
(2003) 10 MAD CK 0202

In the Madras High Court

Case No : Habeas Corpus Petition No. 232 of 2003

Settu

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 10 MAD CK 0202

Hon'ble Judges : V.S. Sirpurkar, J;M. Thanikachalam, J

Bench : Division Bench

Advocate : V. Parthiban, for T.S. Kannian, for the Appellant; I. Subramaniam, Public Prosecutor assisted by A. Naveenathakrishnan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The order dated 21.10.2002 passed by the District Magistrate and District Collector, Vellore branding one Settu S/o. Kulandayappan as a "Bootlegger" and directing his detention u/s 3 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) is in challenge. The said Settu was found to have been involved in three prohibition cases, as also in the incident dated 01.10.2003, wherein he was found to be selling distilling country arrack, which was, ultimately, found to be mixed with atropine.

2. Learned counsel for the petitioner raises a very interesting point, which goes to the root of the matter and hence, we need not consider the other facts. Learned counsel invites our attention to page 35 of the documents supplied. On that page is an order refusing to grant bail. That order is dated 11.10.2002. The last paragraph of the order reads as under:-

" The learned Public Prosecutor has objected to release the petitioner on bail by

stating that C.E's report has been received, wherein it is stated that the seized contraband of arrack contains atrophinea poisonous substance to the extent of 6.00 mgms per 100 M.L and likely to be detained under B.L. Act"

Learned counsel states that in common parlance when a person is detained under the provisions of 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) on the ground that he is a bootlegger, it is normally referred to as "B.L Act".

3. He, further, points out from the language of the grounds that the detaining authority has taken into consideration the fact that a bail application was filed by the detenu before the Court of District Sessions Judge, Vellore vide CrI.M.P. No. 4942/2002, and the same was dismissed on 11.10.2002 by the learned Additional Sessions Judge, Vellore. Learned counsel points out that it is the same bail application regarding which the order has been supplied to the detenu and direct reference to that order has been made by the detaining authority in his detention order, which would go to suggest that the said order was actively considered by the detaining authority before coming to the conclusion of passing a detention order. Learned counsel, therefore, poses a question as to how is it that a representation was made to the Court on the basis of the instructions received from the sponsoring authority that the detenu was "likely to be detained" under B.L. Act. Learned counsel, further, argues that if this was taken into consideration, then the detaining authority would be presumed to have known that the sponsoring authority had made a confident statement during his instructions to the Additional Public Prosecutor that the detenu was "likely to be detained" and therefore, the detaining authority was bound to take into consideration this impression, or as the case may be a confident notion on the part of the sponsoring authority, while passing the detention order. Learned counsel buttresses his argument that on this date i.e., 11.10.2002 when probably the instructions were given by the sponsoring authority to the Additional Public Prosecutor, the sponsoring authority had not even made a proposal by making an affidavit before the detaining authority. A doubt was, therefore, liable to be raised, as to whether there was already a plan to detain the detenu and the subsequent decision was merely a mechanical confirmation of that plan. 4. Learned Additional Public Prosecutor opposes the argument by saying that that was merely an impression on the part of the sponsoring authority and whatever the impression the sponsoring authority could have was not binding as against the detaining authority. He urges, even if the sponsoring authority was contemplating a plan to apply for detention, by making a proposal in that behalf to the detaining authority, it was possible that his contemplation would find a place in the instructions that he passed to the Additional Public Prosecutor, but that by itself would not affect the thinking process of the detaining authority.

5. The argument for the petitioner cannot be said to be without substance. It is

indeed apparent from the record that the order rejecting the bail has not only been supplied, but has been directly referred to in the grounds. It can easily be called to be a "relied on" document. If that document was considered and from that document the detaining authority came to know that the sponsoring authority had made a confident statement that the detenu was "likely to be detained", even when the sponsoring authority had not sworn to an affidavit and made an application in that behalf, then the detaining authority was bound to take note of, consider and express something about this belief on the part of the sponsoring authority.

6. It is clear from the language of the grounds that the order was a relied upon document. It was specifically put to the detaining authority, read by him and also supplied to the detenu. If that is so, the detaining authority did know about the sponsoring authority's confident belief that a detention order was likely to be passed, which belief he already had on 11.10.2002, even when he had not made any formal proposal for the detention. In that case, the detaining authority was duty bound to take this particular portion into consideration and dispel the doubt by holding that his decision to clamp detention order was made independently of any other thing and only on the materials supplied to him, after the affidavit of the sponsoring authority was filed before him. That is not to be found anywhere in the order. This is, therefore, clearly a case where the detaining authority has failed to take into consideration a very substantial portion of the relied upon document and has not applied his mind. The detention order must go on this count alone.

7. In that view, we will not consider any other point. The Habeas Corpus Petition is allowed. The order of detention dated 21.10.2002 is set aside. The detenu Settu S/o. Kulandayappan is directed to be set at liberty forthwith unless his detention is required in any other case.