
(2007) 08 MAD CK 0058
In the Madras High Court
Case No : H.C.P. No. 285 of 2007

Raja	Vs	APPELLANT
State of Tamil Nadu		RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 341, 506

Citation : (2007) 08 MAD CK 0058

Hon'ble Judges : R. Banumathi, J;P.K. Misra, J

Bench : Division Bench

Advocate : T. Gowthaman, for the Appellant; Babu Muthu Meeran, Addl. PP., for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—Challenge in this HCP is the detention order dated 07.08.2006, whereby Petitioner's brother Chella @ Chandrasekar

was detained, branding him as "Goonda" as contemplated u/s 2(4) of the Tamil Nadu Act 14/1982.

2. The detenu had earlier come to adverse notice in a murder case in Cr. No. 634/2004, Karur District Erode Town P.S. for offence u/s 341,

302, 506(ii) IPC for allegedly causing death of one Ravichandran @ Ravi. The immediate cause for passing the detention order is the occurrence

on 12.06.2006. It is alleged that on 12.06.2006, Siva @ Sivakumar, an accused in a murder case, who was released on bail, was done to death

by the detenu and his associates. On the complaint lodged, case was registered in Pasupathipalayam P.S. Cr. No. 221/2006 under Sections 147,

148, 341 and 302 IPC. The detenu was arrested and remanded to judicial custody. While he was in custody, detention order was clamped on the

detenu.

3. Assailing the detention order, the learned Counsel for the petitioner mainly contended that there is lack of materials to show awareness of the

Detaining Authority about the custody of the detenu. It was further urged that the detenu had asked for Remand Extension Order and non

furnishing of the vital document, viz., Remand Extension Order has caused serious prejudice to the detenu in making effective representation.

4. Taking us through the paper book and other relevant materials, the learned Addl. Public Prosecutor has submitted that sufficient materials were

made available before the Detaining Authority to pass detention order against the detenu who was in custody. It was further submitted that from

the materials on record, Detaining Authority was aware of the fact of subsisting custody of the detenu.

5. Awareness of the Detaining Authority is reflected in paragraph No. 3 of the detention order that the detenu is in remand in Pasupathipalayam

P.S. Cr. No. 221/2006 and his remand periods have been extended on 13.07.2006, 18.07.2006, 31.07.2006 and 14.08.2006. The detenu along

with other co-accused were produced before the Judicial Magistrate No. 1, Karur on 24.06.2006 and they were remanded to custody till

03.07.2006 [paper book pages 69 to 70]. From page No. 73 of the paper book, it is seen that on 13.07.2006, remand extension was sought for.

But the paper book furnished to the detenu does not contain the Remand Extension Order. Likewise, page No. 71, pages 75 and 76 of the paper

book are remand requisitions dated 18.07.2006 and 31.07.2006 respectively. There is no material to show that remand was extended by the

Judicial Magistrate nor are there materials to indicate that the remand was extended by video conference. We find much force in the contention of

the learned Counsel for the petitioner that sufficient materials were not placed before the Detaining Authority as to the fact of subsisting custody of

the detenu.

6. Petitioner had sent representation on 22.02.2007 stating about the non-application of mind by the Detaining Authority as to the fact of subsisting

custody of Remand Extension Orders. In the said representation, the petitioner had also asked for copy of the Remand Extension Order. Though

the petitioner has asked for copy of the Remand Extension Order, the same was

not furnished. Rejecting the representation, Government has sent reply dated 21.03.2007 stating that the remand of the detenu was extended by video conference and it is not necessary to furnish Remand Extension Orders. The Government has also said that there is no rule permitting such furnishing of copy of Remand Extension Orders when the remand is extended by Video Conference.

7. It is well settled that when an order of detention is passed against a person in custody, the Detaining Authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while passing the detention order. It appears no material was placed before the Detaining Authority to show the fact of subsisting custody of the detenu.

8. Contending that non furnishing of Remand Extension Order would vitiate the detention order, the learned Counsel for the petitioner placed reliance upon S. Rajasekar Vs. The Commissioner of Police and The Secretary to Government of Tamil Nadu, Prohibition and Excise

Department, . In the said case, the accused was originally remanded till 18.03.2005 and subsequently, his remand was extended till 01.04.2005, there was no further extension of remand on 01.04.2005 till 15.04.2005. But the detaining authority, in the grounds of detention, had presumed

that the fixing of next hearing date as 15.04.2005 and presumed that the remand was extended till 15.04.2005 and passed the order of detention.

The detention order was quashed on the ground that the Detaining Authority has taken into account next hearing date as remand date contrary to material documents available.

9. In yet another decision of Shenbagam Vs. Shenbagam The District Collector and District Magistrate and Another, remand order dated

13.08.2004 was placed before the Detaining Authority. The Remand Extension Order dated 27.08.2004 was not placed before the authority

while passing order of detention. Remand order dated 27.08.2004 was also not served on the detenu. Observing that the detention order has been

passed mechanically without considering the relevant materials, detention order was quashed on the ground of non application of mind on the part of the Detaining Authority.

10. Ratio of the above decisions applies to the present case also. Remand

Extension Order is a vital material which the Detaining Authority ought to have perused and satisfied itself as to the fact of subsisting custody of the detenu. Since the awareness of the Detaining Authority as to the subsisting custody of the detenu is not supported by any materials on record, nor the copy of the remand extension orders furnished to the detenu, the detention order is liable to be quashed.

11. In the result, the detention order is quashed and this petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.