

(1991) 07 MAD CK 0007
In the Madras High Court
Case No : Writ Petition No. 230 of 1991

T. Amirtharaj	Vs	APPELLANT
The State of Tamil Nadu and Others		RESPONDENT

Date of Decision : 01-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) LW(Cri) 354

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

Bench : Division Bench

Advocate : Gopalakrishna Lakshmana Raju, for the Appellant; N. Dinakar, Additional Public Prosecutor, for the Respondent

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 for quashing the order of detention dated 6.8.1990 and setting him at liberty.

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

3. Though learned Counsel for the Petitioner detenu challenges the order on several grounds, he confines his argument on the only ground, namely,

that the order of detention was made on 6.8.1990, the detenu was arrested on 8.8.1990, but the confirmation order of the detenu was made on

12.11.1990 after the expiry of three months. He submits that in as much as the confirmation of the detention order was not made within three

months, the order of detention is illegal. He has raised the above point in grounds (g) and (i) of the affidavit filed in support of the writ petition.

4. In paragraph 3 of the counter affidavit, it is stated that the order of detention was passed on 6.8.1990 and it was served on him on 8.8.1990.

The order of detention made by the 2nd Respondent was forwarded to the Advisory Board on 7.8.1990. The Adversary Board has

recommended the continuous detention of the detenu on 11.9.1990 and the Government considered the opinion of the Advisory Board and agreed

with it and passed the order of confirmation in G.O. (D) No. 217, Home, Prohibition and Exercise (XII) Department dated 12.11.1990 and it was

served on the detenu on 19.11.1990. It is not in dispute that the order of confirmation has been passed after the expiry of three months from the

date of arrest of the detenu.

5. In this connection, learned Counsel for the Petitioner drew our attention to the decisions reported in Shibapada Mukherjee Vs. The State of

West Bengal, Ujjal Mondal v. State of W.B. AIR 1975 S.C. 1446 and Micki Khan v. State of W.B. AIR 1975 S.C. 2262. The case in S.

Mukherjee v. State of W.B. AIR 1975 S.C. 1356 arises under the West Bengal (Prevention of Violent Activities) Act. It was held therein:

Though Section 12 does not in express terms lay down that the decision to confirm the detention order and to continue thereunder the detention is

to be made before the expiry of three months, such a time limit is implicit in the section. The fact that Article 22 of the Constitution requires that the

report of an Advisory Board has to be obtained before the expiry of three months from the date of detention shows that the maximum period for

which the detaining authority can on its own satisfaction detain a person is three months. If the order confirming the detention and its continuation is

passed after expiry of three months then the detention is illegal.

In Shri Ujjal Mandal Vs. The State of West Bengal, it has been held:

Confirmation is necessary only to continue the detention, after the expiry of three months. If that be so, the order of detention must be confirmed

before the expiry of the three months. Unless the power of detention is exercised within the period of three months from the date of detention, the

detention after the expiry of that period would be without the authority of the law.

In Micki Khan v. State of W.B. AIR 1972 S.C. 2262 , it has been held:

...that under the mandatory provisions of the Article 22(4) of the Constitution

not only should the report of the Advisory Board be received within three months from the date of detention, but the confirmation and continuance must also be within three months. In as much as the confirmation in all these cases has not been made within three months, the detention is not valid. Accordingly, the petitions are allowed and the Petitioners are directed to be released forthwith.

Applying the above ratio to the facts of this case, in as much as confirmation has not been made within three months from the date of detention order, the order of detention is vitiated and it is accordingly liable to be quashed.

6. The writ petition is allowed, the impugned order of detention is quashed and the detenu is directed to be set at liberty forthwith unless required in any other case.