
(1999) 06 MAD CK 0042

In the Madras High Court

Case No : H.C.P. No. 1784 and 1785 of 1998

T.M. Syed Ali and another

APPELLANT

Vs

State of Tamil Nadu and five others

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Criminal Law (Amendment) Act, 1908 — Section 7(1)
Explosive Substances Act, 1908 — Section 4, 5
National Security Act, 1980 — Section 3(4)

Citation : (1999) 2 CTC 490 : (2000) 2 LW(Cri) 603

Hon'ble Judges : A.C. Agarwal, C.J; S. Jagadessan, J

Bench : Division Bench

Advocate : Mr. S. Hameed Ismail, for the Appellant; Mr. Syed Faizuddin, Additional Public Prosecutor Advocate, Mr. S. Gomathinayagam, Additional Central Government Standing Counsel Advocate., for the Respondent

Judgement

Judgement pronounced by A.C. Agarwal, C J.

1. An order of detention issued u/s 3(2) of the National Security Act is impugned in the present petitions. The order of detention has been issued

by the Deputy Inspector General of Police, Tirunelveli, the 2nd Respondent herein. The 2nd respondent has issued identical orders of detention

directing the detention of the petitioner in H.C.P. No. 1784 of 98 as well as the petitioner in H.C.P. No.1785 of 1998. Since the points involved in

both the petition are common, the same have been heard together and are disposed of by this common order.

2. The impugned order of detention was issued in both the cases on 22.8.1998. The same is based on an incident which has taken place on the

2nd August, 1998 wherein both the petitioners have been charge sheeted vide Crime No. 210 of 1998 of Perumalpuram police station for the

alleged offence u/s 7(I)(a) of Criminal Law Amendment Act and Sections 4 and 5 of the Explosive Substances Act.

3. The facts leading to the lodging of the aforesaid charge sheet and passing of the order of detention are as follows - In the F.I.R. it is stated that

on the date of the alleged incident i.e. on 2.8.1998 at about 18:00 hours when the Inspector of Police and his party were conducting a prohibition

raid near Elanthakulam and after conducting the raid when they were proceeding to the station at about 19:15 hours near Railway Feeder Road,

they saw one Yamaha motor bike without a number plate and they attempted to search that bike. At that time near Elanthakulam Railway gate 300

feet away from the railway track, two persons viz., the petitioners herein were seen in suspicious manner and hence the Inspector of Police as also

the other policemen rounded them and on their search seized four gelatin sticks, two detonators and 25 feet safety fuse wire and one battery from

them. On enquiry they stated that they were sympathisers of Alumma organisation and one Kichan @ Buhari who was recently arrested by the

Tamil Nadu Police and in order to show their protest for the arrest of the said Kichan @ Buhari they attempted to sabotage the railway track in

order to derail Tirunelveli-Tiruchendur Passenger train. The Inspector of Police Melapalayam P.S. registered a case in Crime No. 210 of 1998

and took up investigation and arrested the petitioners and later produced them before the learned Judicial Magistrate, Tirunelveli on 3.8.1998 and

obtained orders of remand against them. Based on the aforesaid incident, the 2nd respondent herein has proceeded to issue an order of detention

on 22.8.1998.

4. Though the defence of the petitioners (detenus) is not relevant for determining the validity or otherwise of the order of detention, the same is

being reproduced merely in order to understand the contention advanced on their behalf viz., that vital material which was relevant for arriving at

subjective satisfaction as to whether the order of detention should or should not be passed has not been placed before the relevant authorities and

hence the detention stands vitiated both on the ground of non-application of mind as also on the ground that the petitioners have been denied their

valuable right to make an effective representation, thereby contravening the solitary provisions contained under Article 22(5) of the Constitution.

5. It is the case of the petitioners that they were taken to custody by the Inspector of Police, Melapalayam police station, respondent No. 6 herein, from their houses on 25.7.1998 and 31.7.1998 respectively on the pretext of interrogation. As far as the petitioner in H.C.P. No. 1784 of 1998 is concerned, since he did not return home, the family members met the Inspector of Police, the respondent No.6 herein and since there was no positive response from respondent No. 6, the mother of the petitioner sent a telegram to the Deputy Inspector General of Police, the 2nd respondent herein as well as to the Director General of Police, Tamil Nadu alleging that the petitioner had been confined illegally by the respondent No.6 and prayed for the release of the petitioner. So also the father of the petitioner in H.C.P. No. 1795 of 1998 also sent a telegram to the Deputy Inspector General of Police, the 2nd respondent therein and also to the Director General of Police, Tamil Nadu stating that the petitioner in H.C.P. No. 1785 of 1998 had been confined illegally by 6th respondent and prayed for the release of the petitioner. When this process was going on, the petitioners were suddenly shown as accused in the aforesaid Crime No. 210 of 1998 and both the petitioners were remanded to judicial custody. On learning about the same, a representation dated 8.8.1998 was made by the mother of the petitioner in H.C.P. No. 1784 of 1998 addressed to the 2nd respondent as well as to the District Collector alleging that the petitioner had been falsely implicated. So also a representation was made by the father of the petitioner in H.C.P. No. 1785 of 1998. As far as the said representation is concerned, the 2nd respondent made an endorsement on 11.8.1998 directing the same to be filed. He made a further endorsement on 18.8.1998 directing that the representation be closed. Then the 2nd respondent proceeded to issue an order of detention on 22.8.1998.

6. It is common ground before us that the aforesaid representation dated 8.8.1998 sent by the mother of the petitioner in H.C.P. No. 1784 of 1998 and the representation dated 11.8.1998 sent by the father of the petitioner in H.C.P. No. 1785 of 1998 were not considered by the 2nd respondent while issuing the order of detention. The same did not form part of the grounds of detention at the time of passing the order of detention. As a consequence a copy of the same was also not served on the detenu along with the grounds of detention. Similar is the position in

regard to the telegram sent by the mother of the petitioner in H.C.P. No. 1784 of 1998 addressed to the Director General of Police calling upon him to intervene and direct the release of the petitioner who had been detained illegally on 25.7.1998. Similar is the position in regard to the petitioner in H.C.P. No. 1785 of 1998. Since the grounds of detention did not contain the aforesaid representation as also the aforesaid telegram, the same have not been sent by 2nd respondent to the State Government along with the copy of the order of detention and the grounds of detention as required u/s 3(4) of the Act.

7. The short question that has been canvassed before us is as to whether the non-consideration of the representation and telegram by the detaining authority before arriving at the subjective satisfaction in regard to the passing of order of detention would vitiate the order of detention. Further question which arises for our consideration is as to whether the non-furnishing of the said documents to the petitioners and thereby depriving the right of the petitioners to make an effective representation as required under Article 22(5) of the Constitution would vitiate the order of detention and further as to whether the non-forwarding of the aforesaid documents to the State Government as required u/s 3(4) of the Act will have the effect of vitiating the order of detention.

8. The case which has been made out in the aforesaid representation and the telegram is the total denial of the incident on 2.8.1998 which has culminated in the filing of the charge sheet under Crime No. 210 of 1998. According to the prosecuting agency, the incident in question had taken place on 2.8.1998 and the petitioners were involved in the said incident. The case of the prosecution is that the petitioners were arrested only on 2.8.1998 in respect of the offence committed by them on that day. As against this, in the representation as also in the telegram sent on behalf of the petitioners, which has been duly received in the office of the Director General of Police and form part of the records of the case, it has been alleged that no incident as alleged had taken place on 2.8.1998 and the petitioners had already been taken into custody on 25.7.1998 and 31.7.1998 respectively. The question that has to be decided is as to whether this is a relevant material to consider before arriving at subjective satisfaction whether to or not to issue an order of detention. In our considered view, the

aforesaid material is a crucial material which has to be taken into consideration for deciding as to whether to pass or not to pass an order of detention. It may be that the detaining authority may after due consideration of the aforesaid material still come to a conclusion that this is a fit case for passing an order of detention after finding that the case made out in the representation and the telegram as concocted and false. However, it cannot be said that the said documents are immaterial for arriving at the aforesaid subjective satisfaction. It may be that the detaining authority might have been persuaded on consideration of the aforesaid documents to hold that the presence of the petitioners at the time of the alleged offence on 2.8.1998 becomes doubtful and might have been persuaded not to pass an order of detention. As a consequence we are constrained to hold that the order of detention issued by the 2nd respondent suffers from vice of non-application of mind on account of the failure to consider the material piece of evidence and hence the same is liable to be set aside on the ground.

9. Similarly the said material has not been furnished to the petitioners, thereby impairing their right to make proper and effective representation, the right guaranteed under Article 22(5) of the Constitution". Since the right of the petitioners to make an effective representation has been taken away, the impugned order of detention is liable to be quashed and set aside on this ground also.

10. Similar is the position in regard to the non-forwarding of the aforesaid material to the State Government. The said representation though made anterior in point of time to the passing of the impugned order of detention, the same in view of the decision of this court in the case of Mrs. Shanthi

v. State of Tamil Nadu and another in H.C.P. No. 656 of 1998 decided by T. Jayarama Chouda and V. Bakthavatsalu, JJ. on 17.9.1998 are

relevant material piece of evidence to be sent to the Government, for the Government to take a decision u/s 3(4) of the Act whether to confirm or

not to confirm the order of detention. For the above said reasons, the impugned orders of detention are liable to be quashed and set aside.

Accordingly both H.C.Ps are allowed. The impugned orders of detention are thus quashed and set aside. The petitioners (detenus) are directed to

be set at liberty forthwith unless they are required in some other case.