

(2009) 02 MAD CK 0186

In the Madras High Court

Case No : Habeas Corpus Petition No's. 1974 and 1975 of 2008

Ravichandran and Balu @ Bunk Balu

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 324, 341
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 2, 3(1)

Citation : (2010) 2 Crimes 217

Hon'ble Judges : R. Subbiah, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : M. Rajavelu, for the Appellant; N.R. Elango, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—Both the petitioners herein challenge the respective impugned orders of detention clamped against them, dated 08.07.2008, passed by the 2nd respondent, branding them as "Goonda" as contemplated u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). Since both the matters are inextricably interconnected with each other, both the petitions are heard together and disposed of by this common order.

2. From the grounds of detention orders, it is seen that the detaining authority has relied upon one adverse case registered in Crime No. 485 of 2006 on the file of K7, ICF Police Station and the ground case registered in Crime No. 333 of 2008 on the file of K4 Anna Nagar Police Station for clamping the orders of detention. In the adverse case, it is alleged that on 21.06.2006 at about 22.00 hours, when one Suresh Kumar was returning home, the detenus in both the petitions, along with some other two persons, threatened him and beat him with

hands. The detenu in HCP No. 1974 of 2008 caught hold the hands of the said Suresh Kumar along with one John and the detenu in HCP No. 1975 of 2008 took out "jally" stone i.e. gravel stone and fisted with the stone indiscriminately over his head. At that time, when the public came for his rescue, the detenus took out a stick and beat them and threatened them, stating that if they opposed the detenus, they had to face dire consequences. Since a huge crowd gathered at the spot, they fled away. On a complaint given by the victim Suresh Kumar before the K7, ICF Police Station, the adverse case was registered in Crime No. 485 of 2006 for the offences punishable under Sections 341, 324 and 323 IPC.

3. It is stated in the ground case relied upon by the detaining authority that, on 31.05.2008 at about 11.30 PM, both the detenus along with other persons attacked one Ramesh, who was standing in front of a wine shop, with cutting weapons and caused his death. Since the incident took place in the public place, the public who were sitting with their children in front of their houses, noticed the same and ran inside their respective houses out of fear of danger and the vehicles proceeding in the busy road came to a stand still due to the above act of detenus. The normalcy in the area was totally affected. On a complaint given by the mother of the deceased, the ground case was registered in Crime No. 333 of 2008 by the Inspector of Police, K4, Anna Nagar Police Station under Sections 341 and 302 IPC against the detenus. He took up the investigation and arrested the detenus on 03.06.2008 and after recording their confession statements, lodged them at Central Prison, Puzhal, Chennai as remand prisoners till 18.06.2008. Thereafter, a proposal was sent to the 2nd respondent by the Inspector of Police, to detain the detenus under Act 14 of 1982. The 2nd respondent, after considering the entire materials placed before him, passed the orders of detention dated 08.07.2008 branding them as "Goonda" as contemplated u/s 2(f) of the Tamil Nadu Act 14 of 1982.

4. Now, challenging the above said detention orders, both the detenus have come forward with these habeas corpus petitions.

5. Learned Counsel for the petitioners submitted that the detention orders dated 08.07.2008 are vitiated on the following grounds:

(1) The allegation found in the ground case, relied upon by the detaining authority registered in Crime No. 333 of 2008 to clamp the orders of detention, would not amount to breach of public order. On the other hand, a reading of the allegations would show that the alleged offence would have taken place due to the personal motive between the detenus and the deceased. Therefore, the clamping of detention orders under the guise of preventing the detenus from acting in any manner prejudicial to the maintenance of public order, is not correct when there is a chance for the police to take action under the normal criminal law, for the offences arising out of personal motive. Hence, the act of passing the detention order shows the non-application of mind on the part of the detaining authority. Therefore, the detention orders are liable to be set aside.

(2) The adverse case is registered in the year 2006 relating to the incident occurred on 21.06.2006; but the ground case is registered only in the year 2008. Therefore, there is no proximity between the two cases, which was not taken into consideration by the detaining authority while passing the orders of detention.

(3) Though arrest was made as early as on 03.06.2008, the detention orders were passed only on 08.07.2008 by the detaining authority. Therefore, there was a delay in passing the detention orders.

(4) In the grounds of detention, it has been stated as if the adverse case is under investigation, whereas from page 3 of the booklet, it could be seen that the investigation was completed and the final report was filed before the V Metropolitan Magistrate Court, Egmore, Chennai. This aspect would clearly show that the orders of detention were passed by the detaining authority without application of mind and as such, the detention orders are liable to be set aside on the ground of non-application of mind by the detaining authority.

6. Per contra, learned Additional Public Prosecutor submitted his reply as follows:

(1) In the ground case, the detenus along with other rowdy elements attacked one Ramesh in a public place and that the act of the detenus is not only affecting the individual but also created panic in the minds of the public of the locality, which could be evident from the materials available from the booklet. That apart, even in the adverse case, it has been clearly stated that the detenus had threatened the public and created a sense of panic and terror among the common public and created a feeling of insecurity. Under such circumstances, it cannot be said that the offences covered under Crime No. 333 of 2008 would not amount to breach of public peace.

(2) In this regard, learned Additional Public Prosecutor drew the attention of this Court to the confession statements of the detenus, wherein they have stated that they were acting under the leadership of one Gnanam. Thus, by relying upon the confession statements, the learned Additional Public Prosecutor submitted that the statements made by them would establish that they are the habitual offenders. Further, he has submitted that though the arrest was made on 03.06.2008, the sponsoring authority, after collecting the entire materials, placed the matter before the detaining authority and on perusing all the materials and after drawing subjective satisfaction, the detaining authority passed the impugned orders on 08.07.2008. The whole process for passing the detention orders took only a reasonable time and it cannot be said that there was an inordinate delay in passing the detention orders.

(3) In the adverse case, investigation was completed and the final report was filed before the concerned court; but in the grounds of detention, it has been inadvertently stated that the case is under investigation. This statement found in the grounds can be contained as only an error, which would not cause any prejudice to the rights of the detenus in any manner. In this regard, the learned Additional Public Prosecutor relied upon a judgment of this Court dated

24.03.2004 passed in HCP No. 12 of 2004. Thus, by making the above submission, the learned Additional Public Prosecutor submitted that both the petitions have to be dismissed by confirming the orders of detention.

7. Heard the learned Counsel for the petitioners and the learned Additional Public Prosecutor for the respondents and perused the materials.

8. A perusal of the allegations found in the adverse case and ground case would clearly demonstrate that due to the act of the detenus, panic was created in the minds of public. Further, on going through the confession statements, we find that they had been acting according to the instructions of one Gnanam, having him as a leader and they are prone to commit offences habitually breaking the public peace. The materials available on record are sufficient to prove that the detenus are habitually causing breach of peace. Further, in our opinion, it is not necessary that there should be more number of adverse reports/cases to clamp the orders of detention, especially when the materials are available to show that the detenus are committing offences habitually, breaking the public peace and there is every likelihood of their committing offences, once released. In the instant case, the detaining authority, after perusing the entire materials in the adverse case and the ground case, arrived at a subjective satisfaction that it is necessary to prevent the detenus from acting in any manner prejudicial to the maintenance of public order. Under such circumstance, we do not find any force in the submission made by the learned Counsel for the petitioners that the allegations made in the ground case would not amount to breach of public order and there is no habitual activities in committing offences and, accordingly, the said submission is rejected.

9. Similarly, we are also unable to accept the submission of the learned Counsel for the petitioners that there is a delay in passing the detention orders. As pointed out by the learned Additional Public Prosecutor, only a reasonable time has lapsed for the whole process such as collecting the materials and forwarding the same to the detaining authority by the sponsoring authority. Therefore, it cannot be said that the orders of detention are vitiated on the ground of delay in passing the orders of detention.

10. So far as the other submission of the learned Counsel for the petitioners, we are of the view that the statement made in the grounds of detention to the effect that the adverse case is under investigation would not vitiate the said orders. As pointed out by the learned Additional Public Prosecutor, at the most, it could be considered only as an inadvertent error, which would not be sufficient to arrive at a conclusion that there is non-application of mind on the part of the detaining authority when the reasons assigned by the detaining authority in all other aspects are sufficient to clamp the orders of detention. In this regard, it would be useful to refer the relevant passage from the judgment passed by a Division Bench of this Court in HCP No. 12 of 2004 dated 24.03.2004 (Bernad v. The Commissioner of Police, Chennai and Anr.), relied upon by the learned Additional Public Prosecutor, which reads as follows:

3. The learned Counsel appearing for the petitioner submitted that during the narration of the ground case it was mentioned in the order of detention dated 26.08.2003 that the investigation in the ground case was pending, but the fact remains that the investigation was completed as early as on 13.08.2003, even 10 days prior to the order of detention. This according to the learned Counsel for the petitioner showed the non-application of mind of the detaining authority. It may not be so, because what we are concerned with in the grounds of detention are incriminating circumstances and the prejudicial activities of the detenu. Even if some mistake is crept in in describing the stage of the ground case as to the pendency of investigation or that charge sheet was laid, that does not in any way affect the degree of proof of incriminating circumstances. Therefore, this point is of any help to the detenu.

11. Hence, as held in the above judgment even if some mistake has crept in while describing the stage of the adverse case as pending of investigation or that charge sheet was laid, it does not, in any way, affect the degree of proof of incriminating circumstances. Ultimately, we have to look only into the incriminating circumstances and the prejudicial activities of the detenus in order to prevent the detenus from acting in any manner prejudicial to the maintenance of public order. Hence, we do not find any force in the submissions made by the learned Counsel for the petitioners and as such, both the habeas corpus petitions are dismissed.