
(1999) 07 MAD CK 0011
In the Madras High Court
Case No : H.C. Petition No. 9 of 1999

Parvathi	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 28-07-1999

Acts Referred:

Citation : (2000) 1 LW(Cri) 479

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

Bench : Division Bench

Advocate : N. Mohideen Basha, for the Appellant; S.M. Syed Fasiuddin, Additional Public Prosecutor on behalf of the Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The petitioner herein challenges the detention order slapped against her sister dabbing her to be a bootlegger. The order

was passed on 15- 12-1998 by the District Magistrate and District Collector, Perambalur District at Perambalur. The Detaining Authority has

relied on as many as four adverse cases and one ground case. The learned Counsel raised the following points in support of his challenge to the

said detention order:-

(i) that the representation made on behalf of the detenu on 31.12.1998 has not been considered and it has been rejected mechanically and

casually;

(ii) that the said representation has not been dealt with expeditiously and unnecessarily time is lost;

(iii) that the telegram sent earlier to the detention order has not been considered by the Detaining Authority; and

(iv) that the English and Tamil Version of the grounds of detention do not tally and thereby a prejudice is caused to the detenu.

2. We need not consider all these grounds, since the petition is liable to be allowed on the first two grounds alone.

3. The learned Counsel brought to our notice that the representation was sent on 31-12-1998. The said representation was received by the

Government on 8-1-1999 and on the same day, the same was forwarded by the under Secretary. It was considered by the Deputy Secretary and

the Honourable Minister on 8th of January and was rejected on that day i.e., precisely within two days from the receipt. The learned Counsel

submits that the said representation has been casually rejected without even bothering to call for the comments of the Detaining Authority, though

the question raised in the representation could not have been answered in the absence of those comments. It has also been pointed out by the

learned Counsel that the said representation has been rejected mechanically. The learned Counsel took us through the representation as also the

reply thereof by the Government which was received by the detainee in prison on 21-1-1999. Very interestingly, the learned Counsel points out

that he had raised approximately four points in the said representation. It was contended firstly that some false cases were slapped against the

detenu. It was secondly suggested that though the Doctor had not so opined, it was stated in the grounds that the finding of 6.5. of atropine in the

liquor allegedly sold by the detainee would be dangerous to the human life. Thirdly, it was pointed out that it was apparent from the documents at

page 45 which was dated 11-12-1998 that the detention was a foregone conclusion and in fact, the detention order came to be passed ultimately

on 15-12-1998 and lastly, that the relatives of the detainee were not intimated about the detention of the detenu. The learned Counsel drew our

attention to the fact that in the whole representation, the maker thereof had never cared for supply of any documents. On this backdrop, when the

reply is to be seen, it is pointed out by the learned Counsel that barring the first point of slapping the false case and the fourth point of non-

intimation, no reply is given as to the other remaining two points regarding the effect of atropine and regarding the detention being a foregone

conclusion on the part of the Sponsoring Authority. On the other hand, very interestingly, it is pointed out that it is stated that the documents

demanded by the maker of the representation were not liable to be supplied, as such documents had already been supplied to the detenu.

Considering the reply and the representation, it is apparent that the representation was not fully dealt with. We are not on the merits of the reply,

nor is it our endeavour to show that the reply is incorrect, we find that the reply is very casually given and that there has been no active

consideration of the representation. Not only this, the representation has been dealt with in a casual manner.

4. It will be seen that the representation was received on 6th of January, 1999 by the State Government and was disposed of on 8th of January.

There is nothing on record to refute the contentions of the learned Counsel for the petitioner that no comments were invited from the Detaining

Authority Perambalur. It will be seen unless those comments been invited, it would have been impossible for the State Government to reject or at

any rate to deal with the representation as early as on 8th of January. Therefore, it is apparent that the representation was straightaway rejected

within two days without having any comments from the concerned authority and perhaps, without there being any record. As if this is not sufficient,

it is apparent that the representation was dealt with mechanically from the fact that even when no documents were ever invited or wanted by the

detenu, a reply came to be given that the documents sought were already supplied or at least such documents were supplied to which the detenu

would be entitled. This only shows that the rejection is absolutely mechanical and casual.

5. The learned Additional Public Prosecutor tried to suggest that, since the author of the representation had raised a question that no intimation was

sent to the relatives of the detenu, the said answer came to be given regarding the documents. We fail to follow any rational nexus between the

points and the answer given. Suffice it to say that the answer given cannot be linked with the point raised in the representation that the relatives of

the detenu were not intimated. At the most, the State Government could have given the date of such intimation of notice or it could have denied the

allegation by suggesting that the intimation was in fact given. To reply such a point raised by saying that the necessary documents have already been

supplied to the detenu would be really a travesty. We cannot brook the same. It is, therefore, clear that the representation has been dealt with in a

cavalier and a casual fashion without adverting to the points raised. There was one more point raised on behalf of the detenu regarding the

detention being a foregone conclusion on the part of the Sponsoring Authority on 11-12-1998 and the same being followed by the detention order.

We only say that perhaps the authorities concerned have completely missed the real implication of this contention. We will not go into the merits of

the reply but where the rejection is in a casual and mechanical manner, and in this case, we have no doubt that it is so, the detention must be

rendered illegal. On this question alone, the detention is liable to be quashed.

6. Again after the representation was rejected on the 8th of January, the same came to be intimated by 21st of January. The explanation for these

13 days is also rather novel. It is stated that 9th and 10th of January were holidays and therefore, the file came to that department on "11th of

January" that one full day was taken in making a fair copy of the decision and still another day was taken in putting the signature on that reply and.

therefore, the intimation could not have come even on 13th of January. The learned Additional Public Prosecutor then explains that 14th, 15th,

16th, and 17th of January being holidays, the reply could be dispatched only on 18th of January so as to reach the detenu in prison on 21st of

January. We disapprove of this so-called official jargon and the delay caused because of that. Really speaking, once the file was disposed of by

the Honourable Minister on 8th of January, there can be no excuse for the file remaining idle for making a fair copy of the order and for putting the

signature of the concealed Officer for full five days. According to us this period has remained unexplained. For this reason also the detention is

liable to be vitiated.

7. In the result, the Habeas Corpus Petition is allowed, the order of detention is set aside and the detenu is directed to be set at liberty forthwith

unless she is required in any other matter.