
(2006) 03 MAD CK 0031

In the Madras High Court

Case No : Habeas Corpus Petition No's. 1296 and 1298 of 2005

Muniammal and Jayalakshmi

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 307, 341, 392

Citation : (2006) 03 MAD CK 0031

Hon'ble Judges : P. Sathasivam, J; J.A.K. Sampathkumar, J

Bench : Division Bench

Advocate : A.K.S. Thahir, for P. Karthikeyan, for the Appellant; Abudhukumar Rajarathinam, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The petitioner in HCP No. 1296 of 2005 is the mother of the detenu by name Arumugam, who was detained as a

""Goonda"" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders,

Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention

order dated 16.09.2005, challenges the same in this Petition.

2. The petitioner in HCP No. 1298 of 2005 is the mother of the detenu by name Left Sekar @ Lottai Sekar, who was detained as a ""Goonda"" as

contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral

Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated

16.09.2005, challenges the same in this Petition.

3. Heard the learned counsel for the petitioners as well as learned Government Advocate for the respondents.

4. At the foremost, learned counsel for the petitioners, after taking us through the relevant paragraphs in the grounds of detention and other

materials supplied to the detenus, has submitted that the detention orders are liable to be quashed on the ground of non- application of mind on the

part of the detaining authority. In support of the above contention, the learned counsel for the petitioners has brought to our notice that though the

sponsoring authority has made a specific reference to Crime No. 2653/2005 on the file of T1 Ambattur Police Station (second adverse case) and

Crime No. 2666/2005 on the file of T1 Ambattur Police Station (ground case) in the requisition for police custody, the order of remand passed by

the Judicial Magistrate and the Special Report of the sponsoring authority, the detaining authority has not considered the fact that the detenus were

remanded in respect of Crime No. 2653/2005 while passing the orders of detention. In other words, according to the counsel, there is no

awareness as to the fact that the detenus were remanded not only in respect of ground case in Crime No. 2666/2005, but also in Crime No.

2653/2005.

5. On the other hand, the learned Government Advocate would submit that even though the detenus were remanded in respect of Crime No.

2666/2005 and Crime No. 2653/2005, inasmuch as the ground case in Crime No. 2666/2005 relates to a graver offence and the second adverse

case in Crime No. 2653/2005 relates to a lesser offence which is triable by the learned Judicial Magistrate, merely because there is no reference in

respect of the second adverse case in the detention orders, the same cannot be faulted with.

6. We have verified all the details relating to the above contention. As rightly pointed out by the learned counsel for the petitioners, the sponsoring

authority has made a specific requisition for police custody in respect of the second adverse case as well as the ground case. Based on the said

request, an order was passed by the learned District Munsif-cum-Judicial Magistrate, Ambattur, granting police custody in both the crimes.

Likewise, the learned District Munsif-cum-Judicial Magistrate, Ambattur, has passed the remand orders, taking note of both the crime numbers.

The copy of the said order supplied to the detenus is available at page 181 of the paper book. It is also useful to refer to the Special Report of the

sponsoring authority, which is available at page 183, wherein he has specifically referred to the occurrence relating to Crime Nos. 2653/2005 and

2666/2005.

7. In the light of the details referred to above, let us consider the awareness shown by the detaining authority. In the grounds of detention, the

detaining authority, after referring to the first adverse case in Crime No. 257/2005 on the file of T1 Ambattur Police Station dated 7.2.2005, has

referred to the second adverse case in Crime No. 2653/2005 on the file of T1 Ambattur Police Station dated 12.08.2005, which relates to an

offence under Sections 147, 148, 392, 448, 506(ii) IPC. After referring to the same, the detaining authority has narrated the ground case dated

13.8.2005 in Crime No. 2666/2005 on the file of T1 Ambattur Police Station for the offence under Sections 147, 148, 341, 448, 427, 307 and

506(ii) IPC. After narration of those details, while considering the imminent possibility of the detenus coming out on bail, in paragraph 4 of the

detention orders, the detaining authority has specifically stated that, "he was aware that the detenus viz., Arumugam and Left Sekar @ Lottai Sekar

were in remand in T1 Ambattur Police Station Crime No. 2666/2005 and they have not moved any bail petition so far". After finding that there

was imminent possibility that they may come out on bail in the above cases by filing bail applications, since in similar cases, bail was usually granted

by the Court, the detaining authority passed the orders of detention. Though the learned counsel has pointed out that inasmuch as the detaining

authority has shown his awareness in respect of the ground case, which is graver in nature, in view of the fact that the detenus were remanded by

an order of learned District Munsif-cum-Judicial Magistrate, Ambattur, not only in respect of the ground case in Crime No. 2666/2005, but also in

respect of the second adverse case in Crime No. 2653/2005 and in the light of the other information as stated earlier viz., even the sponsoring

authority has made a specific request for police custody in respect of both the crime numbers and orders were passed by the learned District

Munsif-cum-Judicial Magistrate in respect of both the crime numbers, and further taking note of the fact that the Special Report of the sponsoring

authority also refers to both the crime numbers, we are of the view, as rightly pointed out by the learned counsel for the petitioners, that the detaining authority ought to have considered the relevant fact viz., the detenus were also in remand in respect of Crime Nos. 2653/2005. Even in the earlier portion of the grounds of detention, the detaining authority has merely narrated the occurrence that took place on 12.08.2005 which relates to the second adverse case, but there is absolutely no reference to the order of the learned District Munsif-cum-Judicial Magistrate remanding them even in respect of the said Crime No. 2653/2005.

8. Though the learned Government Advocate relied on certain decisions of this Court with reference to the said aspect, in the light of the factual position as narrated above, we are of the view that the non-consideration of the relevant factor that the accused/detenus had been remanded in connection with Crime Nos. 2653/2005, which is the second adverse case, wherein the commission of serious offence had been alleged, has the effect of vitiating the conclusion arrived at by the detaining authority regarding the compelling necessity to pass the orders of detention. We, therefore, accept the said contention raised by the learned counsel for the petitioners and both the orders of detention are liable to be quashed and are accordingly quashed.

9. The Habeas Corpus Petitions are allowed and the impugned order of detention is set aside. The detenus are directed to be set at liberty forthwith from the custody unless they are required in some other case or cause.