

(1998) 06 MAD CK 0061

In the Madras High Court

Case No : H.C.P No's. 1207 and 1208 of 1997

Suriyamoorthy and another

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 10-06-1998

Acts Referred:

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

Citation : (1998) 2 CTC 7

Hon'ble Judges : C. Shivappa, J;A. Ramamurthi, J

Bench : Division Bench

Advocate : Mr. S. Swamidoss Manokaran, for the Appellant; Mr. R. Shanmugasundaram, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Judgement pronounced by C. Shivappa, J.

1. The detenues in both these cases since involved in the same adverse cases and in the ground incident, the date of representations and the procedure complied with, and the grounds urged assailing the orders of detention being the same, they are heard together and this common order is passed.

2. The petitioner in HCP No.1207 of 1997 is the brother of the detenu and HCP No.1208 of 1997 is by the father of the detenu. Both the detenues came to the adverse notice of the respondents in as many as three cases registered in Crime No.412 of 1995 for offence under sections 147, 148, 326, 324, 307 and 302, IPC. Crime No.643 of 1997 for an offence u/s 380 IPC and Crime No.681 of 1997 for an offence u/s 395,

IPC. The ground case relates to an incident which took place on 4.10.1997 at 8.30 hrs. when the detenues robbed one Selvem of Rs.100/- and

also knifed him. The incident disrupted the traffic, caused alarm to the general public and a case was registered against the detenues for offences

u/s 394 read with 397, 427 and 506(ii) IPC, which is under investigation.

3. Having regard to the antecedents and keeping in view the manner how the ground case happened, respondent No.2 passed the impugned

orders of detention dated 31.10.1997 under the Tamil Nadu Act 14 of 1982, describing the detenues as "'Goondas'". now detained at a Central

Prison, Chennai, with a view to preventing them from indulging in activities prejudicial to the maintenance of public order.

4. The detenues were also informed about their right to make representation, if so wished, to the authorities mentioned in paragraph 6 of the

grounds of detention and that such representation will be considered as expeditiously as possible and they will also be heard personally by the

Advisory Board.

5. Learned counsel for the petitioners assailed the impugned orders on the following grounds: (i) The Advisory Board has not sent its report to the

Government within seven days, after the review; (ii) Confirmation order was not passed within the statutory period and the same was not

communicated to the detenues within reasonable time; (iii) In the Tamil version of the orders of detention, there is no mention that the detenues"

representations will be placed before the Advisory Board; (iv) The ground incident basically relates to law and order situation and not public order;

(v) There is delay in considering the representation; (vi) The remand extension order has been subsequently inserted in the grounds of detention

and the insertion is not authenticated; (vii) The bail application which was pending was not considered for recording the finding of compelling

necessity and possibility of the detenues coming out on bail; and (viii) The documents required were not supplied to the detenues.

6. All the contentions urged were repelled by the learned Public Prosecutor inter alia contending that there are no procedural lapses or infraction of

right under Article 22(5) of the Constitution or non-application of mind while passing the impugned orders.

7. Contentions No. (i) and (ii) can be taken together; that orders of detention

were passed on 31.10.1997 and the file was sent to the Advisory Board on 11.11.1997. The Advisory Board, after considering all the materials, sent its recommendation on 12.12.1997, within six weeks. The orders of detention passed on 31.10.1997 were confirmed by the Government on 24.1.1998. The confirmation order was communicated to the detenues on 12.1.1998 under acknowledgement. Therefore, the contention that the report was not sent to the Government within seven weeks after the review by the Board and not been communicated within the statutory period has no basis.

8. Regarding contention No.(iii), it is seen from the counter that in the Tamil version of the grounds of detention there is a mention that the representation would be dealt with as per Section 10 of the Tamil Nadu Act 14 of 1982. At the time of serving the grounds of detention to the detenues both in English and Tamil, the contents were read over to the detenues and explained to them. The detenues have also signed every page of the grounds of detention after having understood the contents which were read over and explained to them. In *A. Alangarasamy Vs. State of Tamil Nadu and Another*, the Apex Court has held, "variation between two versions was not consequential so long it does not cause prejudice to the detenu and on that basis the order of detention cannot be set aside." So long as there is a mention in the grounds of detention that the representation would be dealt with as per Section 10 of the Act and it was made known to them, there is no substance in contending that the Tamil version does not mention the right of the detenues that their representations sent to the Government will also be placed before the Advisory Board.

9. The next contention that the ground incident basically relates to law and order situation and not a public order, has to be examined with reference to the degree of disturbance and its effect upon the life of the community in the locality. The ground incident was on 4.10.1997 at 8.30 hrs. near G. K. Mandapam, Mamallapuram, which is a tourist center. The detenues and their associates committed day-light robbery of one Thiru Selvam, taking away his money and wrist watch, criminally intimidated the general public, who attempted to save the said Selvam and threw soda bottles from the bunk shop, showed knives and threatened to kill whoever tried to apprehend them. As a consequence of such conduct of the

detenues and their associates, the shops in that locality were closed due to fear and the traffic came to a stand-still and the normal life of the people

of the locality was disrupted. What constitutes public order and law and order was considered by the Apex Court in *Arun Ghosh Vs. State of*

West Bengal, and *Mustakmiya Jabbarmiya Shaikh v. M. M. Mehta*, 1995 SCC (Crl.) 454, has held as follows:-

Public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the

country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do

not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life

of the community in a locality which determines whether the disturbance amounts only to a breach of law and order....Again in the case of *Piyush*

Kantilal Mehta v. Commissioner of Police, 1989 (1) SCC 322: 1989 SCC (Crl.) 438 this Court took the view that in order that an activity may be

said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the

general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the

community, such act must be said to have a direct bearing on the question of maintenance of public order.

In *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, , the Apex Court has held that ""Whether the act relates to law and order or to public

order depends upon the impact of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as

to disturb or dislocate the even tempo of the life of the community."" Therefore, having regard to the manner how it affected the community in. the

locality, the acts of the detenues indicate that it is a case of public order and not law and order as contended by the learned counsel for the

petitioners.

10. As regards the contention touching the delay in considering the representations of the detenues, it is stated in the counter affidavits of

respondent No. I that the representations dated 20.11.1997 was received by respondent No. I on 24.11.1997 and remarks were called for from

the detaining authority on 26.11.1997. The detaining authority, who is respondent No.2 herein received the letter for remarks on 4.12.1997.

Respondent No.2 called for the remarks from the sponsoring authority, the Inspector of Police, Mamallapuram on 5.12.1997. 6.12.1997 and

7.12.1997 being holidays, the detaining authority perused the remarks of the sponsoring authority and dealt with the necessity of supplying the

copies of the documents requested to be furnished to the detenues and passed a proceedings on 12.12.1997. Separate remarks of the detaining

authority as well as the proceedings of the detaining authority dated 12.12.1997 were despatched to the Government on 17.12.1997. 13.12.1997

and 14.12.1997 were holidays they being Saturday and Sunday. The remarks of the detaining authority were received by the Government on

22.12.1997, since 20.12.1997 and 21.12.1997 were holidays, they being Saturday and Sunday. Then the file was submitted for circulation on

29.12.1997, 25.12.1997 being Christmas holiday, 27.12.1997 and 28.12.1997 were also holidays, they being Saturday and Sunday. On

30.12.1997, the Under Secretary dealt with the file and submitted it to the Deputy Secretary. The Deputy Secretary dealt with the file on

31.12.1997. 1.1.1998, 3.1.1998 and 4.1.1998 were holidays, they being New Year day, Saturday and Sunday. On 5.1.1998, the Government

rejected the representation, after perusal of the file.

11. Having regard to the intervening holidays and in view of the necessary steps taken in the consideration of the representation, such as calling for

remarks from the sponsoring authority and then receiving the same, which are part of the process, in Madan Lal Anand Vs. Union of India and

others, , the Apex Court has taken into consideration the intervening holidays and also held that the time imperative can never be absolute or

obsessive, and that the occasional observations dealing with the representation must be adequately explained are meant to emphasise the

expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the

release of the detenu and therefore the order of detention cannot be rendered invalid on that ground.

12. Regarding contention No.(vi), the learned counsel for the petitioners contended that the remand extension order was subsequently inserted in

the grounds of detention and it was not authenticated and as such the orders of detention are vitiated. The remand, in this case, was extended on

29.10.1997, till 12.11.1997. The detention orders were passed on 31.10.1997. The remand extension order finds place in the paper book at

page 451, which contains the names of both detenues. This document was served on the detenues. The learned counsel for the petitioners relied on

a decision of this Court in HCP No.786 of 1997 decided on 10.9.1997, following Sathi Muthuswamy v. Secretary to Government of Tamil Nadu

1994 (2) LW (Crl.) 552 wherein this Court has invalidated the order of detention for non-authentication of the corrections made in the order of

detention. In that case, the detaining authority was careless even to verify whether the detenu was a male or a female and the date was left blank

and later on inserted, uninitialled. "Authentication" is, certifying that a record is in due form. It is a condition precedent to admissibility of evidence

that such material exists in fact. In the instant case, the remand extension order was passed on 29.10.1997, copy of which was supplied to the

detenues and there is no doubt as to the authenticity of the fact that such an order was passed on 29.10.1997, extending the remand period upto

12.11.1997. This fact was stated in the grounds of detention while passing the order. This is possible because, on 29.10.1997 the papers were

placed before the authority. In the case referred by the learned counsel, i.e., Sathi Muthuswamy v. Secretary to Government of Tamil Nadu, 1994

(2) LW 552 the grounds did not contain the date on which the document is recorded and the signature was in the red ink and corrections in the

document were carried out in green and blue inks and remained uninitialled and the fact also did not exist at the time the authority signed the order.

Such circumstances indicating non-verification are not existing in the instant case to infer non-application of mind.

13. The next contention urged by the learned counsel for the petitioners is that the pendency of the bail application was not considered to record a

finding of compelling necessity and possibility of the detenues coming out on bail. It is stated by respondent No.2 that bail applications filed on

13.10.1997 were dismissed on 20.10.1997 and he had no knowledge that there were any other bail applications filed on 20.10.1997. If the

detenues have moved for bail, then, the applications and the orders thereon refusing bail, even if not placed before the detaining authority, it does

not amount to suppression of relevant material. The question of non-application of mind does not arise so long as the detaining authority was aware of the fact that the detenues were in actual custody.

14. The last contention urged by the learned counsel is that copies of the documents sought for were not furnished to the detenues. In fact, the detenues have been communicated with all the copies of the documents under acknowledgement, obtained on 4.11.1997. It is not stated which of the documents relied upon was not supplied. When the detaining authority has merely referred to them in the narration of events which are not relied upon, the failure to supply such documents, when no prejudice is caused to the detenues to make effective representations, does not invalidate the orders of detention. This view finds support in *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, wherein the Apex Court has held that where documents were neither referred to nor relied upon by the detaining authority, there is no need to supply the same to the detenu. Where in a given case the detaining authority has casually or passingy referred to certain documents which are not relied upon and where all the vital documents relied upon were supplied to the detenu under acknowledgement, it cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) of the Constitution of India. Therefore, we see no merit in the contention that copies of the documents sought for were not furnished to the detenues.

15. For reasons aforestated, we find no merit in these petitions and they are accordingly dismissed.