
(2010) 06 MAD CK 0261

Madras High Court (Madurai Bench)

Case No: Habeas Corpus Petition (MD) No. 234 of 2010

Bharathi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision: June 29, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120, 147, 148, 294, 302

Hon'ble Judges: M. Duraiswamy, J; M. Chockalingam, J

Bench: Division Bench

Advocate: R. Alagumani, for the Appellant; Issaq Manuel, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

This petition challenges an order of detention made by the second respondent in No. 10/BDFGISSV/2010, dated 08.03.2010, under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug offenders, Forest offenders, Goondas, Immoral Traffic offenders, Sand offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982)(hereinafter referred as the Act) terming the petitioner's husband as "Goonda".

2. All the materials in particular the order under challenge are looked into and the Court heard the learned Counsel for the petitioner.

3. Admittedly, the said detenu was involved in two adverse cases namely in Cr. No. 1080 of 2009 u/s 302 IPC on the file of C3, SS Colony Police Station and in Cr. No. 1558 of 2009 under Sections 294(b) and 506(i) IPC on the file of C3, SS Colony Police Station and one ground case in Cr. No. 1150 of 2009 under Sections 147, 148, 302 and 120(b) IPC registered by B3 Teppakulam Police Station, Madurai for an

occurrence taken place on 25.07.2009. The detaining authority after scrutinizing all the materials made the order under challenge on 08.03.2010. Pursuant to which, the detenu is in custody. The said order is the subject matter of challenge in this petition.

4. Advancing the arguments on behalf of the petitioner, the learned Counsel would submit that so far as the ground case was concerned, the detenu was arrested on 11.01.2010. He was produced before the learned Judicial Magistrate No. I, Madurai and he was remanded to judicial custody till 25.01.2010. On 25.01.2010, the remand was extended by an order of the said Court till 22.02.2010. The said order copy extending the remand period from 25.01.2010 to 22.02.2010 was not served upon the detenu. Under such circumstances, a representation was made for supply of the copy of the said remand extension order on 10.03.2010 and the same is well admitted in the counter. Even this day, the copy of the remand extension order from 25.01.2010 to 22.02.2010 is not served upon the detenu. Thus, it was a relied upon document and since the copy of the remand extension order was not served upon the detenu, it would cause prejudice to the interest of the detenu. Hence, the order has got to be set aside.

5. Added further, the learned Counsel for the petitioner that it is well informed in paragraph 7 of the detention order that the said order will not remain in force for 12 days after making thereof unless in the meantime it has been approved by the State Government and within that 12 days the detenu has got a right of making a representation in writing against the said detention order to the detaining authority within 12 days from the date of the detention order and if any such representation was received by the detaining authority before the approval of the Government, such representation would be duly considered by the detaining authority. In the instant case, the detention order came to be passed on 08.03.2010 and representation was immediately made on 10.03.2010 and the same was received by the second respondent, the detaining authority, on 15.03.2010. As per the Law, it should have been considered by the detaining authority, the second respondent. But, it has been forwarded to the first respondent which was received by the first respondent only on 08.04.2010 and thus, the said representation which should have been considered by the second respondent was not considered at all, and it would also make the detention order infirm and it has got to be set aside.

6. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

7. As could be seen from the available materials, the detention order came to be passed on the recommendation of the sponsoring authority that the detenu was involved in two adverse cases and one ground case referred to above. Admittedly, he was arrested in the ground case on 11.01.2010 and produced before the learned Judicial Magistrate No. I, Madurai and he was remanded upto 25.01.2010. On 25.01.2010, the said judicial custody was extended up to 22.02.2010 and the

detention order came to be passed on 08.03.2010. Under such circumstances, it could be very well stated that the remand extension made by the learned Judicial Magistrate No. I, Madurai from 25.01.2010 till 22.02.2010 was the relied upon document. When the detenu asked for the supply of the said remand extension order by a representation dated 10.03.2010, it was not supplied to him at all. Under such circumstances, the detention order is infirm and a defective one. Apart from the same, paragraph 7 of the detention order reads as follows;

7. Tr. Batcha, S/o. Rahim is informed that this detention order shall not remain in force for more than 12 days after making thereof unless in the meantime, it has been approved by the State Government and Tr. Batcha, S/o. Rahim also informed that he has a right to make a representation in writing against the said detention order to the detaining authority within 12 days from the date of detention order and if any such representation is received by the detaining before the approval of the Government, the said representation will be duly considered by the detaining authority.

From the very reading of the above order, it would be quite clear that the detenu has got a right to make a representation before the detaining authority, the second respondent, within a period of 12 days and if done so, the detaining authority should consider the said representation. In the instant case, admittedly, the detention order came to be passed on 08.03.2010 and the representation was made on 10.03.2010 and the representation was received on 15.03.2010 by the second respondent, who instead of considering the representation, forwarded the same to the first respondent who received the representation only on 08.04.2010. All would clearly indicate that the second respondent, the detaining authority, who should have considered the representation made within the stipulated period, has not considered the same and thus, the detention order is infirm and defective. Accordingly, it is set aside and this petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.