

(1989) 09 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 11458 of 1987 and W.M.P. No. 2229 of 1989

Nallammal

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 05-09-1989

Acts Referred:

Constitution of India, 1950 — Article 21, 22(2), 22(5)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (1990) CriLJ 1728

Hon'ble Judges : T.S. Arunachalam, J; K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : T. Kalaimani, for the Appellant; G. Krishnamurthy, Assistant Public Prosecutor, for the Respondent

Judgement

Arunachalam, J.

(1) The petitioner in the main writ as well as the writ miscellaneous petition is the wife of the detenu, Manickam, who was lodged at the time of

filing of the writ petition in the Central Ex-Prison, Salem, in pursuance of the order of detention made by the second respondent in exercise of the

powers conferred on him by Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas,

Immoral Traffic Offenders and Slum Grabbers Act, XIV of 1982, hereinafter referred to as the Act. The detenu was detained as a bootlegger.

(2) The writ petition was admitted by this Court on 18-11-1987 and notice was ordered to the respondents. The docket entries show that on 25-

4-1988 this Court directed filing of the counter by the respondents by 14-6-1988. On 29-11-1988 on the request of the counsel for the petitioner,

the hearing was adjourned by two weeks. Again on the request of the learned

counsel for the petitioner, on 9-1-1989 the hearing was adjourned by two weeks. By efflux of time the order of detention dated 14-10-1987 had worded itself out and it appears that the detenu had been released on 14-10-1988. The main writ petition, therefore, becomes infructuous.

(3) However, on 23-1-1989, the wife of the detenu has filed W.M.P. No. 2229 of 1989 praying for directions to the first respondent the Tamil

Nadu Government to pay full, fair and adequate compensation and the costs of the application in view of the suffering of the petitioner (Nallamal)

the wife of the detenu and her family members, and the detenu, R. Manickam, and to set aside his illegal detention to remove the stigma as goonda

and pass such other ancillary orders as may be deemed fit. In the affidavit filed in support of this prayer in the writ miscellaneous petition, it is

averred that the writ petition was admitted on 18-11-1987 by this Court and notice was issued to the respondents. Time was afforded to the

respondents to file a counter by 14-6-1988, but no counter was filed till the release of the detenu on 14-10-1988. The second respondent had

wantonly and leisurely filed the counter-affidavit only on 29-11-1988 after signing it on 18-10-1988 knowing the fact of the release of the detenu

on 14-10-1988. The act of the second respondent is stated to be one of wilful disobedience to the notice issued by this Court. Expeditious reply is

contemplated not only for considering the representations but also with regard to the notice issued by this Court. It is further stated that if the

detenu is refused of his opportunity to have justice rendered to him by delaying tactics by the detaining authorities, such an act would be

unconstitutional necessitating declaring the detention as illegal. The further contents of the affidavit disclose that the detention has caused extreme

mental torture and physical sufferings to the family members of the detenu, who were all dependent on him, which would entitled the detenu for

substantial compensation. Since the wilful disobedience or negligence had caused the detenu's detention for the full period, which has been termed

as illegal, the detenu must be awarded the costs of the application.

(4) Mr. T. Kalaimani, learned counsel for the petitioner cited the decision of the Supreme Court in Rudul Sah Vs. State of Bihar and Another, ,

wherein compensation for illegal detention was awarded under Article 32 of the Constitution without affecting the right of the detenu therein to sue

for damages. That was a case of detention in jail after the order of release by the Court of Session. The order of the Sessions Court was made on

3-6-1968, but, the detenu was released on 16-10-1982, during the pendency of his writ petition before the Court. In such peculiar circumstances,

though the relief regarding his release became infructuous, the Supreme Court, taking into consideration the great harm done to the petitioner

therein, awarded a compensation as an interim measure of Rs. 30,000/- in addition to the sum of Rs. 5,000 - already paid by the Government. It

was also mentioned in the order of the Supreme Court that the petitioner would not be precluded from bringing a suit to recover appropriate

damages from the State and its erring officials. The analogy in the said case cannot be applied to the facts of the present case.

(5) The next decision referred to by the learned counsel for the petitioner is reported in Bhim Singh, MLA Vs. State of Jammu & Kashmir and

Others, wherein the Supreme Court awarded a penal compensation by way of exemplary costs to the petitioner therein on the ground that the

M.L.A. was deliberately prevented from attending the Session of the Legislative Assembly by arresting and illegally detaining him in police custody.

Articles 21 and 22(2) of the Constitution was held to have been violated and the mala fide conduct of the police officers and the casual and

irresponsible attitude of the Magistrate and Sub-Judge or their collusion with police for passing orders of police remand against the M.L.A. were

strongly condemned. Obviously this decision will not also help the case of the petitioner.

(5A) The next case cited is Lalitha v. Director General of Police 1989 WLR 9 : 1989 CLJ 1732 wherein the Division Bench of this Court

awarded a compensation to the wife of the detenu, by the State for failure to produce the under-trial prisoner, in pursuance of an order passed,

while allowing a writ of habeas corpus. This Court found in that case that great harm had been done to the petitioner and her family as a result of

the unlawful acts of the respondents 3 to 6 being instrumentalities of the State under the cloak of the power, vested in them, by the State. Even in

that case, this Court had observed that the order in the writ would not preclude the petitioner from bringing a suit to recover appropriate damages

from the State and its erring officers if she so chose. Again this decision cannot be applied to the facts of the case on hand.

(6) The next case cited is reported in Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others, . This ruling was relied on for the

proposition that inordinate and unexplained delay in the disposal of the detenu's representation to the Chief Minister rendered continued detention

illegal and unconstitutional and that the explanation that the Chief Minister remained on tour and was busy with important matters of the State was

not acceptable. The mandate of Art. 22(5) of the Constitution was explained. This decision has nothing to do with the plea for compensation and if

this Court had gone into the merits of the order of detention, when it was still alive, the usefulness of this ruling could have been considered.

(7) The ruling of the Supreme Court in Mohd. Ibrahim Mohd. Sasin v. State of Maharashtra 1987 SCC (Cri) 630 was referred to, to indicate that

if the State Government had failed to defend its action, despite two adjournments given by the Court, the further detention of the petitioner should

be held to be unconstitutional. The period of detention has already expired and the case decided by the Supreme Court related to the passing of a

detention order, immediately after the revocation of the earlier order of detention, on the basis of the report of the Advisory Board. This ruling

naturally cannot come to the rescue of the petitioner.

(8) Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, , was cited to highlight the right of the detenu to consult a legal

advisor of his choice and the detenu's right to live with human dignity which is a part of his personal liberty, which cannot be deprived except in

accordance with reasonable, fair and just procedure established by a valid law. The proposition of law is well understood, but, its application does

not arise to the facts of this case.

(9) The last of the decisions relied on is reported in Sebastian M. Hongray Vs. Union of India (UOI), wherein, for wilful disobedience of a writ of

habeas corpus issued by Court which constituted civil contempt, exemplary costs was ordered to be paid to the aggrieved persons. Needless to

state that the decision will be inapplicable to the present case.

(10) From the docket entries it is very clear that the disposal of the writ petition was not dependent upon the filing of the counter by the

respondents. On number of occasions, when the writ petitions are posted in the chronological order for final disposal, if the counters are not filed

by them, this Court had disposed of such writs on the material available after perusal of the original records and affording an opportunity for both parties to put in their respective contentions. Therefore, it cannot be argued that in view of the non-filing of the counter, the detention must be deemed to be illegal. Once the main writ petition itself has become infructuous, unless the petitioner is able to satisfy this Court on clinching material that the detention is illegal even from its initiation or from a particular stage later on, it may not be possible to award compensation. The illegality of the detention or otherwise will depend on the evidence to be furnished by the detenu and as it stands today, it is not possible to pass any order directing compensation to be paid by the State government, the first respondent. However, this order will not preclude the petitioner, if so advised, to file a suit to recover appropriate damages from the State Government and its erring officers, if she is able to establish illegality of the detention and the sufferings of the detenu and his family members which followed in pursuance of such illegal detention. With these observations, the main writ petition as well the writ miscellaneous petition are dismissed.

(11) Petition dismissed.