
(2004) 08 MAD CK 0077

In the Madras High Court

Case No : Habeas Corpus Petition No. 279 of 2004

Ragu

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 341, 384

Citation : (2004) 08 MAD CK 0077

Hon'ble Judges : S. Sardar Zackria Hussain, J;P. Sathasivam, J

Bench : Division Bench

Advocate : S. Govindarajan, for the Appellant; Abudu Kumar Rajarathinam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner, who was detained as Goonda, under the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), by way of impugned order dated 26.8.2003 of the second respondent, challenges the same in this petition. The ground case, the occurrence of which had taken place on 01.6.2003, relates to Selaiyur Police Station Crime No. 312 of 2003 wherein the detenu was charged for offence u/s 302 I.P.C. The detenu had one adverse case to his credit the occurrence of which had taken place on 25.9.1992 and was charged for offences under Sections 341, 384 and 302 I.P.C.

2. Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for respondents.

3. The learned counsel for the petitioner, after taking us through the grounds of detention and other materials as well as the relevant provisions from the Tamil Nadu Act 14 of 1982, would contend that in the absence of breach of public order and public peace, the order of detention passed by the second respondent cannot

be sustained. On the other hand, learned Government Advocate appearing for the respondents would submit that on consideration of the act committed by the petitioner in respect of the ground case that took place on 01.6.2003 and also one adverse case, both relate to murder for money / gain, the detaining authority has passed the order of detention and there is no ground for interference.

4. The perusal of the details furnished with reference to the adverse case, which has taken place on 25.9.2002, would show that it relates to an offence of murder for gain. The second occurrence, which is the ground case, which took place on 01.6.2003, also relates to an offence of murder for gain. It is not in dispute that if there is any act, which is prejudicial to the maintenance of public order, the authority concerned is empowered to detain the person under Tamil Nadu Act 14 of 1982. Section 2(f) of the Act defines Goonda, which reads as under:

"goonda" means 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 offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act No. 45 of 1860)."

The definition of Section 2 of the Act relates to goonda and Section 2(a)(iii) reads as under :

"in the case of a goonda, when he is engaged or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order".

It is also relevant to refer the explanation appended to the said Section, which reads as under:

"Explanation:- For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause (a) directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health [or ecological system]."

Section 3 of the Act enables the State Government or the authority concerned to detain certain person if they are satisfied and with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

5. In our case, as said earlier, the petitioner was detained as Goonda by the impugned order. A conjoint reading of the above provisions makes it clear that a person either by himself or as a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under any of the provisions under Chapter XVI, XVII and XXII I.P.C. is called goonda.

6. It is also clear from the definition section that if a person is engaged or

prepares for engaging in any of his activities as a goonda, which ultimately adversely affect, adversely or likely to affect adversely the maintenance of public order, he could be detained as goonda under the said Act. "Public order" has been explained in the explanation appended to Section 2(a). It is clear from the explanation that if any of the activities referred to in sub-clause a (in our case a(iii)) either directly or indirectly causing or calculated to cause any harm or danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health, the said activity / activities are deemed to have been affected the public order. In the light of the above provisions, now let us consider the validity of the order of detention dated 26.8.2003. We have already referred to the first adverse case that it relates to a murder for gain and the ground case also murder for money. Though the learned counsel for the petitioner has submitted that none of the persons cited and referred to in the grounds of detention saw the occurrence and raised alarm or conveyed their panic, as rightly argued by the learned Government Advocate, it is seen from the allegation that the accused threatened the auto-driver with knives, tied his hands with his shirt, legs with his pant, inserted a hand kerchief to his mouth and thereafter, cut his neck with knives and killed him, which act would definitely create fear and panic in the mind of the people of the area. It is also relevant to note that the petitioner, being the gang leader, along with the others, took the said auto-driver into an agricultural field situated behind the bus stand opposite to Dhenupureeswarar Temple at Madambakkam. Taking note of all these events / acts, we are of the view that the detaining authority is right in arriving a conclusion that the said act of the petitioner and others would create fear and panic and feeling of insecurity in the mind of the people of the area. We are in agreement with the said conclusion.

7. Learned counsel for the petitioner, by relying on a Division Bench decision of the Allahabad High Court in *Veerpal @ Virendra Vs. State of U.P. and Others*, , would contend that if the occurrence relates to or pertains to a law and order problem and not public order, the detention order cannot be passed. We have gone through the said decision. The fact and circumstances of the case before the Allahabad High Court show that the occurrence took place in the night and it was a solitary incident and there is no material on record to show that it has disturbed tempo or manner of life of the community in the locality or has disturbed general peace or created a sense of alarm or insecurity in the locality. We have already referred to the details furnished in the grounds of detention and on going through the factual position in the case before the Allahabad High Court, we are of the view that the same is distinguishable and not applicable to the case on hand.

8. We have already referred to the relevant provisions applicable to the definition goonda. It is settled position that whenever a sense of insecurity and fear is generated in the mind of public by reason of activity in which an offender is involved, it can well be said that the public order is disturbed prejudicially and if there is reasonable likelihood of similar cases being repeated by the person, the

detention of such person on the ground that it is required to be done for the purpose of maintaining public order would be in terms of the Act referred above. The learned Government Advocate appearing for the respondents has brought to our notice the order dated 09.7.2003 made in H.C.P. No. 2298 of 2002 which supports the above conclusion. It is also useful to refer the Division Bench decision of this Court in SUBBAIAH ALIAS THIRUVOTIYUR SUBBAIYAH ALIAS MAHADEVAN vs. THE COMMISSIONER OF POLICE, MADRAS CITY, MADRAS AND ANOTHER 1993 L.W. (Cri.) 113 wherein Their Lordships, after referring the definition in Section 2(f) of the Act and other materials, have concluded thus:

"The definition of "goonda" refers to the habitual commission or attempt to commit or abatement of the commission of offences specified in the section. When a person is found to be a goonda it goes without saying that he is a person who habitually commits or attempts to commit or abets commission of offences. Hence it is not necessary further for the authority to wait for his committing another act which is likely to cause prejudice to the maintenance of public order. If the facts and circumstances placed before the authority are sufficient to enable him to arrive at the conclusion that he is a goonda then those facts and circumstances are sufficient to consider the second question also as to whether such acts will cause prejudice to the maintenance of public order. The object of the Act is to prevent the person concerned to act in a manner prejudicial to the maintenance of public order. It would be futile to contend that the authority should wait till he acts in such a manner. In that case, it will not be preventive detention but a case of detention after the commission of the offence. Hence, a reading of S. 3(1) together with S. 2(a) and (f) of the Goondas Act makes it clear that if the commission of offences is sufficient to brand a person as a goonda within the meaning of S. 2(f) they can themselves be taken into account for considering the question whether he is acting in a manner prejudicial to the maintenance of public order".

In the light of the provisions referred above, we are in respectful agreement with the said conclusion. As rightly stated, if the commission of offence is sufficient to brand a person as goonda within the meaning of Section 2(f) of the Act, the same can themselves be taken into account for considering the question as to whether he is acting in a manner prejudicial to the maintenance of public order.

9. In the light of what is stated above, we do not find any valid ground for interference. Accordingly, the Habeas Corpus Petition fails and the same is dismissed.