

(1992) 06 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No's. 2487, 2488 and 2491 of 1992

Vasu (Pet. in W.P. No. 2487/92, Sampath (Petitioner in W.P. No. 2488/92) and Paramasivam (Petitioner in W.P. No. 2491/92) APPELLANT

Vs

The State of Tamil Nadu and another RESPONDENT

Date of Decision : 29-06-1992

Acts Referred:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (1993) LW(Cri) 48

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

Bench : Division Bench

Advocate : P. Venkatasubramaniam for the Petitioner in each of the Petitions, for the Appellant; S. Shanmughavelayutham, Assistant Public Prosecutor on behalf of the Respondent in all the petitions, for the Respondent

Judgement

K.M. Natarajan, J.—These three writ petitions were filed by the detenues themselves challenging the respective orders of detention passed against them by the Commissioner of Police, Madras City, the second Respondent herein, dated 20.12.1991 and to quash the same and to set them at liberty. The detenues in all these cases came to the adverse notice of the detaining authority as habitual criminals in view of cases referred to in the orders of detention and on the basis of the ground case. The impugned orders were passed by the Commissioner of Police in exercise of the powers conferred by Sub-Section 1) 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 of 1982), hereinafter referred to as "the Act" with a view to preventing the detenues from acting in any manner prejudicial to the maintenance of public order. Since all these orders of detention are passed on the same ground case and they were challenged on the same grounds, they were clubbed together and disposed of by the common order with the consent of both

the parties.

2. Though the learned Counsel appearing for the Petitioners in these writ petitions, Mr. P. Venkatasubramaniam challenged the orders of detention on various grounds, but confined his arguments to two grounds only, viz. (i) that the second Respondent detaining authority did not state in the grounds of detention on what category of the Act the detenues were branded so as to affect public order. He had simply stated the detenues as habitual criminals. But there is no detention in the Act for "Habitual Criminal", who can be detained. Thus clearly non-application of mind on the part of the detaining authority and on this ground as well the orders of detention are vitiated and (ii) that the second Respondent did not peruse the records and formed the subjective satisfaction unnecessarily by looking at the document Nos. 97 and 103, wherein crime numbers are quoted as Cr. No. 2615 of 1991 and 2425 of 1991 and the same vitiates the subjective satisfaction of the second Respondent.

3. We considered each ground separately. As regards the first ground is concerned, in the counter affidavit filed by the second Respondent detaining authority in paragraph 10, it is stated that this Respondent had not mentioned the category under the detenues were detained, but in the orders of detention, it has been specifically stated that the Petitioners were detained under the classification "Goonda". The learned Counsel for the Petitioners draw our attention to the grounds of detention, wherein we find in the preamble, it is clearly stated that the detenues came to know as habitual criminals. The learned Counsel for the Petitioners also drew our attention to the orders of detention and no where in the orders of detention the detaining authority has characterised the detenues as "Goondas" in arriving at the subjective satisfaction to detain the Petitioners. The learned Additional Public Prosecutor fairly conceded that it has not been described that the detenues came to the adverse notice or they have been dealt as Goondas, but only as habitual criminals. It is only on the basis of the grounds of detention, the detention order is drawn. From the mere fact that the order of detention contains the word "Goonda", it cannot be said that the detaining authority arrived at a subjective satisfaction and treated the Petitioners as Goondas.

4. In this connection, the learned Counsel for the Petitioners also drew our attention to a decision of Andhra Pradesh High Court in C. Venkatiah v. the Commissioner of Police and others 1990 (1) Crimes 698, wherein the Division Bench of Andhra Pradesh High Court while dealing with a similar case has held as follows:

For passing a detention order u/s 3(1) of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, there must specifically be the recording of the detaining authority that the person concerned belongs to any of the categories mentioned in Section 13(1) of the Act.

In the said decision, the Division bench of the Andhra Pradesh High Court has further observed in paragraph 6 as follows:

On the other hand the contention of the learned Counsel for the detenu is that, sine qua non, for passing an order u/s 3(i) of the Act there must specifically be the recording of the detaining authority that the persons concerned belongs to any of the categories mentioned in the opening part of Section 3(i). S. 3(i) does not apply to "any person". The section applies only if the detaining authority is satisfied that the detenu is one of the type of persons mentioned in S. 3(i). Therefore, unless this satisfaction of the particular type covered by Section 3(i) is mentioned in the order of detention, the condition precedent for applicability of Section 3(i) is not satisfied and therefore, the order will be invalid in the sense that it is not in accordance with Section 3(i).

The learned Counsel for the Petitioners also drew our attention to the provisions of the Act 14 of 1982 and nowhere in the said Act, it is provided that an "habitual criminal" can be detained by the detaining authority in exercise of the power conferred u/s 3(i) of the Act 14 of 1982 or that an "habitual criminal" is equivalent to "goonda", "Bootlegger", "Drug Offender", "Forest Offender", "Immoral Traffic Offender", "Forest Offender", "Immoral Traffic Offender" and "Slum Grabber" and not an "habitual criminal". In this connection, it is relevant to note the definition of "Goonda" as defined u/s 2(f) of the Act.

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 offence, punishable under Chapter XVI of Chapter XVII of the Indian Penal Code (Central Act XVL of 1860)

In such circumstances, we are in full agreement with the view taken by the Division Bench of the Andhra Pradesh High Court, as referred to above, and we have no hesitation in holding that the impugned orders of detention are not in accordance with the provisions of Section 3(1) of the Act 14 of 1982.

5. As regards the second ground is concerned, the learned Counsel has taken this ground in paragraph 5 and this has been met in the counter affidavit in paragraph 12, wherein it is stated that it is not correct to state that the conclusion arrived at without perusing the other documents vitiates the order of detention. It is respectfully submitted that the said two cases are registered against the deceased and others on the complaint preferred by the detenu's group. Further, these cases were cited to show the personal enmity between these two rival groups, hence the said documents need not be furnished to the detenu. The learned Counsel for the Petitioners submitted that the contention in the grounds raised by the detenu had not been met in this counter affidavit. The contention of the Petitioners in all these three cases was that the crime number in the confession statement and the seizure mahazar as well as the Form No. 97 the crime of the ground case had been given as Cr. No. 2615 of 1991 and Cr. No. 2425 of 1991, while the correct crime number of the ground case as seen from

the group of detention is Cr. No. 2625 of 1991. If really the detaining authority has applied his mind while perusing those documents, he would have noticed the discrepancy and he would not have relied on those confession statement as well as the Mahazar and other documents relating to the ground case and this discrepancy would have weighed his mind in only way or the other in arriving at the subjective satisfaction is passing the order of detention. Though this point was specifically taken in the grounds of writ petition, but it has not been met out in the counter affidavit. The learned Counsel has also taken us through the relevant documents, viz. confession Statement, Seizure Mahazar, etc. and we also find the discrepancy in the crime number as stated by the learned Counsel and the crime number as given in all those documents. When we asked about the discrepancy the learned Public Prosecutor fairly conceded that it is a fact that a wrong crime number has been given. Hence we also find every force in the contention of the learned Counsel for the Petitioner that there was non-application of mind on the part of the detaining authority while passing the impugned order of detention and that would also vitiate the order of detention. Hence, on both these grounds, the impugned orders passed against these detenues are vitiated and they are liable to be quashed.

6. In the result, all the above writ petitions are allowed and the detenues in respect of each case are directed to be set at liberty forthwith unless they are not required in connection with any other case.