
(2014) 09 MAD CK 0381
In the Madras High Court
Case No : H.C.P. (MD) No. 624 of 2014

Muthulakshmi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 323, 341
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 2(f)

Citation : (2014) 09 MAD CK 0381

Hon'ble Judges : V.S. Ravi, J;S. Manikumar, J

Bench : Division Bench

Judgement

V.S. Ravi, J.—The petitioner, who is the mother of the detenu, namely, M. Shankar, branded as "Goonda" in detention order No. 13/2014, dated 24.05.2014 by the District Collector and District Magistrate, Dindigul District, has sought for a writ of Habeas Corpus Petition.

2. Brief averments made in the petition as well as the contentions put forth on behalf of the petitioner by the counsel for the petitioner are as follows:--

2.1 The detenu has come to the adverse notice of the police in five cases. The first adverse case has been registered in Cr. No. 151/2010 under Sections 147, 148, 341 and 302 IPC on the file of Dindigul Town West Police Station and the said case is pending trial. The 2nd, 3rd and 4th adverse cases have been registered in Cr. Nos. 86 and 775/2012 and 94/2013 under Sections 387 and 506(ii) IPC; 387 and 506 (ii) IPC and 394 IPC @ 395 IPC on the file of Dindigul Town South Police Station and all the three cases are pending trial. 5th adverse case has been registered in Cr. No. 684/2013 under Sections 341, 323, 506(i) and 379 IPC (NP) @ 341, 323 and 506(i) IPC on the file of Dindigul Town North Police Station and the case is pending trial. The ground case has been registered in Cr. No. 153 of 2014 under Sections 341, 392 IPC r/w 397, 506(ii) IPC on the file of Dindigul Town West Police Station.

2.2 Even though there is no bail application filed in ground case, the Detaining Authority has stated that there is a real possibility of the detenu coming out on bail by filing a bail application for the other cases before the same/higher Court. It shows that the detention order is passed without application of mind on the part of the detaining authority. Further, the detaining authority has failed to serve the particulars of similar case. It shows that the detaining authority has not arrived at subjective satisfaction before passing the detention order. The Detaining Authority has submitted that if the detenu comes out on bail, he will indulge in such further activities which will be prejudicial to the maintenance of Public Order. However, no relevant documents have been served to the detenu. The second respondent failed to see that the ground case can be dealt with ordinary law and there is no necessity to invoke the preventive detention against the detenu.

3. On the other hand, in the counter affidavit filed by the learned Additional Public Prosecutor, appearing on behalf of the respondents, it is stated as follows:-

Besides 5 adverse cases, the petitioner is also involved in ground case in Cr. No. 153/2014. Further on proper application of mind and having subjectively satisfied that the detenu M. Shankar by action, in a broad day light, created panic and an alarm and feeling of insecurity among the minds of the general public and thus, acted in a manner prejudicial to the maintenance of public order and as such he is "Goonda" as defined in Section 2(f) of the Act 14 of 1982. Since the detenu M. Shankar has caused wide spread danger to the Public Order, by committing the above described offences, order of detention has been passed against the detenu under Act 14 of 1982, as per the orders of the second respondent in Detention Order No. 13/2014, dated 24.05.2014, which is perfectly legal and in accordance with the settled principles of equity and justice. The detenu has not filed any bail petition in any Court. In similar adverse cases he has been granted bail. Therefore, it has been just inferred that there is real possibility of the detenu coming out on bail in ground case also by filing fresh bail petitions before the same/higher courts and if he comes out on bail, he will indulge in such further activities which will be prejudicial to the maintenance of Public Order and that the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of Public order. Hence, the Detaining Authority only after subjectively satisfying himself basing on the materials available, passed the order of detention with a cogent, clear and sound reasoning, which is in no way "ipse dixit", but rather on the basis of sound principles and settled proposition of law. All the documents relates to the detention have been given to the detenu with legible copy of the booklet and it has been served to the detenu and there is no confusion between the English and Tamil versions as contended by the Petitioner herein and cogent reasoning has been attributed while arriving at the subjective satisfaction about the expediency of detaining the detenu under Tamil Nadu Act 14 of 1982.

4. This Court perused the materials available on record and based upon the submissions on both sides, the following points arise for consideration:-

- i) Whether proper translated copies of records have been served to the detenu in the language known to the detenu for making effective representation?
- ii) Whether there is proper application of mind by the detaining authority in having subjective satisfaction, while passing the detention order by considering various aspects and circumstances and the materials produced?
- iii) Whether the detention order has to be quashed for the reasons mentioned in the present habeas corpus petition?

5. The counsel for the petitioner has drawn the attention of this Court to para 5 of the impugned order, wherein it is specifically pointed out that the detenu is in remand in District Jail, Dindigul, in connection with Cr. No. 153/2014 on the file of Dindigul Town West Police Station and the accused M. Shankar has not filed a bail petition in any Court, as rightly pointed out by the learned counsel for the petitioner. However, in the booklet filed by the respondents, at page no. 225, the respondent enclosed the order of the bail petition, dated 22.05.2014, filed by the detenu in Crl.M.P. No. 2797/2014 before the Court of Judicial Magistrate No. I, Dindigul with regard to the said Crime No. 153/2014. Further at page No. 226, the respondent has furnished the Tamil version of the bail order. However, in the detention order, it has been categorically stated that the accused has not filed any bail petition in any Court. On that ground only, it has been rightly pointed out by the learned counsel for the petitioner that the Detaining Authority has not passed the detention order after arriving at subjective satisfaction on the materials placed before him, which reveals the non application of mind on the part of the Detaining Authority.

6. Further at page No. 221 of the booklet, the respondent has enclosed the remand extension order, by which remand has been caused on 21.05.2014 by the Court of Judicial Magistrate. However, tamil version of the said remand extension order has not been enclosed.

7. In support of his contention, learned counsel for the petitioner relied on the following decisions;-

i)(2006) 2 M.L.J. (Crl.) 151 (A. Pillayar v. Secretary to Government of Tamil Nadu), wherein this Court has held as follows;-

"After finding that there is variation in the English and Tamil versions of the relevant paragraph, namely, paragraph 4 and variation goes to the root of the matter, following the decision to the Supreme Court in Vijay Kumar Dharna alias Koka Vs. Union of India and others, and the unreported decision of a Division Bench of this Court in H.C.P. No. 6 of 2000, dated 27.07.2000, this Court quashed the detention order on the said ground alone."

ii) (2008) 1 MLJ (Crl) 325 (Dharanji v. State of Tamil Nadu), wherein it is held as

follows;-

"In view of the above contradictions in the grounds of detention and the omission in the vernacular translated version, the detenu was not able to make an effective representation. The order of detention is therefore vitiated. The order of detention is therefore vitiated. This petition must succeed and the same is ordered as prayed for. The detention order dated 22.11.2006 is set aside. the detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case." In this case also we found that the respondents have not served the true and valid materials of the records relied on by the Detaining Authority to pass the detention order and true and correct copies of translated records have not been furnished in the language known to the detenu for making effective representation and also there is non application of mind by the Detaining Authority while passing the detention order. Further, regarding the contradictions found in the materials as mentioned above, the Detaining Authority has not asked for any clarification from the Sponsoring Authority before having subjective satisfaction while passing the impugned order of detention.

iii) (2009) 1 MLJ (CrI) 411 (Rajendran V. State) wherein this Court has held as follows;-

"As per the connected adverse case in Crime No. 919 of 2008, the alleged occurrence had taken place on 21.06.2008 at 7.30 p.m., only duet to the wordy quarrel between the lorry driver, the de facto complainant and the detenu and four others, as the detenu had parked his motor cycle nearby the road and the de facto complainant was driving his vehicle at the turning with a high speed. As per the case, there was no previous enmity or any other reason for the occurrence."

In this case also, it is found that the Detaining Authority has not considered the vital contradictions in the materials records furnished to the detenu, before passing the order of detention.

8. In the present case, the detaining authority has failed to consider various aspects and circumstances available in the materials produced for passing the detention order. The vital contradictions available in the detention order shows the non application of mind by the detaining authority, which vitiates the detention order. Hence, the detention order is liable to be set aside for the reasons stated above and also in the light of the above decisions.

9. In the result, the Habeas Corpus Petition is allowed and the detention order is set aside. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.