
(2003) 03 MAD CK 0036
In the Madras High Court
Case No : H.C.P. No. 2106 of 2002

N. Vijaya

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 19-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 03 MAD CK 0036

Hon'ble Judges : V.S. Sirpurkar, J;V. Kanagaraj, J

Bench : Division Bench

Advocate : P. Kumaresan, for the Appellant; A. Navaneethakrishnan, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The challenge is to the order dated 05.06.2002 passed by the Commissioner of Police, Chennai City, branding one

Nagarajan as a Goonda and ordering his detention under the provisions of Section 3 of the Tamil Nadu Act 14 of 1982.

2. Learned counsel for the petitioner presses only one point. Learned counsel points out that after the detenu was served with the order of

detention on 7.6.2002 and the grounds of detention on 11.6.2002, he sent a representation dated 20.06.2002 to the Commissioner of Police, i.e.,

the concerned authority. The Commissioner has accepted this and intimated to him that he did not have the power to consider the representation

because in the meantime, the Government had approved the said detention. However, the Commissioner informed him by a letter dated 22.6.2002

that his representation had been forwarded to the Government. Learned counsel says that thereafter the Government has not decided that

representation at all and till today also, he does not know as to what has happened to that representation.

3. This, in our opinion, is a good ground to hold that an important right of the detenu under Article 22(5) of the Constitution of India, of the

expeditious consideration of the representation, has been blatantly breached. When we asked the Additional Public Prosecutor as to what has

happened to that representation, the learned Additional Public Prosecutor only argued that it was up to the Government to decide that

representation, because it was made to the Commissioner of Police. We fail to follow this logic. A representation made to the Commissioner of

Police, who is the detaining authority, is a representation conceived by the provisions of Article 22(5) of the Constitution of India and if the said

representation was forwarded to the Government, that Government was duty bound to consider the same in good time. The Government not

having done so, the right of the detenu has been breached and his representation has been rendered illegal. The learned Additional Public

Prosecutor further said that the detenu had sent another representation dated 18.7.2002, which was disposed of by the Government on 9.8.2002.

That will be of no consequence, because admittedly the first representation has not been considered by the Government even till today.

4. In that view, the petition is allowed and the further detention of the detenu is quashed. The detenu Nagarajan is directed to be set at liberty

forthwith, unless he is required in connection with any other case.