

(2012) 02 SC CK 0061

In the Supreme Court Of India

Case No : Criminal Appeal No. 417 of 2012 (Arising out of S.L.P. (Criminal) No. 9716 of 2011)

Subramanian

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 153, 153A, 294
Presidential Policy Directive Act — Section 3
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and SI

Citation : (2012) ACR 1366 : (2012) 3 ALT(Cri) 63 : (2012) 1 LW(Cri) 681 : (2012) MLJ(Cri) 859 : (2012) 2 SCALE 613 : (2012) 4 SCC 699 : (2012) 2 UC 926

Hon'ble Judges : P. Sathasivam, J;J. Chelameswar, J

Bench : Division Bench

Advocate : A. Sharan, Ashutosh Jha, Vivek Singh, Aseem Chandra and Amit Anand Tiwari, for the Appellant; Guru Krishna Kumar, AAG, Prasana Venkat and B. Balaji, for the Respondent

Final Decision : Partly Allowed

Judgement

P. Sathasivam, J.—Leave granted.

2. This appeal is directed against the final judgment and order dated 09.12.2011 passed by the High Court of Judicature at Madras in Habeas Corpus Petition No. 937 of 2011 whereby the High Court dismissed the petition filed by the Appellant herein.

3. Brief facts:

a) The Appellant is the father of the Detenu. The Detenu has a dispute regarding their land with one Kaliyamoorthy for which a Civil Suit being O.S. No. 452 of 2008 is pending before the Subordinate Judge at Trichy. The said Kaliyamoorthy filed a complaint with police on 18.07.2011 complaining that the detenu armed

with aruval (sickle) along with his associates apart from threatening the de facto complainant Kaliyamoorthy caused damage to the STD booth by damaging the glasses and chairs. Accordingly, an FIR being Crime No. 361 of 2011 was registered by the K.K. Nagar Police Station, Trichy. The complainant - Kaliyamoorthy had already lodged a complaint before the City Crime Branch, Trichy, on 07.02.2010, which was registered by the Police as Case Crime No. 3 of 2010 which is still pending.

b) On 21.07.2011, Respondent No. 2 - Commissioner of Police passed a detention order against the detenu u/s 3 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 (14 of 1982) while holding the detenu to be a 'goonda' noticing his involvement in the case of 18.07.2011 as well as three past cases of the years 2008 and 2010.

c) Against the said order of detention, the Appellant sent a representation to the Detaining Authority on 25.07.2011 for revoking the detention order. He also made a representation to the State Government, which is the approving authority, against the said order. After receiving the representation of the Appellant on 28.07.2011, the Detaining Authority forwarded the same to the Government recommending rejection of the same. On 12.08.2011, the State Government after due consideration rejected the said representation.

d) Aggrieved by the said decision of the State Government, the Appellant herein filed Habeas Corpus Petition before the High Court. The High Court, by its impugned judgment dated 09.12.2011, dismissed the said petition.

e) Challenging the said judgment of the High Court, the Appellant has filed this appeal by way of special leave before this Court.

4. Heard Mr. A. Sharan, learned senior Counsel for the appellant and Mr. Guru Krishnakumar, learned Additional Advocate General for the Respondents.

5. Mr. A. Sharan, learned senior Counsel for the Appellant after taking us through the detention order and the impugned order of the High Court confirming the same submitted that from the materials placed, the Detaining Authority has not made out a case for preventive detention. He also submitted that even if the stand of the Detaining Authority is acceptable, the alleged action of the detenu, at the most, is only a law and order problem and not of public order as arrived at by the said Authority for invoking the T.N. Act 14 of 1982. He further submitted that the reference made by the Detaining Authority in all the three places in the grounds of detention that the accused obtained regular bail and not anticipatory bail shows non-application of mind by the Authority. He also submitted that failure on the part of the Detaining Authority to consider the representation of the detenu vitiates the entire order. Finally, he submitted that the cases relied on by the Detaining Authority are stale and there is no ground for invoking the provisions of T.N. Act 14 of 1982.

6. On the other hand, Mr. Guru Krishnakumar, learned Additional Advocate General for the State of Tamil Nadu, by taking us through the grounds of detention, reasoning of the High Court in confirming the same and the materials placed in the form of counter affidavit before this Court submitted that none of the arguments advanced by the senior Counsel for the detenu is acceptable and there is no ground for interference by this Court.

7. Before considering the rival submissions, it is relevant to refer the definition of 'Goonda' as described in T.N. Act 14 of 1982 which reads thus:

2 (f) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable u/s 153 or Section 153A under Chapter VIII or under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act XLV of 1860) or punishable u/s 3 or Section 4 or Section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (Tamil Nadu Act 59 of 1992).

The said Act was enacted by the State in the year 1982 and subsequently amended expanding the scope of the Act in order to prevent certain persons from dangerous activities which are prejudicial to the maintenance of public order. Since there is no dispute as to the power and execution, there is no need to refer other provisions.

8. We have carefully perused all the relevant materials and considered the rival submissions.

9. With regard to the first submission that no case is made out for preventive detention by invoking the provisions of T.N. Act 14 of 1982, though the ground case incident arose out of a land dispute between the detenu and the de facto complainant, however, the argument that it is only a law and order problem and that public order was not disturbed is contrary to the facts and equally untenable. As rightly pointed out by Mr. Guru Krishnakumar, the Detaining Authority, on consideration of materials placed has found that the accused caused damage to both public and private properties, threatened the public and also created a situation of panic among the public. In this regard, it is useful to refer the materials narrated in the grounds of detention which are as follows:

On 18.07.2011, at about 10:00 hours, while Kaliyamoorthy was available in the STD booth, Kajamalai Kadaiveethi, Kajamalai, Tiruchirapalli city, the accused Kajamalai Viji @ Vijay armed with aruval, his associates Manikandan, Uthayan, Sathiya, Sivakumar armed with Kattas came there. The accused Kajamalai Viji @ Vijay abused Kaliyamoorthy in a filthy language, threatened to murder him with aruval by saying "Have you become such a big person to give complaints against me. You bastard, try giving a complaint, I will chop you down right here.

His associates threatened him with their respective kattas.

Thereafter, the accused Kajamalai Viji @ Vijay caused damage to the glasses,

chair and stool available in the shop. While Kaliyamoorthy questioned them, the accused Kajamalai Viji @ Vijay slapped him on the face. Kaliyamoorthy raised alarm for rescue. The general public came there and they were threatened by the accused Kajamalai Viji @ Vijay and his associates by saying "if anyone turns up as witness, I will kill them." The nearby shop-keepers closed their shops out of fear. Auto drivers took their autos from the stand and left the place. The situation created panic among the public. On the complaint of Kaliyamoorthy, a case in K.K. Nagar P.S. Cr. No. 361/2011 u/s 147, 148, 447, 448, 427, 294(b), 323, 506(ii) Indian Penal Code and 3 P.P.D. Act was registered.

10. From the above materials, the Detaining Authority was satisfied that the detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a 'goonda' as contemplated u/s 2(f) of the T.N. Act 14 of 1982. The order further shows that the Detaining Authority found that there is a compelling necessity to detain him in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of public order. After narrating the details of the ground case and after adverting to earlier instances commencing from the years 2008 and 2010, the Detaining Authority has concluded as under:

Hence, I am satisfied that the accused Kajamalai Viji @ Vijay is habitually committing crimes and also acting in a manner prejudicial to the maintenance of Public order and as such he is a Goonda as contemplated u/s 2(f) of the Tamil Nadu Act No. 14 of 1982. By committing the above described grave crime in a busy locality cum business area, he has created a feeling of insecurity in the minds of the people of the area in which the occurrence took place and thereby acted in a manner prejudicial to the maintenance of public order.

11. It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.

12. The next contention on behalf of the detenu, assailing the detention order on the plea that there is a difference between 'law and order' and 'public order' cannot also be sustained since this Court in a series of decisions recognized that

public order is the even tempo of life of the community taking the country as a whole or even a specified locality. (Vide Pushpadevi M. Jatia Vs. M.L. Wadhavan, Addl. Secretary, Government of India and Others, Dr. Ram Manohar Lohia Vs. State of Bihar and Others, Union of India and Others Vs. Arvind Shergill and Another, Sunil Fulchand Shah Vs. Union of India and Others, The Commissioner of Police and Others Vs. Smt. C. Anita,

13. We have already extracted the discussion, analysis and the ultimate decision of the Detaining Authority with reference to the ground case dated 18.07.2011. It is clear that the detenu, armed with 'aruval', along with his associates, armed with 'katta' came to the place of the complainant. The detenu abused the complainant in filthy language and threatened to murder him. His associates also threatened him. The detenu not only threatened the complainant with weapon like 'aruval' but also damaged the properties available in the shop. When the complainant questioned the detenu and his associates, the detenu slapped him on his face. When the complainant raised an alarm for rescue, on the arrival of general public in and around, they were also threatened by the detenu and his associates that they will kill them. It is also seen from the grounds of detention that because of the threat by the detenu and his associates by showing weapons, the nearby shop keepers closed their shops out of fear and auto drivers took their autos from their stand and left the place. According to the Detaining Authority, the above scene created a panic among the public. In such circumstances, the scene created by the detenu and his associates cannot be termed as only law and order problem but it is public order as assessed by the Detaining Authority who is supposed to safeguard and protect the interest of public. Accordingly, we reject the contention raised by learned senior Counsel for the Appellant.

14. The next contention relates to non-application of mind by the Detaining Authority in respect of the bail obtained by the detenu. Learned AAG, by drawing our attention to the factual details narrated in the grounds of detention and in the counter affidavit submitted that such argument is factually incorrect. A contention has been raised that the accused had obtained regular bail in all the criminal cases referred to in the detention order and not anticipatory bail as noted therein, and therefore, there is non-application of the mind to the relevant material by the Detaining Authority. As rightly pointed out by learned Counsel for the State, the said claim is factually incorrect. It is also brought to our notice that the said submission was made only now before this Court as an afterthought. A perusal of the impugned order of the High Court clearly shows that the only contention before the High Court was that the detenu got regular bail in Crime No. 727 of 2010 but the Detaining Authority has wrongly mentioned the same as anticipatory bail. Further, no specific ground has been raised in the SLP. The only ground is that the copy of the anticipatory bail order in Crime No. 727 of 2010 was not given to the detenu which is also contrary to the record since it is specifically stated so in the detention order and averred in the counter affidavit that all the materials were duly furnished to the detenu. There is no

denial of the same by filing rejoinder. Further, it is pointed out that the detenu had obtained anticipatory bail in the cases referred to in the detention order including in Crime No. 727 of 2010, accordingly, the said contention is also liable to be rejected.

15. It is also relevant to refer the finding of the High Court that the detenu being granted bail or anticipatory bail does not matter as far as the fact remains that he was not on remand in those cases and there was no prejudice to the detenu by reason of the reference made in the detention order. The High Court has rightly observed that the bail petition in respect of the ground case was pending before the Sessions Judge, Tiruchirapalli and he was very likely to be released on bail and if he comes out on bail, he would indulge in future activities which will be prejudicial to the maintenance of public order.

16. Learned senior Counsel for the detenu next submitted that there was non-consideration of the representation of the detenu by the Detaining Authority which vitiates the entire detention order. The representation was received only on 28.07.2011 by the Detaining Authority. It is pointed out that within a day, i.e., on 29.07.2011 itself, the detention order was approved by the Government. In such circumstances, the Detaining Authority could not consider the representation. Further once the Government affirms the detention order, the Detaining Authority had become functus officio. (Vide Sri Anand Hanumathsa Katare Vs. Additional District Magistrate and Others, . Even otherwise, as rightly pointed out by the Learned Counsel for the State, this argument is solely baseless since the detenu simultaneously made a representation to the Government and the Government had fully considered his representation and rejected the same on 12.08.2011. Further, the Advisory Board has also rejected the representation of the detenu by order dated 23.08.2011 thereby confirming the detention. This is also clear from the information furnished in the counter affidavit filed on behalf of the Respondent-State before this Court.

17. Finally, learned senior Counsel for the Appellant submitted that the cases relied on by the Detaining Authority are stale. In order to answer this contention, we once again perused the entire grounds of detention. The ground case relates to the occurrence dated 18.07.2011 and prior to that, the detenu was involved in two cases in the year 2010 and one case in the year 2008. The above details clearly show that the detenu was a habitual offender and as such instances shown are not stale as argued by the learned senior Counsel for the Appellant. These aspects have been taken note of by the High Court, in fact, the High Court has found that the detenu had indulged in one case in the year 2008 and two cases in the year 2010 and the ground case in 2011. The particulars also show that in the year 2010, the detenu had indulged in two cases within a span of 6 months and again had indulged in the ground case in the year 2011, therefore, incident Nos. 2 and 3 cannot be said to be stale and, in such circumstance, the conclusion of the Detaining Authority that the detenu was a habitual offender cannot be considered to be based on stale instances.

18. The incidents have been highlighted in the grounds of detention coupled with the definite indication as to the impact thereof which have been precisely stated in the grounds of detention mentioned above. All the incidents mentioned in the grounds of detention clearly substantiate the subjective satisfaction arrived at by the Detaining Authority as to how the acts of the detenu were prejudicial to the maintenance of public order. All these aspects have been considered by the High Court which rightly affirmed the detention order.

19. In view of the above conclusion, while there is no quarrel as to the proposition of law in the decisions relied on by the learned senior Counsel for the detenu, namely, Commissioner of Police (supra), Union of India (UOI) Vs. Paul Manickam and Another, M. Ahamedkutty Vs. Union of India (UOI) and Another, the same are inapplicable as being distinguished, more particularly, in view of the factual details stated in the impugned detention order, we are not referring to those decisions in detail.

20. In the light of the above discussion, we are unable to accept any of the submissions made on behalf of the Appellant, on the other hand, we are in entire agreement with the conclusion arrived at by the High Court, consequently, the appeal fails and the same is dismissed.