
(2014) 06 MAD CK 0281
In the Madras High Court
Case No : H.C.P. No. 2674 of 2013

Vijayalakshmi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Constitution of India, 1950 — Article 22(1)

Penal Code, 1860 (IPC) — Section 336, 341, 392, 397, 506(ii)

Citation : (2014) 3 MLJ(Cri) 257

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Judgement

V. Dhanapalan, J.—The petitioner is the wife of detenu. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the 2nd respondent passed in Memo No. 607/BDFGISSV/2013 dated 05.08.2013. The detenu came to adverse notice in the following cases:

The ground case alleged against the detenu is one registered on 17.07.2013 by the Inspector of Police, K-5, Peravallore Police Station in Crime No. 1437 of 2013 for the offences under Sections 341, 392, 397, 336 and 506(ii) IPC. Aggrieved by the order of detention, the present petition has been filed.

2. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he has mainly focussed his argument on the ground that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo in a proper manner to the family members, relatives or friends of the detenu and there was no acknowledgement to show that the intimation of arrest was given, which clearly shows non-application of mind on the part of detaining authority.

3. We have heard the learned Additional Public Prosecutor on the above submission.

4. A close reading of the arrest memo, which is annexed at page No. 91 of the

booklet shows that though a copy of postal receipt is shown as proof of intimation in the arrest memo, that itself is not sufficient to say that the constitutional requirement has been complied with, as no signature or acknowledgement is adduced in proof of such intimation. It is to be remembered that in order to meet fairness, justness and reasonableness, after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him.

5. In the case on hand, there is no proof to exhibit such intimation of arrest to the family members of the detenu, except simply showing a copy of postal receipt. Thus, on account of the failure of the detaining authority in communicating the arrest of detenu to the family members in proper manner, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India.

6. The Hon"ble Division Bench of this Court in the case of Shanmugam and Another Vs. State of Tamil Nadu and Another, , while issuing some suggestions and guidelines to the Government of Tamil Nadu in this regard, set aside the order of detention, by observing as under:

19. Despite clear instructions given by the Government after touching upon the legal position, the officer, who arrested the detenus informed the said arrest to the wife and friend of detenus over cellphone, by simply stating that the date of arrest being Sunday, no telegraphic service was available, which is a matter of ignorance on the part of arresting authorities, as in our country, telegraphic services are available even on Sundays. The mode of communication adopted by the authorities, which was not even looked into by the detaining authorities is not only unknown to the settled principles, but also is an attempt to cast aside the instructions given by the Government.

Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely, Kandha @ Kandhasamy, S/o. Arjunan made in Memo No. 607/BDFGISSV/2013 dated 05.08.2013, is quashed and the habeas corpus petition is allowed. The above named detenu, who is detained at the Central Prison, Puzhal, Chennai, is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.