
(2014) 03 MAD CK 0057
In the Madras High Court
Case No : H.C.P. No. 1256 of 2013

Raji @ Raja

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 17-03-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5)

Penal Code, 1860 (IPC) — Section 380, 392, 397, 457

Citation : (2014) 03 MAD CK 0057

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner, who has been detained as a Goonda under Tamilnadu Act 14 of 1982 vide proceedings in D.O. No. 28/2013-C2, dated 30.04.2013 on the file of the 2nd respondent, has filed this Habeas Corpus Petition seeking to quash the same and for a direction to the respondents to set him at liberty from detention.

2. The detenu came to adverse notice in the following cases:

S. No.

Police Station and Crime No.

Sections of Law

1

Cheyyar Police Station Sections 457 and 380 IPC

Crime No. 38/2010

2

Cheyyar Police Station Sections 457 and 380 IPC

Crime No. 87/2010

3

Cheyar Police Station Sections 457 and 380 IPC

Crime No. 547/2010

4

Cheyar Police Station Sections 457 and 380 IPC

Crime No. 718/2010

5

Cheyar Police Station Sections 457 and 380 IPC

Crime No. 1142/2010

6

Cheyar Police Station Sections 457 and 380 IPC

Crime No. 561/2011

7

Cheyar Police Station Sections 457 and 380 IPC

Crime No. 623/2011

8

Cheyar Police Station Sections 457 and 380 IPC

Crime No. 659/2012

The ground case alleged against the detenu is one registered on 16.02.2013 by the Special Sub-Inspector of Police, Cheyar Police Station in Crime No. 66/2013 for offences u/s 392 r/w. 392, 397 I.P.C.

3. Though the learned counsel for the petitioner has raised several grounds, he mainly argued on the question of delay in considering the petitioner's representation. He would contend that the inordinate delay of consideration of the representation would entitle the petitioner the relief prayed for in the present petition. Therefore, the detention order is vitiated in law.

4. We have heard Mr. P. Govindarajan, learned Additional Public Prosecutor on the above point, perused the records and verified the chart produced by the respondents.

5. In the Detention Order, the District Collector & District Magistrate, Tiruvannamalai District/2nd respondent herein has arrived at a suggestion as could be seen from paragraph 5, which is as follows:

5. I am aware that Thiru. Rajji @ Raja, who is now in remand in the ground case of Cheyyar Police Station Crime No. 66/2013 and also in adverse case in Cr. No. 38/2010, 87/2010, 547/2010, 718/2010, 1142/2010, 561/2011, 623/2011 and 659/2012 of the same Police Station and lodged in the Central Prison, Vellore as a remand prisoner. I am also aware that no bail petition filed on behalf of the above accused in any Court so far in the above cases. I am also aware that in a similar case registered in Vettavalam Police Station in Cr. No. 28/2012 u/s. 392 r/w 397 IPC, bail was granted to the accused Thiru. Prabhu by the Honourable Sessions Court, Tiruvannamalai in CrI. M.P. No. 228/2012 on 20.02.2012. Hence, I infer that there is a real possibility of his (Thiru. Rajji @ Raja) coming out on bail in the above cases similarly by filing bail petitions later on in the appropriate Court since bails are granted by the Courts in these cases. If he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order. Further, recourse to the normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. From the materials placed before me, I am fully satisfied that the said Thiru. Rajji @ Raja is a Goonda and there is compelling necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order under the provision of Tamil Nadu Act 14 of 1982 u/s. 2(f).

6. On a perusal of the list informing the course of consideration of the petitioner's representation, it is seen that the Detention Order was passed on 30.04.2013; the detenu made a representation to the detaining authority on 17.05.2013 and it was received by the competent authority on 24.05.2013; remarks were called on 27.05.2013 and only on 06.06.2013, remarks were received and file was submitted on 07.06.2013, on which day itself, the Under Secretary and Deputy Secretary have dealt with it; the Minister (Electricity, Prohibition and Excise) dealt with the same on 11.06.2013 and rejected it on 12.06.2013, on which day itself, rejection letter was sent to the detenu and it was served on the detenu on 14.06.2013.

7. Verification of the above dates and events would clearly show that there is unexplained delay of 8 days between 27.05.2013, the date on which remarks were called for and 06.06.2013, the date on which remarks were received, including 2 holidays i.e. on 01.06.2013 and 02.06.2013. The said delay is not explained by the competent authority. Therefore, it is apparent that there has been an inordinate and unexplained delay in consideration of the petitioner's representation and the same contradicts the requirement of Article 22(5) of the Constitution of India and the consequence thereof is in infringement of the right of Article 21 of the Constitution of India.

8. Accordingly, the impugned detention order passed by the second respondent in D.O. No. 28/2013-C2 dated 30.04.2013 is hereby quashed and the Habeas Corpus Petition is allowed. The detenu, namely Raji @ Raja, in this case is set at

liberty forthwith, unless his custody is required in connection with any other case. However, this order shall not preclude the prosecution from conducting cases effectively and shall not confer any right to the detenu before the Regular Court.