

Geetha Vs State of Tamil Nadu

Court: Madras High Court (Madurai Bench)

Date of Decision: June 8, 2010

Acts Referred: Penal Code, 1860 (IPC) â€” Section 307, 341, 379, 380, 385

Hon'ble Judges: M. Chockalingam, J; A. Arumughaswamy, J

Bench: Division Bench

Advocate: R. Alagumani, for the Appellant; P.N. Pandidurai, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

This Writ Application challenges the Order of Detention made by the second respondent on 25.2.2010 whereby the

husband of the petitioner, by name, Ganesh @ Umesh, was ordered to be detained under the provisions of the Tamil Nadu Prevention of

Dangerous Activities of Boot-Leggings, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers

and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a ""Goonda"".

2. The Court heard the learned Counsel appearing for the petitioner and looked into all the materials available, in particular, the order under

challenge.

3. The detenu was involved in seven adverse cases as follows:

SI Police Station Section of

law

No. Cr. No. & Date

1 Thoothukudi Central Crime Branch 454 and 380

Police Station IPC

Cr. No. 260/09 dt. 12.06.2009

2 Sipcot Police Station 454 and 380

IPC

Cr. No. 273/2009 dt. 15.09.2009

3 Thoothukudi Central 457 and 380

P.S.Cr. No. 585/09 IPC

dt. 29.10.09

4 Vilathikulam Police Station 454 & 380

Cr. No. 323/09 IPC

dt. 30.11.2009

5 Thoothukudi North Police Station 379 IPC

Cr. No. 1296/09 dt. 03.12.09

6 Thoothukudi South Police Station 454 and 380

IPC Cr. No. 12/10 dt. 05.01.10

7 Thoothukudi South Police Station 454 and 380

IPC

Cr. No. 13/10 dt. 05.01.10

Apart from that, the detenu was involved in one ground case registered by Thoothukudi Central P.S. Crime No. 29/10 under Sections 341, 385,

307 and 506 (ii) IPC. It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the detenu was involved

in seven adverse cases and in one ground case referred to above, on scrutiny of the materials, the detaining authority has made the order under

challenge branding him as a "Goonda" after recording its subjective satisfaction that the activities of the detenu was prejudicial to the maintenance

of public order and the same is the subject matter of challenge before this Court.

4. Advancing the arguments on behalf of the petitioner, learned Counsel for the petitioner Mr. R. Alagumani, made the following submissions:

(i) According to the learned Counsel, the detenu was involved in seven adverse cases and one ground case and insofar as the ground case was

concerned, he moved for bail before this Court in Crl.O.P.(MD) No. 1501/2010 and the same was also dismissed by this Court on 12.2.2010

and when the order came to be passed on 25.2.2010, there was no bail application pending insofar as the ground case or in any one of the

adverse cases but the detaining authority has mentioned in the order that there was a real possibility of the detenu coming out on bail. Thus, it was

without any basis or material whatsoever.

(ii) Added further the learned Counsel that the detenu has not moved any bail application in any one of the adverse cases and that has not been

considered by the detaining authority.

(iii) The learned Counsel would further add that the original order of detention has been subsequently amended by an order dated 2.3.2010 and

the order of detention was approved by the State Government on 5.3.2010 but the amended order was not actually placed before it was being

approved. Thus, what was approved was only the original order of detention and not the amended order and under the circumstances, it has also

vitiated the order under challenge. Therefore, on these three grounds, the order of detention has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor on the above contention.

6. Concededly, the order of detention invoking the provisions of Tamil Nadu Act 14 of 1982, came to be passed by the detaining authority on the

recommendation made by the sponsoring authority that the detenu had involved in seven adverse cases and in one ground case. It is also not in

controversy that he moved Bail Application in the ground case in Crime No. 29/2010 registered by Thoothukudi Central P.S. and the Bail

Application in Criminal O.P.(MD) No. 1501 of 2010 filed before this Court was also dismissed on 12.2.2010. It is also indicated very well in the

order of detention. Apart from that, the detenu has not moved any bail application in any one of the adverse cases but the order of detention reads

as follows:

4. ...I am aware that he had filed a bail application for Thoothukudi Central PS Cr. No. 29/10 before the Hon"ble High Court Madras, Madurai

Bench in CrI.O.P. No. 1501/10 and the same has been dismissed on 12.02.2010. But there is a real possibility of his coming out on bail by filing

another bail application before the same Court or higher Court....

7. The very reading of the order would indicate that the detaining authority has observed that there was a real possibility of the detenu coming out

on bail when there was not even a bail application was pending before a Court of Criminal law and thus, it was an anticipation passing in the minds

of the authority and such an observation was only the impression that was passing in the minds of the detaining authority without any materials

muchless cogent materials. Under the circumstances, the order cannot be stated to be passed on the valid grounds.

8. Apart from that, insofar as the order under challenge is concerned, the Court is able to see serious lacunae. Admittedly, the detenu was served

with an amended order. According to the department, the original order under challenge came be passed on 25.2.2010 but the order was

subsequently amended on 2.3.2010 and the same was not actually placed before the Government. What was placed before the Government and

approved was only the original order of detention dated 25.2.2010 and thus, it would be quite clear that not only the amended order of detention

was not placed before the Government for the purpose of approval but also no opportunity of being heard was accorded to the detenu. Under the

circumstances, it would be quite clear that this would also go to the root of the matter and thus, both the grounds are available to the petitioner for

setting aside the order of detention.

9. Accordingly, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any

other case. The Habeas Corpus Petition is allowed.