

(2007) 12 MAD CK 0087

Madras High Court

Case No: H.C.P. No. 1308 of 2007

Selvaraj @ Chinraj

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision: Dec. 4, 2007

Acts Referred:

- Constitution of India, 1950 - Article 21, 22, 22(5)
- Penal Code, 1860 (IPC) - Section 336, 341, 380, 392, 397
- Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 - Section 3(1)

Hon'ble Judges: R. Regupathi, J; P.D. Dinakaran, J

Bench: Division Bench

Advocate: N. Ramu, for the Appellant; N.R. Elango, Assistant Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.D. Dinakaran, J.

The second respondent herein clamped an order of detention as against the detenu/petitioner, as the said authority

arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained u/s 3(1) of the. Tamil Nadu Prevention of

Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and

Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 6.7.2007 came to be passed by the second respondent on the basis of the ground case in Crime No. 388 of

2007 on the file of Kilpauk Police Station for the offences punishable under Sections 341, 336, 427, 397 and 506(2) IPC, complaint of which was

given by one Arivazhagan. On 15.6.2007, the complainant was proceeding at Diwan Rama Road and Dr. Azhagappa Road junction and when he

was crossing the detenu, he was asked to stop and beaten by the detenu. At the point of knife, he threatened the complainant to hand over the

gold ring and cash. As the complainant prevented him to take gold ring and cash, the detenu kicked him and forcibly took the gold ring and cash.

The complainant raised alarm and on hearing the same, the nearby public came to his rescue. The accused picked up stones and cool drink bottles

and hurled the same against them. The public seeing the atrocious activities of the detenu ran for safer places out of fear of danger. At that time the

police personnel attached to Kilpauk Police Station, who came to the spot, surrounded the detenu and apprehended him.

2.2. Apart from the above, the detaining authority also took note of four adverse cases pending against the detenu, viz., Crime Nos. 1206 of 2006,

211 of 2007 and 385 of 2007 on the file of Kilpauk Police Station for the offences punishable under Sections 457, 380 and 392 IPC; and Crime

No. 283 of 2007 on the file of Chetpet Police Station for the offence punishable u/s 380 IPC.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the

impugned order.

3. Challenging the said detention, the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for

the records relating to his detention vide order of the second respondent in C. No. 2 92 of 2007, dated 6.7.2007 approved by the first

respondent, to set aside the same and to produce him, now detained in Central Prison, Puzhal-II, Chennai, before this Court and to set him at

liberty.

4. Heard the learned Counsel for the petitioner and Mr. N.R. Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention, advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation and

the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M.

Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others,

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government.

Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and

Others, .

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara

Chand Vs. State of Rajasthan and Others, and Raghavendra Singh Vs. Superintendent, District Jail, Kanpur and Others, .

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period

is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words ""as soon as may be"" in Clause (5) of

Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the

authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly

consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference

or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority

concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay

can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that

the Minister was on tour hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when

the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not

sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important

fundamental right of a citizen, vide *Rajammal Vs. State of Tamil Nadu and Another*, .

7. In the instant case, the impugned order of detention came to be passed on 6.7.2007. A representation was made to the, Government on

24.7.2007 and the same was received by it 25.7.2007. Remarks were called for from the detaining authority on 26.7.2007 and the remarks "of

the detaining authority, after obtaining the remarks of the sponsoring authority, was received by the Government on 3.8.2007. The file was

considered by the Under Secretary and the Additional Secretary on 7.8.2007. The Hon"ble Minister dealt with the file on 8.8.2007. However, the

rejection order was prepared on 14.8.2007, viz., after a delay of four days, excluding two public holidays. The delay in considering the

representation, as indicated above, was highlighted by the learned Counsel for the petitioner. There is no convincing reply on behalf of the State for

the said delay. We find some force as well as substance in this contention. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in *Kunddanbhai Dulabhai Sheikh v. District Magistrate, Ahmedabad* :

1996CriLJ1981 is apposite:

In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers

continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the

representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give

up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the

Aliberty and freedom to the person whose detention is allowed to become bad by the Government itself on account of his representation not being

dispersed of at the earliest.

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any

unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention

impermissible and illegal, vide K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and

Others, .

10. The delay which stands unexplained is fatal to the detention order attracting Article 22 of the Constitution of India and therefore, the petition

must succeed and the same is ordered as prayed for. The detention order dated 6.7.2007 is set aside. The detenu is directed to be set at liberty

forthwith unless his custody is required in connection with any other case.