
(2009) 03 MAD CK 0040

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 615 of 2008

Muthulakshmi

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 153(A), 295(A), 336, 427

Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3

Citation : (2009) 03 MAD CK 0040

Hon'ble Judges : M. Venugopal, J; M. Chockalingam, J

Bench : Division Bench

Advocate : S. Kanagarajan, for the Appellant; Issaq Manuel, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of the first respondent dated 05.08.2008 made in Cr. M. P. No. 12 of 2008

whereby the husband of the petitioner was detained under the Act 14 of 1982, terming him as a "Goonda" as defined under the provisions of the

Act.

2. The Court heard the the learned Counsel for the petitioner and the learned Additional Public Prosecutor on behalf of the respondents and also

looked into all the materials including the order under challenge and also the counter affidavit filed by the State.

3. The order under challenge came to be passed on the strength of the recommendation made by the sponsoring authority that the detenu was

involved in a case registered in Cr. No. 424 of 2008 under Sections 295(A), 153(A), 505 IPC and 3 of Tamil Nadu Property (Prevention of

Damage and Loss) Act, 1992 on the file of the the Karaikudi North Police Station, Sivagangai District on 26.07.2008 as an adverse case and he

was also involved in another case registered in Cr. No. 427 of 2008 under Sections 147, 336 and 427 IPC on the file of the Karaikudi North

Police Station, Sivagangai District on 27.07.2008.

4. The detaining authority after looking into all the materials recorded his subjective satisfaction that the activities of the detenu were prejudicial to

the maintenance of the public order and hence he should be detained under the provision of the Act 14, 1982, and accordingly made the order,

which is the subject matter of challenge.

5. Advancing his arguments on behalf of the petitioner, the learned Counsel for the petitioner mainly put forth the delay that was caused in

considering the representation. He relied on the Proforma placed by the respondents side where the delay is noticed.

6. It is not in controversy pursuant to the recommendation made by the sponsoring authority that the detenu was involved in one adverse case and

also a ground case referred to above, the detaining authority passed the order under challenge after recording his subjective satisfaction that the

activities of the detenu were prejudicial to the maintenance of the public order.

7. After going through the materials available, the Court has to necessarily set aside the detention order on the ground of delay. From the proforma

placed by the State before this court, it could be seen that the representation was made on 19.08.2008, remarks were called for on 20.08.2008

and the remarks were received on 29.08.2008. Thus, there was a delay of 9 days in which, according to the learned Additional Public Prosecutor,

two days were holidays. Thus, there was a delay of 7 days which remains unexplained by the State. It would be indicative of the fact that the

consideration of the representation was not done with prompt attitude and there was 7 days delay which remains unexplained. It is needless to

state that it would cause prejudice to the interest of the detenu. In the considered opinion of the Court, it would be suffice to set aside the order

under challenge on this ground. Hence, this Court has made undone by upsetting the order under challenge.

8. Accordingly, the Habeas Corpus Petition is allowed and the detention order Cr.M.P.No.12 of 2008 dated 05.08.2008 passed by the first

respondent is quashed. The detenu is directed to set at liberty forthwith unless his presence, in accordance with law, is required in connection with any other case.