

(2002) 04 MAD CK 0162

In the Madras High Court

Case No : Habeas Corpus Petition No. 1631 of 2001

Rajammal

APPELLANT

Vs

Govt. of Tamilnadu

RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2002) 04 MAD CK 0162

Hon'ble Judges : S. Jagadeesan, J;D. Murugesan, J

Bench : Division Bench

Advocate : P. Rathinavel, for the Appellant; A. Navaneethakrishnan, APP, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—Petitioner is the mother of the detenu by name, Vedigundu Justin (a) Justin (a) Justin Raj, who was detained under the Tamilnadu Act 14 of 1982 as a goonda by the order of the second respondent dated 8.10.2001.

2. The only ground of challenge to the detention order is that the alleged ground case relates to an incident wherein the detenu made an attempt of attack on a private individual and such an incident cannot be the basis for detention, since it cannot be said to be an act in any manner prejudicial to the maintenance of public order and at the worst, it may amount to a law and order problem.

3. In support of the said submission, the learned counsel for the petitioner strongly relied upon the judgment of the Supreme Court in the case of Shri Mustakmiya Jabbarmiya Shaiki Vs. Shri M.M.Mehta, Commissioner of Police & Others 1995 III Cri 18 which arose under the Gujarat Prevention of Anti-Social Activities Act, 1985. While considering the definition of Section 2(c) relating to dangerous person, the Supreme Court held that the incident directed against single individual having no adverse affect prejudicial to the maintenance of public order disturbing the even tempo of life or peace and the tranquillity of the

locality cannot be considered as the basis for detention.

4. At the outset, we are of the view that the principles laid down by the Apex Court in the said judgment have no application to the facts of the present case, as the provisions are totally different.

5. In the Tamilnadu Act 14 of 1982, the word "goonda" has been defined 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 offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code. In the definition of "dangerous person" under Gujarat Anti Social and Preventive Activities Act, 1985, Chapter XXII of the Indian Penal Code is omitted. Chapter XXII of the Indian Penal Code relates to the criminal intimidation, insult and annoyance.

6. The present case has to be considered only in the back-ground of the definition under the Act 14 of 1982. In the statement u/s 161 of the Criminal Procedure Code, it is specifically stated that the detenu has caused public disorder including annoyance to the general public. It is more so, when the incident referred to in the grounds of detention occurred in a public place, that too in the Marthandam junction and in front of the Indian Overseas Bank where there is frequent movement of general public.

7. The words "public order" came up for consideration before this Court in H.C.P.No.860 of 2001 and this Court, by an order dated 18.9.2001, held as follows :

"Though it may be possible to argue that based on enactments like National Security Act, etc., the activities so complained of will not prejudicially affect the "public order", going by the definition of "public order" and its explanation occurring in the Tamilnadu Act 14 of 1982, we have absolutely no doubt in holding that the detenu has indulged in activities prejudicial to the maintenance of "public order" by causing a feeling of insecurity among the general public of the locality. In order to sustain the order of preventive detention under Act 14 of 1982, all that the detaining authority has to find out is whether the detenu is a "goonda" and on being satisfied that he is a "goonda", the further point to be ascertained is whether that "goonda" has acted in any manner prejudicial to the maintenance of public order. It is from the acts complained of against the detenu, the detaining authority has to arrive at a conclusion that the detenu is a habitual offender and therefore, a "goonda". From the various instances relied upon by the detaining authority in support of the order of detention, we are of opinion that the detenu has prejudicially affected the even tempo of life of the community and in that view, the detenu has committed an act or acts which has or have affected adversely the maintenance of "public order" as defined under the Act 14 of 1982. Therefore, the first contention advanced by the learned counsel for the petitioner is devoid of any merit."

8. This Court in another judgment in the case of Sakthi (a) Sakthivel vs. State of

Tamilnadu, etc. 1995 II L.W. 409 had an occasion to discuss the similar issue and finally held as follows :

"From the facts of the ground case as stated above, it is rather crystal clear that the activity of the petitioner-detenu, done conjointly with his comrades, affected even tempo of the life of the society by creating a feeling of insecurity in the minds of the public of that area. Further, the fear psychosis created by the detenu and his other comrades in the minds of the members of the community, was such that such culprits and assailants would go un-punished which has the potential of the society, and not merely some individual to suffer. In such circumstances, we are of the view that the activities of the detenu-petitioner would squarely fall within the tentacles of Explanation appended to Clause "A" of Section 2 of Act 14/1982. In this view of the matter, the second submission projected by learned counsel for the petitioner also bristles next to nothing."

9. The facts of the present case are identical to the facts of the cases referred earlier. In the grounds of detention, it is stated that the detenu, on 31.8.2001 at 16.30 hours at Marthandam Junction and in front of Indian Overseas Bank way laid and attempted to stab one Thangam, but she escaped narrowly and raised alarm. When some of the public warned the detenu, he again threatened them and on seeing the incident, the people waiting in the bus stop ran helter and skelter out of fear and panic and the shop-keepers closed their shop to run to save themselves. The movement of transport vehicle came to a halt. From the above narrated incident, we are of the view that the detenu had acted in a manner prejudicial to the interest of general public and public order. Therefore, we do not find any reason to take a different view in this petition also. Accordingly, the submission of the learned counsel for the petitioner that the incident aimed at an individual in a public place will not cause any prejudice to the maintenance of public order, but only amount to law and order problem cannot be accepted. We do not find any merit in this petition.

10. Hence, the habeas corpus petition is dismissed.