
(2010) 03 MAD CK 0160
In the Madras High Court
Case No : H.C.P. No. 2248 of 2009

Nallammal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 307, 341

Citation : (2010) 03 MAD CK 0160

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; V.R. Balasubramanian, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to an order of the second respondent made in C.M.P. No. 33/09 dated 14.8.2009, ordering the petitioner's son Vilvathurai to be detained under Act 14 of 1982 branding him as a Goonda.

2. The Court heard the learned Counsel on either side and looked into all the materials available.

3. It is not in controversy that on the recommendation made by the Sponsoring Authority that he is involved in two cases namely (1) Avaniyapuram PS Crime No. 538/2007 under Sections 147, 148, 341, 307 and 302 IPC and (2) Avaniyapuram PS Crime No. 324/2009 u/s 392 read with 397 IPC, and also one ground case in Avaniyapuram PS Crime No. 328/2009 u/s 392 of IPC for an occurrence on 28.6.2009, and he was also arrested on 30.6.2009, the detaining authority on scrutiny of the materials, recorded its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order and has made the order under challenge after branding him as Goonda.

4. Advancing arguments on behalf of the petitioner, the learned Counsel would submit that as far as the last adverse case in Crime No. 324/2009 and the

ground case in Crime No. 328/2009 were concerned, the order of remand extension and the initial order of remand respectively were not supplied to him. Added further the learned Counsel that the bail application was dismissed only on 6.8.2009; but when the order under challenge came to be passed on 14.8.2009, it is stated that there is real possibility of coming out on bail, which was not correct. Added further the learned Counsel that in paragraph 5 of the order, it is referred by the detaining authority that he was remanded in two cases; but at the end of the order, it is stated that he was remanded only in the ground case in Crime No. 328/2009, and it has not referred to the last adverse case in Crime No. 324/2009; that this would also be indicative of the non-application of mind, and hence it has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

6. It is not in controversy that the petitioner's son was ordered to be detained on 14.8.2009, in view of the recommendations made on the two adverse cases and one ground case as referred to above. As rightly pointed out by the learned Counsel, the initial order of remand in the ground case though relied upon by the detaining authority, was not supplied to him. At this juncture, it is contended by the State that as far as the ground case is concerned, the remand extension order was supplied to him. But, the original order of remand was not supplied to him according to the Counsel for the petitioner. As far as the ground case was concerned, the original order of remand is not found which would be indicative of the fact that it was not supplied to him. Insofar as the extension of remand in Cr. No. 324 of 2009 was concerned, it was not supplied. Once the documents as to the original remand order and also the extension of remand, were relied on by the detaining authority to make an order of detention, the department is duty bound to give a copy to him.

7. As far as the second ground is concerned, the authority in paragraph 5 has stated that he was judicially remanded in both Crime Nos. 324 and 328 of 2009, but at the end of the order, it has referred only the ground case in Crime No. 328/2009 and not Cr. No. 324/2009. Thus it would be indicative of the non-application of mind which in the considered opinion of the Court would vitiate the order.

8. Accordingly, this petition is allowed. The order of detention passed by the second respondent is set aside, and the detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.