

(2015) 09 MAD CK 0039
In the Madras High Court
Case No : H.C.P.(MD) No. 656 of 2015

Rajeshwari

APPELLANT

Vs

The Principal Secretary to Government

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Citation : (2015) 3 MadWNCri 220

Hon'ble Judges : S. Nagamuthu and V.S. Ravi, JJ.

Bench : Division Bench

Advocate : R. Alagumani, Advocate, for the Petitioner; T. Mohan, Additional Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

1. S. Nagamuthu, J.—The Petitioner is the wife of Mr. Raju @ Rajasekar. S/o. Kuppusamy, aged about 35 years He has been detained under the Tamil Nadu Act 14 of 1982 by the Order of the Second Respondent in Detention Order No. 41/ BCDFGISSSV/2015, dated 29.4.2015 branding him as a "Bootlegger". Challenging the same, the Petitioner is before this Court with this Habeas Corpus Petition.

2. We have heard the learned Counsel appearing for the Petitioner, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though several grounds have been raised in this Petition, the learned Counsel for the Petitioner would mainly focus his arguments on the ground that there is violation of Article 22(5) of the Constitution of India and under Section 8(1) of Tamil Nadu Act 14 of 1982.

4. In this case, the Detention Order was made on 29.4.2015. Admittedly, the Booklet containing the materials considered by the Detaining Authority and the satisfaction arrived at were served on the Detenu only on 5.5.2015. Thus, according to the learned Counsel for the Petitioner, there is violation of Section

8(1) of the Tamil Nadu Act 14 of 1982 and Article 22(5) of the Constitution of India.

5. The learned Additional Public Prosecutor would submit that in this case, as soon as the Detenu was detained under the Detention Order, the Grounds of Detention were furnished to him on 29.4.2015 itself, in winch, the Booklet containing the materials of the Detaining Authority are not furnished him on the same day. It is furnished on 5.5.2015 Thus, according to the learned Additional Public Prosecutor, there is no violation of Section 8 (1) of the Tamil Nadu Act 14 of 1982 as well as Article 22(5) of the Constitution of India.

6. We have considered the above submissions.

7. At the outset, it needs to be mentioned that Preventive Detention, being a detention without a proper trial and proof of any offence, the provision should be construed very strictly The right to have earliest opportunity of making representation against the Detention Order has been guaranteed as a fundamental right under Article 22(5) of the Constitution of India The said provision reads as follows :

"Article 22(5) : When any person is detained in pursuance of an Order made under any law providing for Preventive Detention, the Authority making the Order shall, as soon as may be, communicate to such person the grounds on which the Order has been made and shall afford him the earliest opportunity of making a representation against the Order."

8. Section 8 (1) of the Tamil Nadu Act 14 of 1982 reads as follows :

"8. Grounds of Order of Detention to be disclosed to persons affected by the order. - (I) When a person is detained in pursuance of a Detention Order the authority making the order shall, as soon as may be. but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the Order to the State Government."

A plain reading of these provisions would go to show that it is not only enough to communicate to the Detenu, the grounds on which, the order has been made and also he shall be afforded the earliest opportunity of making a representation against the Order It is only in compliance with these provisions, the Booklet containing the materials, which have been considered by the Detaining Authority to arrive at a subjective satisfaction to pass the Detention Order are furnished In the absence of the service of these papers, the Detenu cannot have an opportunity to effectively make a representation.

9. In such view of the matter, though it is true that in this case, the Grounds of Detention were communicated to him on 29.4.2015, other papers were served only on 5.5.2015, which, in our considered view, is in violation of Article 22(5) of the Constitution of India and similarly, Section 8(1) of the Tamil Nadu Act 14 of 1982. Such view has been taken in an earlier Order passed by yet another

Division Bench of this Court in Malleeswari v. State Government and another, 2011 (1) MLJ (Crl) 513, wherein in paragraph No 7 as follows:

It is not in controversy that the Order of Detention came to be set aside on the grounds recorded above As rightly pointed out by the learned Counsel for the Petitioner, though the impugned Detention Order came to be passed on 2.3.2010. a copy of the same and the Grounds of Detention and connected papers were supplied to the Detenu only on 9.3.2010 From a reading of the Detention Order and grounds, it is quite clear that the copies of the Adverse cases and the Ground case, were to be supplied to the Detenu not exceeding five days from the date of the Order of Detention In the present case on hand, though the impugned Detention Order was passed on 2.3.2010, it was supplied to him only on 9.3.2010, which is violative of the mandatory provision."

In view of the above, in this case, the Detention Order is liable to be set aside.

10. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the Second Respondent, in Detention Order No. 41/2015, dated 29.4.2015 is quashed. The Detenu, namely. Raju @ Rajasekar, S/o. Kuppusamy. aged about 35 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.