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**(1995) 01 MAD CK 0085**  
**In the Madras High Court**  
**Case No : HCP No. 805 of 1994**

Pattammal

APPELLANT

Vs

District Magistrate and Collector and Others

RESPONDENT

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**Date of Decision :** 18-01-1995

**Acts Referred:**

Constitution of India, 1950 — Article 22(5)  
General Clauses Act, 1897 — Section 3(60)

**Citation :** (1995) 1 CTC 335

**Hon'ble Judges :** Thangamani, J;Janarthanam, J

**Bench :** Division Bench

**Advocate :** K. Manivasakam, for the Appellant; R. Ragupathi, Additional Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Janarthanam, J.—Pattammal (Petitioner) is the wife of the detenu S. Rajangam. The detenu, it is said, is a bootlegger. Apart from the ground case, as set out in the grounds of detention, the detenu had come to adverse notice in seven other cases. The District Magistrate and Collector, Nagai-Quaide-Milleth District, Nagapattinam (First respondent), in exercise of the powers conferred by sub-section (1) of Section 3 of Tamil Nadu Act 14 of 1982 clamped upon the detenu the impugned order of detention in his proceedings COC No. 5/94 dated 30.1.1994 with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and health.

2. Mr. K. Manivasakam, Learned Counsel for the petitioner, would press into service a lone and sole ground viz., that the representation sent to the Chief Minister of Tamil Nadu had not at all been considered and disposed of till upto date and in that view of the matter, the impugned order of is liable to be set aside.

3. Mr. R. Raghupathi, learned Additional Public Prosecutor, representing the respondents, would however, repel such a submission and produce the relevant

file for perusal and consideration by this Court.

4. A perusal of the file reveals that no representation stated to have been sent to the Chief Minister of Tamil Nadu had ever been received.

5. In the affidavit filed in support of the present action, the petitioner had however taken ground No.(e) as reflected below:

"The detaining authority ought to have considered my representation. But it was not considered even though I made a representation in the month of March.

6. From what has been extracted above, it is rather crystal clear that the representation was stated to have been sent to the detaining authority viz., the first respondent District Magistrate and Collector and not to the Chief Minister of Tamilnadu. However, learned Counsel appearing for the petitioner would produce before us a xerox copy of the representation steed to have been sent by one Pattammal said to be the wife of the detenu, to the Chief Minister along with an acknowledgment. From a perusal of the said copy of the representation, we arc unable to decipher the date, on which the representation had been sent to the Chief Minister. Even by a perusal of the acknowledgment card produced before us, we are able to find a seal of the office of the Chief Minister containing only the date and not even the month or the year. A cursory perusal of such representation reveals that the wife of the detenu craved for the mercy of the Chief Minister to release her husband, the detenu from prison, in as much as she and her children were starving as a consequence of her husband, the bread winner, had been detained under Act 14/82.

7. The moot question, in such a situation, that crops up for consideration is as to whether the so-called representation stated to have been sent to the Chief Minister of Tamil Nadu must be construed as a representation made to the State Government. The further question that crops up for consideration is that if the same is to be construed as a representation made to the State Government, whether such a representation is in the proper form.

8. In answer to those two questions, our attention had been drawn to certain decisions of the apex court of this country, besides the salient provisions adumbrated u/s 3(60) of the General Clauses Act, 1897 (for short "Act 1897"). defining "State Government".

9. We shall now proceed to consider them. Section 3(60) of Act 1897 defines "State Government" as below.

a.....

b.....

c. as respect anything done or to be done after the com- mencement of the constitution (seventh amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union territory, the Central Government.....

10. From what has been extracted above, it is rather crystal clear that State Government in a State shall mean the Governor and none else. On the face of sanguine provision adumbrated in Section 3(60) of Act, 1897, we can straight-away hold that the so-called original representation stated to have been sent to the Chief Minister of Tamil Nadu, cannot at all be stated to have been sent to the State Government of Tamil Nadu. We can recapitulate here that Section 8 of Act 14/82 confers a right on the detenu an opportunity of making a representation against the order of detention to the State Government, which is in tune with the constitutional mandate, as adumbrated under Article 22(5) of the constitution of India.

11. Certain decisions, on which our attention had been drawn, may now fall for consideration in the arena of discussion. In Mohinuddin v. D.M. 1987 SCC Cri 674 there was an inordinate and unexplained delay in the disposal of the detenu's representation to the Chief Minister, the authority to consider the representation. An explanation had been offered stating that Chief Minister remained on tour and busy with important matters of the State. Such an explanation was not accepted and consequently the apex court rendered continued detention of the detenu illegal and unconstitutional.

12. The decision, as above referred to, is not at all applicable to the facts of the instant case. Under the Rules of Business of the Government, the power to consider the representation made to the Government, had been delegated to the Secretary to Government, Prohibition and Excise Department, Fort Saint George, Madras -9 and forward it through the Superintendent of Prison, in which he is confined as expeditiously as possible. It is further stated therein that any representation that is made by him will be duly considered by the Government and will also be placed before the Advisory Board for consideration u/s 10 of the Tamil Nadu Act 14/82.

13. As a matter of fact, he had not sent any representation to such authority nor did he makes any representation to the Government, thereby meaning "Governor". If he had made any representation to the Governor, then the representation so made ought to have been directed to the concerned authority for consideration. The representation in this case had been sent only to the Chief Minister, who is not the authority under the Government to consider and dispose of the representation. Further, even if the same is to be construed as a representation made to the Government, even then, the representation did not raise the question of validity of the order of detention, nor contained a prayer for its revocation.

14. In Rumana Begum Vs. State of Andhra Pradesh and Another, , a representation had been made to the Governor instead of to the Chief Secretary to the State Government. There was a delay of 174 days in transmitting the representation to the State Government and ultimately there is a delay of about six months in its disposal from the date of representation. The delay so caused was sought to be explained by stating that representation deliberately made to

the Governor, knowing well that it had to be addressed to the Chief Secretary, with a view to create a ground for delay and that it was a mere non-statutory representation, in view of earlier representations made by detenu, which were expeditiously disposed of. The Supreme Court rejected such explanation as untenable and ultimately held that representation made to Governor must be treated to have been made to the State Government and unexplained and unreasonable delay in the disposal of that representation vitiated the order of detention.

15. In *Raghavendra Singh Vs. Superintendent, District Jail, Kanpur and Others*, the apex Court held that u/s 3(8) of the General Clauses Act, the "Central Government" means the President and a representation addressed to the President must, therefore, be considered to be a representation properly addressed to the central Government. The view, as expressed in the decision as above referred to, is analogous to the view expressed in *Rumana Begum Vs. State of Andhra Pradesh and Another*, .

16. In *ShaliniSoni v. Union of India* 1980 CrL LJ 1487 the apex court as respects the form of representation expressed in paragraph 4 of page 1489 and 1490 thus:

" .... The representation has not to be made in any prescribed form. There is no formula nor any magical incantation like "open sesame" to be repeated or chanted in order to qualify a communication as a representation. So long as it contains a demand or a request for the release of the detenu in whatever form or language couched and a ground or a reason is mentioned or suggested for such release, there is no option but to consider and deal with it as a representation for the purpose of Article 22(5) of the constitution".

17. In the case on hand, we have already referred to that the so called representation stated to have been sent to the Chief Minister can by no stretch of imagination, be construed to be a representation made to the State Government. Further even though there is no prescription to the form of representation, yet the representation that is made, must have to really raise the question of validity of the order of detention or to contain a prayer for its revocation. In the case on hand, as stated earlier, the so-called representation did not contain any of such prayers and what all it contains is to order for the release of the detenu on the ground of mercy, in as much as the detenu's wife and her children were starving for food, as a consequence of the detenu, the bread winner of the family had been detained.

18. For the reasons as above, the HCP deserves to be dismissed and accordingly the same is dismissed.