
(2010) 03 MAD CK 0043
In the Madras High Court
Case No : H.C.P. No. 2321 of 2009

Radhakrishnan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 302, 307, 324, 336

Citation : (2010) 03 MAD CK 0043

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

Bench : Division Bench

Advocate : K. Srinivasan, 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 passed by the second respondent in Memo.480/BDFGISSV/2009 dated

23.11.2009, whereby the son of the petitioner namely Suresh @ Muttai Suresh was detained under the Act 14 of 1982, terming him as ""Goonda"".

2. This Court heard the learned Counsel appearing for the petitioner and looked into the materials available on record, in particular, the order under challenge.

3. It is not in controversy that pursuant to the recommendations made by the sponsoring Authority that the detenu is involved in one adverse case

viz. Crime No. 774 of 2009 registered by K9 Thiru Vi Ka Nagar police station under Sections 341, 324, 307, 506(2) and 302 of the Indian

Penal Code and also involved in a ground case in Crime No. 779 of 2009 dated 23.10.2009 registered by K9 Thiru Vi Ka Nagar police station

under Sections 341, 294(b), 336, 427, 397 and 506(2) of the Indian Penal Code,

on scrutiny of the materials, after arriving at subjective

satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, passed the detention order, terming him as

Goonda".

4. Advancing arguments on behalf of the petitioner, learned Counsel would submit that as could be seen from the order, the detenu is involved in

one adverse case in Crime No. 774 of 2009 and also ground case in Crime No. 779 of 2009. Insofar as Crime No. 779 of 2009 is concerned,

the detenu was never remanded judicially at any point of time, but it was taken as a basis for passing the order under challenge. Learned Counsel

added further that the sponsoring Authority sent the special report, which is at page Nos. 97 and 98 of the booklet, but it did not contain the date

on which it was actually sent to the detaining Authority. Learned Counsel added further that no bail application was filed in respect of ground case,

but the Authority has stated that there was a real possibility of the detenu coming out on bail. It is only the apprehension of the Authority, which

cannot form basis for passing the order of detention. Hence the detention order has got to be set aside.

5. This Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious considerations on the submissions

made.

6. It is not in controversy that the detaining Authority, after recording its subjective satisfaction that the activities of the detenu were prejudicial to

the maintenance of public order, passed the detention order. The said order suffers on the following grounds:

(i) According to the department, the detenu was arrested in crime No. 779 of 2009, which was registered on 23.10.2009. It is shown as ground

case and booklet contains the remand report and also the order passed by the V Metropolitan Magistrate, Egmore, Chennai, judicially remanding

the detenu and also extension thereon. A perusal of those orders would clearly indicate that all the orders came to be passed only in Crime No.

774 of 2009 and not 779 of 2009. Under such circumstances, necessarily a query should have been raised by the detaining Authority as to how it

came to be made, but the Detaining Authority has not called for anything in that regard. On the contrary, it is taken as extension of remand as if

made in Crime No. 779 of 2009 as the basis for making the order under challenge.

(ii) Apart from this, a special report was also relied on by the detaining Authority, found at page Nos. 97 and 98 of the booklet, which did not

contain the date on which the report was sent and hence when it was sent remained unknown.

(iii) Admittedly, no bail application was filed by the detenu in the ground case. Contrarily it is stated by the detaining Authority that there was a real

possibility of the detenu coming out on bail. It is only an apprehension in the mind of the Authority without any basis or material.

7. The Court is of the considered opinion that the above grounds would suffice to vitiate the detention order. Accordingly, the habeas corrupt

petition is allowed, setting aside the order passed by the second respondent in Memo. 480/BDFGISSV/2009 dated 23.11.2009. The detenu viz.

Suresh @ Muttai Suresh, who is now confined at Central Prison, Puzhal, Chennai is directed to be set at liberty unless he is required in connection

with any other case.