6.98 was produced before the detaining authority on 26.6.98, the date on which the order of detention was passed. We are of the view that on that ground, the order of detention has to be set aside and accordingly, it is set aside.

In the case on hand also, as stated earlier, the affidavit of the sponsoring authority is dated 15.3.2004, the true copy of the remand order was made ready by the Office of the Judicial Magistrate No. 1, Chidambaram only on 17.3.2004 and the same was relied on by the detaining authority in his order dated 18.3.2004. If the document was subsequently produced before the detaining authority by the sponsoring authority, it is but natural for the sponsoring authority to have produced it with a covering letter or by filing an additional affidavit. Admittedly, there is no covering letter or additional affidavit from the sponsoring authority for production of those documents. As observed by the Division Bench in the decision referred to above, we are of the view that the order of detention has to be set aside. Since no document was produced to show that the subsequent document was produced along with a forwarding letter or an additional affidavit, the detention order is vitiated. Similar view has been

expressed in H.C.P. No. 1810 of 1998 dated 21.6.1999 (M Ramu v. District Magistrate, Ramanathapuram And Another). Though learned Government Advocate by relying on a decision in H.C.P. No. 2330 of 2002 dated 05.08.2003 (Mrs. Sudha v. The Secretary To Government, Prohibition And Excise Department, Govt. Of Tamil Nadu And Another, contended that it is only a minor error and the same would not justify for interference on the ground of non-application of mind, we are of the view that the said error pointed out above cannot be termed as a minor error, as claimed by the learned Government Advocate. We have already pointed out that the original affidavit of the sponsoring authority bears the date as 15.03.2004 and the material documents, viz., remand report and remand order were made ready by the concerned Court only on 17.3.2004, and that the same were relied on by the detaining authority while passing the order of detention on 18.3.2004. In the absence of a covering letter or an additional affidavit by the sponsoring authority explaining how those documents were sent to the detaining authority, we are of the view that the detention order is vitiated. Further, it cannot be termed as a minor error and it only shows the lethargic attitude of the persons concerned in passing the order of detention. Though Learned Counsel for the petitioner pointed out several other infirmities, in the light of our above conclusion, it is unnecessary to refer all those details.

6. In the light of what is stated above, the impugned order of detention dated 18.3.2004 is set aside and the petition is allowed. The detenu-Dhanislas is directed to be released and set at liberty forthwith unless his detention is required for any other cause.