Mariappan Vs Secretary to the Government, Home, Prohibition and Excise Department, Secretariat, Chennai and Another

H.C.P. (MD) No. 933 of 2012

Court: Madras High Court

Date of Decision: Nov. 8, 2012

Acts Referred:
Constitution of India, 1950 â€" Article 21, 22, 22(5)

Citation: (2013) MLJ(Cri) 750

Hon'ble Judges: S. Nagamuthu, J; M. Jaichandren, J

Bench: Division Bench

Advocate: A. Thiruvadikumar, for the Appellant; C. Ramesh, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.
The petitioner is the brother of the detenu, by name, Kottaisamy, aged about 27 years, who has been detained u/s 3(1)

of the Tamil Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand

Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short ""Tamil Nadu Act 14 of 1982), on the orders of the second respondent, by his

proceedings in M.H.S. Confdl No. 58 of 2012, dated 5.6.2012 Now, he has been lodged at the Central Prison, Palayamkottai. After the

Detention Order was passed, the detenu made a representation to the Government on 20.7.2012 and the same was received by the Government

on 26.7.2012 upon which remarks were called for from the Detaining Authority on 27.7.2012 and the remarks were received by the Government

only on 2.8.2012. In this aspect, there was a delay of seven days, out of which, two days were holidays. Even if allowance is given for those two

days, which were holidays, still there was a delay of five days. Seeking to quash the said Detention Order and to set the detenu at liberty, the

petitioner has come up with this Habeas Corpus Petition.

2. Even though several grounds were raised in the Habeas Corpus Petition, the learned counsel for the Petitioner would mainly focus his argument

on the ground of delay between 27.7.2012 and 2.8.2012 in considering the representation of the detenu. The learned counsel for the petitioner

would submit that there was a delay of seven days, as detailed above and the same remains unexplained. According to the learned counsel, the

said unexplained delay has caused serious prejudice to the detenu, and therefore, the Detention Order is liable to be quashed.

3. The learned Additional Public Prosecutor has produced a proforma detailing the dates and events. In the said proforma, it has been admitted

that the representation of the detenu was received on 26.7.2012 remarks were called for from the Detaining Authority on 27.7.2012 and the

remarks were received by the Government only on 2.8.2012.

4. From the narration of the above facts and the rival contentions, it is crystal clear that there was a delay of seven days between 27.7.2012 and

2.8.2012 in considering the representation. Even if allowance is given to the two days holidays, still, there remains a delay of five days, which has

not been explained by the respondents at all.

5. At this juncture, it is relevant to refer to few decisions of the Hon''ble Apex Court and the same are as follows:

(i) In Rashid Sk. Vs. State of West Bengal, the Hon''ble Supreme Court has held as follows:

The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without

its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be

defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to

personal liberty the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

(ii) In Tara Chand Vs. State of Rajasthan and Others, and Raghavendra Singh Vs. Superintendent, District Jail, Kanpur and Others, the Apex

Court held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal.

(iii) In Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others, the Hon''ble Supreme Court has held as follows:

The supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the

representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant''s representation by the government which

received the representation 11 days after it was handed over to the jail Superintendent by the detenu. This avoidable and unexplained delay has

resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.

....

When it is emphasised and re-emphasised by a series of decisions of the Supreme Court that a representation should be considered with

reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation

with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the

delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may

invalidate the order of detention as having infringed the mandate of Article 22(5),

(iv) In K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, it is held as

follows:

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

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

impermissible and illegal.

(v) In Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others, the Hon''ble Supreme Court has held thus:

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.

(vi) In yet another decision of the Hon''ble Apex Court in Rajammal Vs. State of Tamil Nadu and Another, , it is held as follows:

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 preempted 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 the 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 and 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.

6. In view of the above settled position of law, the Detention Order is liable to be quashed on the sole ground of delay, as detailed above. In view

of the fact that we are inclined to quash the proceedings on the ground of delay alone, we do not propose to go into the other grounds raised in this

Habeas Corpus petition. In the result, this Habeas Corpus petition is allowed and the impugned Detention Order, passed by the second

respondent, in his proceedings in M.H.S. Confdl. No. 58 of 2012 dated 9.7.2012 is quashed. The detenu, by name, Kottaisamy, aged about 27

years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.