
(1985) 04 MAD CK 0035
In the Madras High Court
Case No : Writ Petition No. 12016 of 1984

Phoola

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-04-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 332

Citation : (1985) LW(Cri) 363

Hon'ble Judges : V. Ramaswami, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : T.V. Ganesh, for the Appellant;

Judgement

V. Ramaswami, J.—This is a petition for the issue of a writ of Habeas Corpus to quash the order of detention made under the Tamil Nadu Act 14 of 1982 and set the Petitioner at liberty.

2. The Petitioner was detained under that Act, as a Goonda by an order dated 19th June, 1984. In the grounds of detention it is mentioned that, in addition to the instance dated 19th February, 1984, the Petitioner had also come for adverse notice in Crime No. 779 of 1983, for an offence under Ss.332 and 307 I.P.C. The detaining authority being satisfied that, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain him under the said Act 14 of 1982, made the order on 19th June, 1984. It may be mentioned that though the Petitioner's name also finds a place in Crime No. 779/83, as one of those involved in the commission of a series of crimes, he was not apprehended till 19th February, 1984. On that day when the Police went there to arrest him, finding him somewhere near Thiruma-ehisai(sic), the Petitioner is stated to have hit the police constable. He was arrested on 19th February, 1984, in respect of the incident of assault on that day. The police also have registered a case in Poonamallee Police Station in Crime No. 119 of 1984, u/s 332, I.P.C. Both these cases are pending investigation.

3. Number of points are raised by the learned Counsel for the Petitioner questioning the validity of the order of detention. It was first contended by the learned Counsel that, in order to bring him as a Goonda within the meaning of Section 2(f) of the Act, he should have committed more than one offence punishable under Chapters 16, 17, or 22 of the I.P.C. and that unless there is a conviction and sentence for more than one offence, he cannot be considered to be a goonda. In this connection he drew our attention to the definition of "Habitual Offender" in Section 2(4) of the Tamil Nadu Restriction of Habitual Offenders Act, 1948, (Act 6 of 1948). Section 2(4) of the said Act reads as follows:-

Habitual offender" means a person who, before or after the commencement of this Act, has been sentenced to a substantive term of imprisonment, such sentence not having been set aside in appeal or revision, on not less than three occasions, (for any one or more of the scheduled offences) each of the subsequent sentences having been passed in respect of an offence committed after the passing of the sentence on the previous occasion;

Explanation:-The passing of an order requiring a person to give security for good behaviour with reference to Section 110 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) shall be deemed to amount to the passing of a sentence of substantive imprisonment within the meaning of this clause.

Under Section 3 of the Restriction of Habitual Offenders Act, the Government may, by notification, if they are satisfied that any person is a habitual offender, declare that he shall be subject to the provisions of this Act to such extent and subject to such restrictions, if any, as may be specified in the notification. The Schedule to the Act refers to certain offences under the Indian Penal Code. Suffice it for our purpose to state that all the offences under Chapters 16, 17 or 22 of the I.P.C are not covered and only certain of them are covered. Therefore, that was a peculiar definition for the purpose of the Act.

"Goonda" is defined in Section 2(f) of the Tamil Nadu Act 14 of 1982, as meaning a person who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of an offence punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act XLV of 1860). It may be seen from this definition that in order to consider a person as "Goonda" it was not necessary for a conviction in one or more of the cases. We have already held in a series of cases that, if a person is charged for an offence and that is pending in a court or pending investigation, that could be taken into account for considering whether a person is a "goonda" or not for the purpose of the Act. Since there is an earlier instance in Crime No. 779/83, in which the Petitioner had come for an adverse notice, the detaining authority was well within his jurisdiction in invoking the provisions of Section 3 in order to detain him.

4. It was then contended by the learned Counsel for the Petitioner that, though

he was arrested on 19th February, 1984, he was detained under the provisions of the Act 14 of 1982 only on 20th June, 1984 after a delay of four months and that this delay would vitiate the order. In support of this contention, the learned Counsel relies on a decision reported in SK. Abdul Munna Vs. The State of West Bengal, In that case, arising under the Maintenance of Internal Security Act, the Supreme Court held that there should be proximity between the prejudicial activity and the detention order, and if there is a long interval between the date of commission of the offence and the date of making of the detention order, that would vitiate the order. We have also held in a number of cases that, if any of the grounds are not proximate to the order of detention, it would not be a ground for detention itself. But, in this case, crime number 779/83 is with reference to the commission of an offence under Ss.307 and 332, I.P.C. on 11 /12th November, 1983, and the other offence was committed on 19th February, 1984. In the counter-affidavit filed by the second Respondent, the detaining authority, this point has also been specifically considered and the detaining authority has stated that both these offences were investigated(sic) and when the investigation was (sic) 1984, and after the investigation and reached a certain stage, it was (sic) that it was necessary to invoke the provisions of Tamil Nadu Act 14 of 1982, against the Petitioner. In the circumstance, therefore, we are satisfied, that there is no delay and the order of detention was not not liable(sic) to be interfered with on any ground of want of proper(sic) of the grounds to the detention order itself.

5. It was then contended by the learned Counsel that there is no evidence of any bad antecedence(sic) of (sic) past conduct showing a tendency of a rational(sic) connection between the satisfacti(sic) authority that it was (sic) him under the Act. We are (sic) with this contention also. (sic) mention in the order of the (sic). Itself which would show the (sic) antecedents of the (sic), it is for the detaining (sic) consider whether the provision of the Act (sic) of 1982 will have to be invol(sic) the regular criminal law (sic) in the circumstances, (sic) interfere with the dete(sic) on the ground.

6. (sic) the activities of (sic) in the nature of a criminal(sic) cannot be stated that any law (sic) involved in the activities of the (sic) even here our jurisdiction (sic) of the Constitution is limited. In the (sic) of detention, the detaining authority(sic) activities of the petitioner (sic) associates, are such Bangalore Main road (sic) may have created alarm and a feeling of (sic) in the minds of the people in the (sic) thereby acted in a manner prejudicial (sic) to the maintenance of public (sic) there was any case that (sic) prejudicial to the maintenance of public order is the subjective satisfaction of the authority concerned. of course, if there is no evidence at all, this Court could interfere, as the subjective satisfaction could not have been arrived at on any basis. However, since these instances are mentioned and the authority had specifically considered this question and since we do not sit in appeal over that order, we could not interfere with the order on this ground also.

7. It was then stated that there was a long delay of nearly 18 days in considering his representation dated 30th August, 1984 and that would vitiate the order. Though the affidavit is not clear on this point, we looked into the counter-affidavit and it is with reference to the parole application made by the Petitioner that this contention has been raised. It appears that the father of the Petitioner died some time towards the end of August, 1984, and he wanted to go on parole on that ground. That application, which was received by the Government on 4th September, 1984, was not disposed of till 22nd September, 1984. That is the delay which is complained of by the learned Counsel for the Petitioner. We do not think that that the application will come under Article 22 (5) of the Constitution. The duty of the authorities contemplates expediency only with reference to any representation made against the detention and that is the only representation that is contemplated under Article 22(5) of the Constitution of India and not any application for parole. If for any reason the parole application was illegally rejected, the Petitioner should have invoked the jurisdiction of this Court praying to release him on parole and if there has been sufficient grounds, this Court would have granted him parole. But suffice it to say that those representations cannot be considered to be one against the detention of the Petitioner and therefore the question of delay in that petition does not arise for consideration in writ this petition.

8. No other ground is raised in this writ petition.

9. The writ petition fails and it is dismissed.