

(1992) 06 MAD CK 0002

In the Madras High Court

Case No : Writ Petition No. 1579 of 1992

Saravanan

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 13-06-1992

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Penal Code, 1860 (IPC) — Section 379, 380, 397, 457
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (1992) LW(Cri) 534

Hon'ble Judges : K.M. Natarajan, J;Arumugham, J

Bench : Division Bench

**Advocate : P.V. Venkatasubramanian, for the Appellant; S.
Shanmughavelayutham, Assistant Public Prosecutor, for the Respondent**

Final Decision : Allowed

Judgement

K.M. Natarajan, J.—This Writ petition is filed by the detenu himself under Article 226 of the Constitution of India seeking for the issue of a

Writ of habeas corpus quashing the order of detention dated 19.12.1991 and for setting him at liberty.

2. The detenu came to the adverse notice as goonda in view of the adverse cases referred to in the preamble and he was detained on the basis of the ground case.

3. The impugned order of detention was passed by the second respondent the Commissioner of Police, Madras City, in exercise of the powers

conferred by Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas,

Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of

1982) hereinafter called the Act, with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. The facts which lead to the passing of the order were set out in the ground of detention and hence we do not propose to reiterate the same especially when the grounds of detention was duly served on the detenu and in view of the limited plea raised by the learned counsel for the petitioner, in the grounds of detention.

4. Though the learned counsel for the petitioner challenged the impugned order of detention on various grounds, confined his arguments to grounds

(f) and (g), wherein it is stated as follows:

(f) The detaining authority has relied on the extraneous material in the remand report, namely, Cr. No. 412/91 u/s 457 and 380 IPC which was not referred either in the adverse case or in the ground case. Hence the consideration of extraneous and irrelevant material vitiates the order of detention.

(g) If the second respondent relied on that case, failure to furnish copies of the documents violates Art. 22(5) of the Constitution of India.

In reply to the same it is stated in paragraph 12 of the counter affidavit filed by the second respondent that the detaining authority has not relied on

the extraneous material and passed the order of detention. In paragraph 13 of the same counter-affidavit, it is submitted that it is not correct to

state that the second respondent failed to serve the copies of the documents relied upon for arriving at the subjective satisfaction. It is further

submitted that the copies of documents placed before the second respondent for arriving at a subjective satisfaction were furnished to the detenu

through the Superintendent of Central Prison, Madras, under proper acknowledgement. The learned counsel for the petitioner drew our attention

to the document No. 64, the copy of which has been furnished by the Inspector of Police, J.1, Saidapet Police Station, requesting the Government

to remand the detenu in respect of the ground case. Wherein, in paragraph 2 it is stated as follows:

During the course of the investigation the above two accused individually has given a confession statement before me which was recorded in the

presence of witnesses and wherein they have admitted, apart from the above case, their complicity in E.3 P.S. Cr. No. 1726/91, u/s 397. IPC P.4

Cr. No. 412/91 under sections 457 and 380 IPC Cr. No. 328/91, u/s 379 IPC (Snatching) Cr. No. 343/91 u/s 380 IPC and the investigation

could not be completed within the time limit of 24 hours and the investigation is to be carried out in to the above mentioned Crime Numbers.

The learned counsel also drew our attention that of offence in Crime No. 412/91 registered under Sections 457 and 380 of Indian Penal Code are

grave offences. The other documents placed before the detaining authority for arriving at a subjective satisfaction, even though it was referred to in

the grounds of detention, certainly it would have influenced the mind of the detaining authority in passing the impugned order of detention and as

such it is vitiated on the ground of consideration of extraneous materials and also in respect of which extraneous consideration has not been given.

In this connection the learned counsel for the petitioner relied on a judgment of the Apex Court reported in Vashisht Narain Karwaria v. State of

U.P. and Another 1990 SCC (Crl.) 372 wherein it is held as follows:

The above averments made in the above two letters, the copies of which are furnished to the detenu along with grounds of detention unequivocally

and clearly spell out that the detenu is a hardened Criminal, having a gang under his control often committing heinous crimes, that many cases

against the detenu are registered in various police stations and that he is in the habit of committing offences. No doubt, these averments are not

made mention of in the grounds of detention. But can it be said that these materials placed before the authority might not have influenced the mind

of the detaining authority in taking the decision of detaining the detenu? In our view, the above averments which are extraneous touching the

character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the detaining authority to some extent

one way or other in reaching the subjective satisfaction to take the decision of directing the detention of the detenu. As rightly pointed out by Mr.

Jain, had these extraneous materials not been placed before the detaining authority, he might or might not have passed this order. Therefore, we

have to hold that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order. There are

several pronouncements of this court, on this point, of which we will make mention of the following decisions: Ram Krishna Paul v. Government of

West Bengal, Pushpa v. Union of India, Merugu Satyanarayana v. State of A.P., Mehboob Khan Pathan v. Police Commissioner, Ahmedabad.

The ratio laid down the above decision will squarely apply to the facts of this case. Applying the same to the facts of this case, we have no

hesitation in holding that the impugned order is vitiated on the ground of consideration of extraneous materials in arriving at a subjective satisfaction

while passing the impugned order of detention and as such it is vitiated.

5. In the result, the writ petition is allowed, the impugned order of detention is quashed and the detenu is hereby directed to be set at liberty

forthwith unless he is required in connection with any other case.