
(2010) 02 MAD CK 0017
In the Madras High Court
Case No : H.C.P. No. 2031 of 2009

Munusamy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2010) 1 LW(Cri) 364 : (2011) 8 RCR(Criminal) 194

Hon'ble Judges : P.R. Shivakumar, J;C. Nagappan, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for C.C. Chellappan, for the Appellant; M. Babu Muthu Meeran, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

C. Nagappan, J.—The father of the detenu has filed the Habeas Corpus Petition seeking for quashing the Order of detention, dated

15.10.2009, passed by the second Respondent.

2. On the recommendation made by the Sponsoring Authority citing one adverse case in Crime No. 127/2008 on the file of Kadambathur Police

Station and the ground case in Crime No. 189/2009 on the file of same Police Station, and after looking into the materials available, the second

Respondent, the District Collector and District Magistrate, Tiruvallur district, Tiruvallur, formed an opinion that the detenu was to be termed as

"Sand Offender" since his activities are prejudicial to the maintenance of public order as contemplated u/s 2(k) of the Tamil Nadu Act 14 of 1982

and in order to prevent him from indulging in such activities in future, the Order of detention, dated 15.10.2009, was passed. The said Order is

under challenge in this petition.

3. Though several grounds have been raised in the petition, Mr. R. Sankarasubbu, learned Counsel appearing for the Petitioner, mainly relies on the following two grounds:

(1) Non-supply of Tamil translated copies of the documents relied on by the Detaining Authority and rejection of the request made on behalf of the detenu for supply of those documents on the ground of non-feasibility would vitiate the Order of detention.

(2) The Order of detention is vitiated on the ground of non-consideration of the representation made on behalf of the detenu to furnish a copy of the Special Report referred to in the detention order.

4. We also heard the learned Additional Public Prosecutor on the above submission.

5. The charge sheet filed by the Inspector of Police, Tiruvallur Taluk Circle, in the adverse case is found in pages 11 to 14 in English; Proceedings

of the Deputy Superintendent of Police, Tiruvallur, Sub-Division, History Sheet and the request made by the Inspector of Police to the Deputy

Superintendent of Police, Tiruvallur Sub-Division, are found in pages 16 to 18 of the paper book in English; the letter of the Court sending the

seized sand to the Forensic Laboratory for chemical analysis is found in page 59 in English; the letter of receipt from the Laboratory is found in

page 61, in English; the remittance chalans are found in pages 62 to 64, in English; the Registration Certificate of the vehicle is found in English, in

pages 65 to 68; and the remittance chalans are found in pages 69 to 71 in English. Tamil translated version of the above documents are not found

in the paper book. Representation, dated 7.11.2009, has been made on behalf of the detenu to the Government seeking for furnishing of copies of

the above said documents in Tamil and also a copy of the Special Report referred to in the detention order and the Government by letter dated

1.12.2009, bearing No. 31183/C.K&M/11/2009, has rejected the representation by stating that it is "not feasible" to furnish Tamil translated

copies of the documents sought for and further stated that copies of other documents in Tamil have already been furnished in the paper book. It is

pertinent to point out that the request made on behalf of the detenu for furnishing the copy of the Special Report on which the ground case came to

be registered was not considered by the Government in the said rejection order.

6. In the counter, filed by the second Respondent, it is stated that the documents for which Tamil translated copies were sought for were read over

and explained to the detenu in language known to him and after having understood the same, the detenu has signed each and every paper in the

presence of Superintendent of Prisons and hence, the request of the Petitioner could not be furnished. In this regard, the learned Counsel for the

Petitioner relies on the dictum of Constitutional Bench of the Supreme Court in the case in Harikisan Vs. The State of Maharashtra and Others, ,

which was also followed by it in Powanammal Vs. State of Tamil Nadu and Another, and submits that it is incumbent on the part of the Detaining

Authority as to furnish copies of the documents in a language known to the detenu and non-supply of the same would amount to denial of right

embodied in Article 22(5) of the Constitution of India and denial of making effective representation and hence, the order of detention is vitiated.

For better appreciation, the observations of the Constitutional Bench are extracted below-

(7)... In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in Clause (5) of Article

22. To a person, who is not conversant with the English language, service of the Order & the grounds of detention in English, with their oral

translation or explanation by the police officer serving them does not fulfil the requirements of the law.

The law laid down by the Apex Court in Powanammal Vs. State of Tamil Nadu and Another, is as follows -

8. The law relating the preventive detention has been crystallized and the principles are well neigh settled. The amplitude of the safeguard embodied

in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood

by the detenue but also to supplying their translation in script or language which is understandable to the detenue. Failure to do so would amount to

denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.

7. It is needless to say that the safeguard embodied in Article 22(5) of the Constitution of India extends to the supply of documents relied on by the

Detaining Authority in a language known to the detenu. The stand taken by the Government while rejecting the representation that it is "not

feasible" to supply the copies of the documents duly translated in Tamil sought for by the detenu is against the constitutional safeguard provided to

the detenu and on this vital ground alone, the detention order is vitiated. Besides, as already seen, the request made on behalf of the detenu for

supply of copy of the Special Report was not at all considered by the Government and non-consideration of the relevancy of the document would

also vitiate the Order of detention.

8. For the reasons stated above, the Habeas Corpus Petition is allowed and the impugned detention order is set aside. The detenu is ordered to be

set at liberty forthwith, unless his custody is required in connection with any other case.