

(2002) 04 MAD CK 0143

In the Madras High Court

Case No : Writ Petition No. 13611 of 2002 and WPMP No. 18300 of 2002

Vijayakumari

APPELLANT

Vs

Home Secretary Prohibition and Excise Dept., Chennai and
The Commissioner of Police, Greater Chennai, Egmore,
Chennai

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5), 226
Penal Code, 1860 (IPC) — Section 147, 148, 307, 336, 341
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 2, 3, 3(2)

Citation : (2002) 04 MAD CK 0143

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : T.K. Sampath, for the Appellant; I. Subramaniam, Public Prosecutor,
for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The petitioner has approached this court seeking for the issue of a writ of mandamus directing the first respondent not to invoke the provisions of The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, drug offenders, Goondas, Immoral Traffic offenders, forest offenders and slum grabbers Act, 1982 (Act 14 of 1982) against the petitioner's husband K.Dhanasekar, S/o, Karupa Devar confined at Central Prison, Chennai.

2. Heard Mr.T.K.Sampath, learned counsel appearing for the petitioner and Mr.I.Subramaniam, learned Public Prosecutor on this court directing to take notice.

3. According to the petitioner her husband Danasekar is a Municipal Councillor of K.K.Nagar Division in Chenani Corporation, he is a Managing Director of A.K.Securities Pvt., Ltd., and also an income tax assessee holding permanent

account Number. It is also stated that her husband is a D.M.K. Party Secretary of K.K. Nagar Division and has social status, besides doing several public services, such as eliminating selling of illicit arrack and curbing activities under immoral trafficking act.

4. It is alleged that due to change in Government, the Police personnel are trying to foist several cases against the said Danasekar just to defame him. It is stated that during the year 2002 three cases have been foisted against Danasekar by R.3 Ashok Nagar Police Station, namely in Crime No.19/2002 for alleged offences under sections 147, 148, 336, 427 and 506(2) IPC, Crime No.487/2002, for alleged offences under sections 325, and 506(2) and Crime No.513/2002 for alleged offences under sections 341, 307, and 506(2) IPC.

5. The petitioner alleges one Venkataraju, former personal assistant to the present Chief Minister is the person who is trying to influence the police. It is the allegation of the petitioner that all the cases are foisted against her husband with a view to detain him under the said Tamil Nadu Act 14/82 as a Goonda just to tarnish his good name and fame in the midst of the people and politically finish him off once for all and to liquidate him physically. It is stated that the petitioner and her husband belong to a respectable family, her husband is a graduate in Economics and he is not a street rowdy to be termed as Goonda. It is alleged that the police personnel deliberately describe her husband Danasekar as a Goonda and if her husband is to be detained, the family reputation is on stake and they will be put to shame and ignominy among the public and relatives. Hence the present writ petition has been filed for the relief of writ of mandamus.

6. Mr.T.K.Sampath, learned counsel for the petitioner also drew the attention of the court to the additional affidavit filed at the time of hearing. In the additional affidavit, it is alleged that her husband has been implicated in several cases falsely at the instance of the said Venkataraju. It is further stated that Human Rights Commission has been approached. It is also stated that the Inspector of Police, R.3 Police Station openly proclaims that he would foist cases and detain Dhanasekar under Act 14/82.

7. It is further stated that the said Dhanasekar went to R.7 K.K. Nagar Police Station to seek permission for conducting public meeting on 1.4.2002, and he was beaten brutally and was shifted from one Police Station to another Police Station and finally he has been implicated as one of the accused in the murder of one Jayakumar, said to have been done to death during the month of October, 2001. The police are vindictive since Dhanasekar has lodged a complaint before the Human Rights Commission. Therefore a writ of mandamus has to be issued.

8. Per contra, Mr.I.Subramaniam, learned Public Prosecutor contended that the relief of mandamus cannot be granted and drew the attention of the Court to Ar.22(5) of The Constitution of India as well as two pronouncements of the Supreme Court contending that no mandamus as prayed for could be issued on mere apprehension of the petitioner. The learned Public Prosecutor pointed out

that on the own showing of the petitioner, her husband is involved in grave crimes and more than four crimes have been registered with in a short period of four months for grave offences, including offence u/s 302 IPC. However, this court will not be justified in going into the details of the crimes or expressing any opinion since it does not arise for consideration at all at this stage.

9. The point that arise for consideration is:

Whether a writ of mandamus could be issued as prayed forbearing the respondents from ordering detention of Dhanasekaran?

10. Section 2(f) of the Tamil Nadu Act 14/82 defines the expression "goonda". Section 3 confers power of detention on the State Government and sub section (2) of Section 3 provides for delegation of the said power of detention on the Commissioner of Police in so far as the Metropolis. Section 3(1) could very well be invoked by the detaining authority if he is satisfied that the detenu answers the description of a Goonda or other category and not otherwise. If the detaining authority act honestly and in good faith, in making an order of detention, on being satisfied on such information being placed before him and the detaining authority complies with the requirements of Art.22 of The Constitution. The satisfaction of the detaining authority in this respect is purely a subjective satisfaction. Hence, it cannot be interfered at the thresh hold by issue of a mandamus on mere apprehensions. It cannot be assumed that there will be violation of statutory provisions of Act 14/82 by the second respondent, and on mere apprehension of the petitioner, no writ of mandamus could be issued.

11. In the present case the petitioner has made certain averments as against the Station House Officer, namely the Inspector of Police, as if he had proclaimed that he will see that the petitioner's husband is detained under the Act 14/82 as a Goonda. Such an averment cannot be entertained at all as the Inspector of Police, who is the Station House Officer is not the authority and it is the second respondent, who is the competent authority to pas an order of detention if he arrives at a subjective satisfaction in terms of Section 3 of the Tamil Nadu Act 14/82. No allegations have been made against second respondent such as mala fide or want of bona fides or vindictiveness. Therefore, this court will not be justified in issuing a writ of mandamus at this stage, nor a case has been made out for issue of writ of mandamus.

12. This court while applying the tests laid down by the Apex Court, where judicial review could be exercised to interfere with the orders of detention, this court holds that it will not be justified in issuing a writ of mandamus as none of those grounds had neither been pointed out, nor been set out, nor made out.

13. The Apex Court in SAYED TAHER BAWAMIYA Vs JOINT SECRETARY TOTHE GOVT. OF INDIA AND OTHERS reported in 2001 SCC (Cri) 56 while following its earlier decision in Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, laid down the tests fro exercise of equitable jurisdiction under Art.226 and Art.32.

14. In that respect, the Apex Court held thus:-

"6. This court in Alka Subhash Gadia case was also concerned with a matter where the detention order had not been served but the High Court had entertained the petitioner under Article 226 of the Constitution. This court held that equitable jurisdiction under Article 226 and Article 32 which is discretionary in nature would not be exercised in a case where the proposed detenu successfully evades the service of the order. The Court, however, noted that the courts have the necessary power in appropriate cases to interfere with the detention order at the pre-execution stage but the scope for interference is very limited. It was held that the courts will interfere at the pre-execution stage with the detention orders only after they are prima facie satisfied-

- (i) that the impugned order is not passed under the Act under which it is purported to have been passed,
- (ii) that it is sought to be executed against a wrong person,
- (iii) that it is passed for a wrong purpose,
- (iv) that it is passed on vague, extraneous and irrelevant grounds,
- (v) that the authority which passed it had no authority to do so.

7. As we see it, the present case does not fall under any of the aforesaid five exceptions for the court to interfere. It was contended that these exceptions are not exhaustive. We are unable to agree with this submission. Alka Subhash Gadia Case shows that it is only in these five types of instances that the court may exercise its discretionary jurisdiction under Article 226 or Article 32 at the pre-execution stage. The petitioner had sought to contend that the order which was passed was vague, extraneous and on irrelevant grounds but there is no material for making such an averment for the simple reason that the order of detention and the grounds on which the said order is passed has not been placed on record inasmuch as the order has not yet been executed. The petitioner does not have a copy of the same and therefore it is not open to the petitioner to contend that the non-existent order was passed on vague, extraneous or on irrelevant grounds."

15. In the said case the order of detention has been challenged. Tests have been laid down to exercise the power of Judicial Review. The very same test could be applied even for issue of a writ of mandamus, such as,

- (i) that the impugned order is not passed under the Act under which it is purported to have been passed,
- (ii) that it is sought to be executed against a wrong person,
- (iii) that it is passed for a wrong purpose,
- (iv) that it is passed on vague, extraneous and irrelevant grounds,

(v) that the authority which passed it had no authority to do so.

16. In the present case, no such ground has been set out or advanced. All that the petitioner averred is that she apprehends detention. On mere apprehension, this court will not be justified in issuing a writ of mandamus as no case at all has been made out on the facts set out in the affidavit filed in support of the writ petition, nor it is a case where the respondent has no authority at all to exercise its power u/s 3 of the Act 14/82, nor allegations of malice or mala fides have even been suggested against the second respondent, who is yet to apply his mind, only if proposal is placed before him.

17. While following the above pronouncements of the Apex Court, this court holds that no case has been made out for issue of a writ of mandamus and the writ petition is dismissed. Consequently, connected WPMP is also dismissed. However, it is made clear that if an order of detention is passed on any future date, it is well open to the petitioner to challenge the same by raising one or more of the grounds.