
(2005) 02 MAD CK 0121
In the Madras High Court
Case No : H.C.P. No. 1473 of 2004

Muthulakshmi

APPELLANT

Vs

The Secretary to Government, Prohibition and Excise
Department and The District Magistrate and District Collector
of Cuddalore District

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 02 MAD CK 0121

Hon'ble Judges : T.V. Masilamani, J; M. Karpagavinayagam, J

Bench : Division Bench

Advocate : K. Gandhikumar, for the Appellant; E. Raja, Addl.P.P., for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—Relied upon document by the detaining authority, has not been furnished to the detenu, and hence, the detenu

was not able to make an effective representation to the Government seeking for revocation of the detention order, is the ground urged in this

habeas corpus petition filed by the wife of the detenu.

2. It is not disputed that the grounds of detention was passed on 5.12.2004 by the detaining authority on the basis that the detenu Mariappan has

been remanded to judicial custody upto 13.12.2004, and lodged at Central Prison, Cuddalore in connection with the ground case in Crime No.

794 of 2004. The detaining authority has observed that there is an imminent possibility of the detenu coming out on bail, and if he comes out on

bail, he will indulge in further activities in future, which would be prejudicial to the maintenance of public order. The impugned order has been

passed by the detaining authority on the basis of the said facts.

3. By virtue of the said observations made in paragraph 5 of the grounds of detention, it is clear that the remand order dated 29.11.2004, which

has been passed by the learned Magistrate, remanding the accused till 13.12.2004, as seen from page 170 of the booklet, is a vital document,

which was relied upon by the detaining authority while passing the detention order. Page 170 of the booklet is the English version of the remand

order dated 29.11.2004. This would indicate that Mariappan, who is one of the co-accused, was remanded on 29.11.2004 along with the other

accused, till 13.12.2004.

4. As indicated above, this is the main document, which was relied upon by the detaining authority while passing the order of detention.

Unfortunately, the Tamil version of the said remand order as found in page 170 of the booklet, has not been furnished to the detenu.

5. It cannot be debated that the detenu knows only Tamil language. This booklet was furnished on 15.12.2004. Since the Tamil version of page

170 is not available, it is stated that, on behalf of the detenu, a representation was sent on 21.12.2004, asking for the Tamil copy of the same.

Learned counsel for the petitioner would submit that till date, no Tamil copy of page 170 of the booklet has been furnished to the detenu.

6. On the other hand, it is represented by learned Additional Public Prosecutor that, on 17.1.2005, the Tamil copy of the said page was directed

to be served on the detenu. However, no material has been placed before this Court to show that the Tamil copy of page 170 of the booklet has

been served on the detenu.

7. Whatever it is, even assuming that the Tamil copy of page 170 has been served on the detenu on 17.1.2005, it cannot be contended that

Section 8(1) of Tamil Nadu Act 14 of 1982 has been complied with in this case.

8. While dealing with a similar question, in the case of Powanammal Vs. State of Tamil Nadu and Another, , the Supreme Court would observe in

paragraph 9 as follows:

9. However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of

detention and a document which finds a mere reference in the grounds of detention. Whereas non-supply of a copy the document relied upon in the

grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document, would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

9. Furthermore, u/s 8(1) of the Tamil Nadu Act 14 of 1982, the document which has been considered by the detaining authority while passing the order of detention, has to be furnished to the detenu and served on the detenu within five days. Admittedly, the copy of the remand order as found in page 170 of the booklet, which is a vital, relevant and relied upon document, has not been furnished to the detenu in Tamil. Naturally, this would amount to deprivation of the liberty of the detenu from making an effective representation to the Government in time.

10. In our view, belated supply of Tamil copy of the said document, that too, only after asking for the same, would not cure the illegality committed by the authority concerned by not furnishing the relied upon document and the relevant papers in time, as stipulated in Section 8(1) of the Tamil Nadu Act 14 of 1982. Therefore, we have no other option except to hold that the detention order is invalid.

11. Hence, the impugned order of detention is set aside. The habeas corpus petition is allowed. The detenu is directed to be set at liberty forthwith, unless she is required in connection with any other case.