

(2004) 01 MAD CK 0032

In the Madras High Court

Case No : H.C.P. No's. 1580 to 1585 and 1596 of 2003

Murugan and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1),
3(3)

Citation : (2004) 01 MAD CK 0032

Hon'ble Judges : V.S. Sirpurkar, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

**Advocate : Hameed Ismail, for the Appellant; A. Navaneethakrishnan, Assistant
Public Prosecutor, for the Respondent**

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—This judgment shall dispose of the abovementioned seven writ petitions. In all these writ-petitions, the detention orders

passed against M/s. Murugan (petitioner in HCP No. 1580 of 2003), Krishnasamy Thevar (petitioner in HCP No. 1581 of 2003), Gengari

(Petitioner in HCP No. 1582 of 2003), Karuppasamy (petitioner in HCP No. 1583 of 2003), Mariappan (petitioner in HCP No. 1584 of 2003),

Erulappan (petitioner in HCP No. 1585 of 2003) and Mariselvam (petitioner in HCP No. 1596 of 2003) are challenged. All these detention

orders were passed by the District Collector and District Magistrate, Thoothukudi District, Thoothukudi, on 18-6-2003, branding the concerned

detenus as goondas and directing their detention under Sec. 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot Leggers, Drug

Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short Act 14 of 1982.

2. At the outset, learned counsel appearing for the petitioners very fairly pointed out that all the seven detenus belonged to one and the same

family; they are very closely related to each other and all the adverse cases and the ground case against them are identical. In short, it is on the

basis of the common adverse cases and the common ground case that all the seven detenus came to be detained by the detaining authority under

seven separate detention orders.

3. When we see the grounds for the detention, it is seen that it is based on an incident dated 10-5-2003, which took place at about 10.45 hrs.,

near the old bus-stand at Kayathar. In that incident, the detenus and more particularly Murugan and his associates formed an unlawful assembly

with an intention to commit the murder of one Dharmaraj, who was waiting at that spot, since he belonged to the rival group. It is pointed out then

that Murugan and five others threw each one country-made bomb towards Dharmaraj. These bombs fell on the road and exploded with deafening

sound and the passengers waiting for the busses were alarmed because of that and ran helter skelter. Some aged men and women fell on the road.

It is then stated that Mariappan, one of the associates of Murugan, threatened the public by showing the country-made bombs and warned the

public that if any person informs the police about the incident, he would be murdered and saying this, he threw the country-made bomb towards

the public, which exploded with loud noise. Seeing the incident, the others and more particularly the people belonging to the scheduled caste

community, Nadars and Muslims ran away from the scene and the place wore a deserted look.

On the complaint of Dharmaraj, the police immediately sprang into action and registered the offence with Kayathar police station under Crime No.

93 of 2003 under Secs. 147, 148, 307 IPC and Secs. 3 to 5 of the Explosive Substances Act. It is pointed out that each of the detenu had

committed similar such offences on 7-5-2003, 8-5-2003 and 9-5-2003 and the investigation in those cases were pending. It is on this basis that

the detention came to be ordered.

4. The first and the foremost contention raised by the learned counsel for the

petitioners is based on the reported judgment of the Division bench of this Court in T.M. SYED ALI AND OTHERS v. STATE OF TAMIL NADU AND OTHERS (1999 (3) Crimes 370). Learned counsel points out that after this incident, on 29-5-2003, a telegram came to be sent by Sarasu, wife of the detenu Murugan to the detaining authority and in that it was apprehended by Sarasu that false and frivolous cases were being foisted against Murugan and his relatives (naming all the detenus) with the sole idea of putting them in preventive detention. Learned counsel argues very fervently that thereafter the detention order came to be passed on 18-6-2003 in respect of all the detenus, whose names were mentioned in the said representation and yet in the grounds, there is no reference whatsoever to the said telegraphic representation dated 29-5-2003 or to any action taken or order passed thereupon by the detaining authority. He says that the said representation was closely connected with the subject of detention and pertained to the apprehension expressed that there was going to be a frame-up by the police for preventively detaining the said detenus. Learned counsel says that this was bound to be taken into consideration by the detaining authority and the studious silence on the part of the detaining authority in respect of this representation obviously shows that the detaining authority has failed to apply his mind to the relevant factors. He further says that had that representation been considered by the detaining authority, his subjective satisfaction would have been affected one way or the other and he might have taken the decision not to clamp the detention orders against the petitioners in view of the representation made as early as about 19 days prior to the passing of the detention order.

4.2. Secondly learned counsel says that these representations were also not sent to the Government though under Sec. 3(3), it was incumbent upon the detaining authority to send all the relevant papers to the Government.

4.3. Lastly, learned counsel says that in their subsequent representations, which were received by the Government on 6-10-2003, though the detenus had specifically asked for these representations, they were not supplied to them at all so that, the detenus' right to make an effective representation against the detention ensured by Art. 22(5) of the Constitution of India has been affected. For this, learned counsel very heavily

relied on the aforementioned decision in Syed Ali case, cited supra. Learned counsel pointed out that in that case also a pre-detention telegraphic representation was sent whereupon, the detaining authority had merely made an endorsement on that representation and closed it and thereafter proceeded to pass the detention orders. Learned counsel points out that in that case also, the representation sent on behalf of the detenus did not form the part of the grounds of detention at the time of passing the order of detention and the copies thereof were also not served on the detenus. Learned counsel further points out that in that case, the said representations were not served though asked for by the detenus. Our attention was drawn to the observations made by the Division Bench in paragraphs 7 to 10. The following portions were specifically relied on by the learned counsel:

In our considered view, the aforesaid material is a crucial material which has to be taken into consideration for deciding as to whether to pass or not to pass an order of detention. It may be that the detaining authority may after due consideration of the aforesaid material still comes to a conclusion that this is a fit case for passing an order of detention after finding that the case made out in the representation and the telegram as concocted and false. However, it cannot be said that the said documents are immaterial for arraying at the aforesaid subjective-satisfaction. It may be that the detaining authority might have persuaded on consideration of the aforesaid documents to hold that the presence of the petitioners at the time of the alleged offence on 2-8-1998 becomes doubtful and might have been persuaded not to pass an order of detention.

9. Similarly, the said material has not been furnished to the petitioners, thereby impairing their right to make proper and effective representation, the right guaranteed under Article 22(5) of the Constitution. Since the right of the petitioners to make an effective representation has been taken away, the impugned order of detention is liable to be quashed and set aside on this ground also.

10. Similar is the position in regard to the non-forwarding of the aforesaid material to the State Government. The said representation though made anterior in point of time to the passing of the impugned order of detention, the same in view of the decision of this Court in the case of Mrs. Shanthi

v. State of Tamil Nadu and another (HCP No. 656 of 1998, decided on 17-9-1998) decided by T. Jayarama Chouda and V. Bakthavatsalu, JJ.

are relevant material piece of evidence to be sent to the Government for the Government to take a decision under Sec. 3(4) of the Act whether to

confirm or not to confirm the order of detention. For the above said reasons, the impugned orders of detention are liable to be quashed and set

aside.

5. As against this, learned Additional Public Prosecutor points out that the facts of the aforementioned reported decision are materially different

from the facts in the present case. His contention is that it is only the "relevant material" which has to be considered by the detaining authority and

the material, which has been considered if relevant and material alone is to be supplied to the detenu. Learned Public prosecutor points out that in

this case, though there was a common representation made on 29-5-2003, that representation was independently considered by the detaining

authority by calling the wife of the detenu Murugan. She was fully heard and the representation was disposed of as baseless by a specific order

dated 17-6-2003 which was served upon the wife of the detenu Murugan. It was then that the detention order came to be passed on 18-6-2003.

The learned Public Prosecutor, therefore, says that this is the essential difference in the facts of the reported decision and the present case. He

points out that once the detaining authority had independently found that the representation was baseless, there was no question of again making a

reference to the same in the grounds as the detaining authority in this case was entirely relying upon the facts of the antecedents of the detenu and

the facts of the ground case. He, therefore, suggests that it was not necessary that such representation should have reflected in the grounds.

Learned Public Prosecutor further argues that it being a pre-detention representation, which was already taken into consideration and disposed of

on merits, it was not the relevant material and, therefore, the detaining authority has not erred in any manner in not forwarding the same to the

Government under Sec. 3(3) of the Act. He further points out that since the representation and the order thereupon were already available with the

detenu's wife, it was not necessary to supply them to the detenus afresh. For this, the learned Public Prosecutor heavily relies upon all the

representations of the detenus in which, all the detenus have clearly pointed out that their pre-detention representations dated 29-5-2003 was

disposed of on 16-6-2003 and signed on 17-6-2003 and it was only thereafter that the detention order came to be passed.

6. There can be no dispute that there was undoubtedly a pre-detention representation. However, it cannot also be ignored that the said

representation was enquired into by the detaining authority and was already disposed of. Once it was already disposed of even prior to the passing

of the detention order since it was found to be baseless, there was no question of referring to the baseless representation in the detention order.

Such was certainly not the case in the reported judgment. There, the representation was merely ordered to be filed. It was not as if it was enquired

into and found to be baseless. There is an order on record passed by the detaining authority on 17-6-2003, which we have taken into

consideration very closely. That order itself suggests that the Sarasu, wife of the detenu Murugan, was specifically called and a thorough enquiry

was made into that representation wherein it was alleged that the incidents, on which the criminal cases were registered against the detenus, were

fake incidents. The detaining authority seems to have examined the representation thoroughly in the presence of Sarasu, giving her an opportunity

to be heard and then found that the representation itself was baseless because there was enough material on record to show that the detenus were

involved in the incidents with which they were charged. Under these circumstances, once if the detaining authority had already disposed of the pre-

detention representation, in our opinion, such representation would not remain to be a relevant material which had to be reflected in the grounds of

detention. We have already held in the earlier decisions that if the representations are disposed of even prior to the passing of the detention order

then, there will be no necessity of referring to those representations or the orders passed thereupon afresh again. We reiterate the same view. In

that view, it is clear that the facts in the reported decisions are basically different and, therefore, the said decisions are not applicable to the present

cases.

7. Similar would be the position in respect of the contention which has been raised on the basis of Sec. 3(3) of Act 14 of 1982. When we closely

look at the language of the section, it would be apparent that it is only the material which is relevant in the opinion of the detaining authority which

has to be forwarded to the State Government. Once the detaining authority had already dubbed the said representation as baseless, there was no

question of forwarding the same to the Government again. The contention of the learned counsel that there has been a breach of procedure in not

forwarding that representation to the Government is, therefore, obviously incorrect.

8. Lastly, learned counsel pointed out that though asked for, the said representation and the orders passed thereupon were not supplied to the

detenu. Once it is held that that material is baseless and further it was not the material on the basis of which, the detention order was passed, such

material becomes extraneous material and, therefore, there will be no reason for the State Government or the detaining authority to supply that

material, though asked for. It is not as if all the documents sought for by the detenu, after the detention order is passed, are bound to be supplied to

him. It has been clarified by the Supreme Court time and again that it is only those documents which are relied upon by the detaining authority are

the relevant document which have to be supplied to the detenu. The other documents, which are merely "referred to" documents need not be

supplied and the detenu has to prove the prejudice caused because of the non-supply of the "referred-to" documents. Such is not the situation

here. This is apart from the fact that the order of the detaining authority was well with the wife of the detenu Murugan, who was the maker of the

representation, and the detenus were also armed with the order because they have made a reference to that order in their representations.

Therefore, it cannot be said that there was any prejudice caused to the detenus much less affecting their right under Art. 22(5) of the Constitution.

9. In that view, we do not find any merit in any of these seven writ petitions. They are dismissed.