

**(2003) 10 MAD CK 0042**  
**In the Madras High Court**  
**Case No : H.C.P. No. 55 of 2003**

Srinivasan

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 17-10-2003

**Acts Referred:**

Constitution of India, 1950 — Article 22(5)  
Penal Code, 1860 (IPC) — Section 363  
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,  
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(2)

**Citation :** (2003) 10 MAD CK 0042

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

**Bench :** Division Bench

**Advocate :** C.R. Malarvannan, for the Appellant; A. Navaneethakrishnan, for the Respondent

**Final Decision :** Allowed

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## Judgement

M. Thanikachalam, J.—Thiru Srinivasan S/o. Ramamurthy has been detained under Sub Section 2 of Section 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 14/82) by an order dated 11.11.2002 labeling him as Goonda, which is challenged in this writ petition before us.

2. The detenu has been involved in a case in Cr.No. 187/2002 of Virudhunagar Bazar Police Station, for the offences under Sections 365 and 392

I.P.C, for which investigation is under process. The detenu once again involved in a case for the alleged incident that took place on 13.9.2002 at

about 17.30 hours at Nallamanaickenpatti, within the limit of Kallakudi Police Station. It is pointed out that on 13.9.2002, one Ramesh, who was

studying in K.V. Middle School, Virudhunagar was abducted by the detenu, while he was returning from the school and that the detenu demanded money from his parents to release him and asked them to come with money. It seems, the boy's mother scolded the detenu, with unparliamentary words, which enraged the detenu and therefore, the boy was done to death by strangulating with a nylon rope on his neck and in order to escape from the legal punishment, the body was buried near the highway. It is further pointed out, that on a complaint by Thiru Subbu Reddy of Nallamanaickenpatti that his brother's son, Ramesh was found missing, a case was registered at Virudhunagar West Police Station in Cr.No. 357/02 under the heading ""Boy Missing"", which was subsequently altered into 363 I.P.C. It seems the detenu, in order to screen his involvement, assisted the boy's parents in searching the boy, as if he is alive. But investigation revealed that the phone call to the parents of the deceased Ramesh, demanding money was received from a cellphone and on further investigation, it came to light that the cellphone was sold to an unknown person by name Thiru Solomon, who informed the police that he can identify the person, on seeing. Subsequently, as pointed out, Solomon identified the accused on seeing a video cassette recorded during the Grahapravesam of the house of Thiru Nagarajan, performed recently before the occurrence, which compelled and prompted the accused to surrender before the Head Quarter Deputy Tahsildar, Virudhunagar, and a statement was also recorded from him. On information from the Head Quarter Deputy Tahsildar, the Inspector of Police, secured the accused and further action was taken including the detention order also, which is impugned before us.

3. The learned counsel for the petitioner submits that the remand order dated 27.9.2002 was not supplied to the detenu and therefore, he had lost the opportunity of making effective representation, to safeguard his right as contemplated under Article 22(5) of the Constitution of India and in this view, the detention order is vitiated. We are unable to persuade ourselves to accept this contention in view of the fact that no remand order has been "relied on", as seen from the grounds of detention. In paragraph-3 (ii) of the detention order, it is stated

the accused Srinivasan was produced before the Judicial Magistrate No. I Court, Virudhunagar on 27.9.2002 and lodged at Central Prison,

Madurai.

Therefore, according to the learned counsel for the petitioner, the remand order dated 27.9.2002 is a document relied on and therefore, it ought to

have been supplied to the detenu. Except, narrating the fact that the accused is in Central Prison as stated, that the detenu was produced before

the Judicial Magistrate on 27.9.2002 and lodged at Central Prison, Madurai, the detaining authority has not relied upon the remand order

anywhere in the grounds of detention. In this view, it is clear that the detaining authority has not relied upon any remand order dated 27.9.2002 and

if at all it could be said it is only a referred document and the law does not mandate for the supply of the same. In this view, the first contention

deserves to be rejected.

4. The learned counsel for the petitioner by way of second contention would contend, that the representation sent by the detenu was not properly

considered. The learned Additional Public Prosecutor furnished the particulars of the dates, regarding the representation, which would reveal that

the representation dated 17.12.2002 was considered without giving a chance for a delay. The representation dated 17.12.2002 was received on

20.12.2002 and the same was received by the detaining authority on 28.12.2002. Parawar remarks were called from the sponsoring authority on

30.12.2002 and the remarks were received from the sponsoring authority on 2.1.2003, which was sent to the Government on 6.1.2003, received

by the Government on 9.1.2003, considered between the period 10.1.2003 and 14.1.2003, rejected on 20.1.2003, and served on 23.1.2003.

Except the week holidays and other public holidays, as furnished by the Additional Public Prosecutor, there is no delay, much less inordinate delay

or unexplained delay, in considering the representation, thereby causing prejudice to the detenu. In this view, we are inclined to reject this

contention also.

5. The contention of the learned counsel for the petitioner that there is no material that the activity of the detenu was prejudicial to the maintenance

of the public order and on this ground, the detention order should be quashed. We are unable to accept this point considering the facts and

circumstances of the case. As pointed out, a boy was kidnapped, while he was returning from the school, a ransom was demanded and on failure,

he was murdered and buried. This would indicate, coupled with previous case, that the activity of the accused was prejudicial to the maintenance

of the public order and therefore, it cannot be said that the activity of the accused was not prejudicial to the maintenance of the public order.

Hence, this contention is also rejected.

6. Finally, the learned counsel for the petitioner would contend, that the statement recorded by the Head Quarter Deputy Tahsildar, Virudhunagar

has not been supplied to the detenu, despite the fact, the same was sought for by the detenu, in his representation to the Government dated

17.12.2002, the fact being, it is a document relied on, for the purpose of passing an order of detention. It is an admitted position, that the statement

recorded by the Head Quarter Deputy Tahsildar, Virudhunagar has not been supplied to the detenu, despite his request. The learned Additional

Public Prosecutor would contend, that the statement recorded by the Head Quarter Deputy Tahsildar, Virudhunagar is not a document relied on,

whereas while describing or narrating the incident, the fact of recording the statement by the Head Quarter Deputy Tahsildar also was referred and

therefore, the non supply of referred document, would not invalidate the detention order, which is clamped otherwise validly. Considering

paragraph 3(ii) of the detention order and its impact, we are unable to subscribe our view to the above said contention.

7. Originally a case was registered in Cr.No. 357/2002 of Virudhunagar West Police Station under the head "" Boy Missing"" and subsequently it

was altered to 363 I.P.C. The said case was also later on altered to 302 and 201 I.P.C. and that is why, the detenu is facing the trial for the above

said offences. The statement recorded by the Head Quarter Deputy Tahsildar alone has given a lead, to the Tahsildar as well as the Inspector of

Police to reach a conclusion prima facie, that the detenu might have involved in this crime. If that statement recorded by the Head Quarter Deputy

Tahsildar, Virudhunagar is not available, then the Investigation Officer would be in dark in fixing the culprit. Therefore, that document takes its

importance. If the detenu had confessed before the Head Quarter Deputy Tahsildar, Virudhunagar regarding the crime said to have been

committed by him, then that must be construed as material document leading to further investigation and only in that sense alone in the grounds of

detention, it is Stated -

Knowing this, the accused Srinivasan asked Nagarajan of the video cassette and as he refused, the accused surrendered before the Head Quarter

Deputy Tahsildar, Virudhunagar and a statement was recorded. On information, the Inspector of Police went to Taluk Office, the accused was

secured and recorded his confession statement.

As seen from the typeset, the confession statement said to have been given by the detenu was given to him, where we find some reference

regarding the statement recorded by the Head Quarter Deputy Tahsildar, Virudhunagar also. The contention of the learned Additional Government

Pleader that there is a reference about the statement recorded by the Head Quarter Deputy Tahsildar in the confession statement would not relieve

the sponsoring authority or detaining authority, as the case may be, from supplying the statement recorded by the Head Quarter Deputy Tahsildar,

Virudhunagar, since it should be construed as a document relied on. Only upon going through the statement recorded by the Head Quarter Deputy

Tahsildar, the detaining authority ought to have satisfied himself about the crime said to have been committed by the detenu and in this view, the

statement recorded by the Head Quarter Deputy Tahsildar, assumes importance, bringing the same within the ambit of relied on document.

Admittedly, this document has not been furnished to the detenu and therefore, he was deprived of his right to make representation under Article

22(5) of the Constitution of India and thereby his right was infringed. On this ground alone, we are constrained to hold that for the non supply of

the relied on document, the detention order suffers and therefore, the validity of the said order could not be confirmed by us.

For the foregoing reasons, the writ petition is allowed quashing the detention order dated 11.11.2002 and ordering to release the detenu forthwith,

if he is not required in any other case.