

(2011) 11 MAD CK 0149

Madras High Court (Madurai Bench)

Case No: Habeas Corpus Petition (MD) . No. 913 of 2011 and M. P. No. 1 of 2011

Latha Ramajeyam

APPELLANT

Vs

Home Secretary, Home
Department,
Government of Tamil
Nadu, Fort.St.George,
Chennai and Others

RESPONDENT

Date of Decision: Nov. 3, 2011

Acts Referred:

- Constitution of India, 1950 - Article 21, 22(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 167(1), 267
- Penal Code, 1860 (IPC) - Section 147, 148, 294, 307, 365
- Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 - Section 3

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

Bench: Division Bench

Advocate: N.R. Elango, for the Appellant; C. Ramesh and Mr. A. Ramar Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

This Habeas Corpus Petition has been filed seeking to set at liberty the alleged detenus, by name 1.K.N.Nehru 2. K.N.Ramajeyam and 3.M.Anbazhagan, who, according to the petitioner, were illegally detained in Cuddalore, Palayamkottai and Salem prisons, respectively.

2. According to the petitioner, the detenus were earlier arrested in connection with the cases, in Crime Nos. 24 of 2011 and 26 of 2011, and in pursuance of the remand orders

passed by the learned Judicial Magistrate No. V, they were lodged in Cuddalore, Palayamkottai and Salem prisons, respectively.

3. While so, their involvement in Crime No. 27 of 2011, on the file of the Anti Land Grabbing Special Cell, City Crime Branch, Trichy, for offences punishable under Sections 147, 148, 365, 307, 427, 294(b) and 506(ii) IPC r/w Section 3 of PPDL Act, came to light. Therefore, the Investigating Officer in the said case, effected formal arrest of the detenus, on 03.10.2011. Thereafter, on 04.10.2011, the respondent police made a request to the learned Judicial Magistrate No. V, Tiruchirappalli, [jurisdictional Magistrate], to issue a P.T. warrant, u/s 267 of the Code of Criminal Procedure, for the production of the detenus before the said Magistrate. Accordingly, on 04.10.2011, the learned Judicial Magistrate issued a PT warrant, thereby, directing the Prison Authorities to produce the detenus before the Magistrate, on 07.10.2011. Admittedly, 05.10.2011 and 06.10.2011 were holidays. In pursuance of the said PT warrant, the detenus were produced before the learned Judicial Magistrate, on 07.10.2011. But, the learned Judicial Magistrate No. V, [S. Maheshwari Banu Reka], was on leave and one M. Pushparani, learned Judicial Magistrate No. IV, was put in charge of the Court of the learned Judicial Magistrate No. V, Tiruchirappalli.

4. On 07.10.2011, when the detenus were produced, in pursuance of PT warrant, the Investigating Officer made a request before the learned Judicial Magistrate seeking to remand the accused, as provided in Section 167(1) of the Code of Criminal Procedure, in connection with the case in Crime No. 27 of 2011, in pursuance of the formal arrests effected on 03.10.2011. But, the learned Judicial Magistrate, after hearing both parties, passed the following order:

ORDER: 7.10.2011 at 2.30 P.M.

Formal arrest made on 3.10.11. Requisition for P.T. Warrant given on 4.10.11 in view of holidays concerned Magistrate directed to produced the accused on 7.10.11 on P.T. Warrant. Hence accused produced on P.T.Warrant. Grounds of arrest explained. Right of Legal Aid Explained. Considering the circumstance of the Court holiday on 5.10.11 & 6.10.11 as well as Casual Leave of regular Magistrate on 7.10.11 this court not inclined to remand the accused on Judicial custody in view of available records. Produce the accused before concerned Magistrate on 10.10.11 for further suitable Order in this regard. Hence accused to be produced before regular Magistrate on 10.10.2011.

5. The said order was not challenged by any party. The detenus were taken to the respective prisons and detained. In the meanwhile, in connection with the earlier cases, in Crime Nos. 24 of 2011 and 26 of 2011, the detenus were granted bail and the sureties bond executed, in pursuance of the bail orders, were received by the Prison Authorities, on 08.10.2011. Accordingly, the accused were released from the judicial custody, in connection with the cases, in Crime Nos. 24 of 2011 and 26 of 2011, on 08.10.2011. But, they were not still released from the respective prisons and instead, they were detained,

in connection with the case, in Crime No. 27 of 2011. According to the petitioner, there was no valid remand order passed by the learned Judicial Magistrate, in connection with the case, in Crime No. 27 of 2011, for detaining them in the respective prisons. In this regard, telegrams were also sent to the Prison Authorities, requesting them to set the detenus at liberty, because there was no valid remand order passed by the learned Judicial Magistrate to detain them in prison. But, they were not released from the respective prisons and they were continuously detained in prison, by the respective Prison Authorities.

6. On 10.10.2011, the detenus were produced before the learned Judicial Magistrate No. V, Tiruchirappalli. At that time, an objection was raised by the learned counsel for the detenus that the learned Judicial Magistrate lacked jurisdiction to remand the accused in view of a dictum stated by a learned Single Judge of this Court, in CrI.O. P (MD). No. 1182 of 2009. The learned Judicial Magistrate, relying on the said order and taking the view that the detention of the accused in prison, beyond 24 hours from the time of formal arrest was illegal, declined to remand the accused. Thus, the learned Judicial Magistrate passed an order, rejecting the request of the police for remanding the detenus. Thereafter, they were set at liberty by the respective Prison Authorities.

7. The present Habeas Corpus Petition came to be filed on the morning of 10.10.2011, seeking to set at liberty the detenus from the respective prisons, because, there was no valid remand order in Crime No. 27 of 2011. In the afternoon, the detenus were released by the Prison Authorities, since, the learned Judicial Magistrate declined to remand them. Thus, though the Habeas Corpus Petition became infructuous, the learned Senior Counsel insisted that the matter should be heard further, because, in gross violation of Articles 21 and 22(2) of the Constitution of India, the detenus were illegally detained, from 08.10.2011 to 10.10.2011. That is how, the Habeas Corpus Petition is now before this Court.

8. We have heard Mr. N.R. Elango, the learned Senior Counsel for the petitioner, Mr. I. Subramaniam, learned State Public Prosecutor for the respondents and we have also perused the records carefully.

9. It is the contention of the learned Senior Counsel that though the detenus were set at liberty, in pursuance of the Bail Orders, on 08.10.2011, they were illegally detained, till 10.10.2011, by the respective Prison Authorities and for the said illegal detention, which infringes the right to life, as guaranteed in Article 21 of the Constitution of India, appropriate action should be directed to be taken against the erring officials.

10. The learned State Public Prosecutor would contend that the detention of the detenus in the respective prisons, between 08.10.2011 and 10.10.2011, was in pursuance of the temporary remand order, passed by the learned Judicial Magistrate No. IV, Tiruchirappalli, who was in charge of the Court of the learned Judicial Magistrate No. V, Tiruchirappalli, on 07.10.2011. The learned State Public Prosecutor would take us

through the order passed by the learned Judicial Magistrate, on 07.10.2011 and submit that the said order is nothing short of an order of remand, authorizing the detention of the detenus, in the respective prisons till 10.10.2011, and for the production of the detenus, on 10.10.2011. He would further submit that since the learned Judicial Magistrate No. V, Tiruchirappalli, before whom the detenus were produced, on 10.10.2011, did not remand the detenus to judicial custody, they were all set at liberty, forthwith.

11. From the above rival contentions, it needs to be seen, as to whether the learned Judicial Magistrate No. IV, Tiruchirappalli, who was in charge of the Court of the learned Judicial Magistrate No. V, Tiruchirappalli, on 07.10.2011, had passed any valid order of remand, till 10.10.2011. A perusal of the said order, as extracted in Paragraph No. 4 of this order, would go to show that the learned Judicial Magistrate directed the production of the accused before the learned Judicial Magistrate, on 10.10.2011. However, in the earlier paragraph of the same order, the learned Judicial Magistrate has stated that she was not inclined to remand the accused to judicial custody, in view of the casual leave of the regular learned Judicial Magistrate on 07.10.2011. Thus, the order passed by the learned Judicial Magistrate has not been happily worded and there appears to be some conflict between the earlier part and the later part of the order, as referred to above.

12. According to the learned State Public Prosecutor, since the order of the learned Judicial Magistrate, dated 07.10.2011, was not understandable, an opinion was sought for, by the respective Prison Authorities from the learned Public Prosecutor of Tiruchirappalli. The learned Public Prosecutor opined that the order of the learned Judicial Magistrate is an authorization to detain the detenus in the respective prisons till 10.10.2011 and for further production of the detenus before the Court on 10.10.2011.

13. It is also seen from the records that the Commissioner of Police also gave similar instructions to the Prison Authorities. They have acted upon the opinion of the learned Public Prosecutor, Tiruchirappalli and with the impression that the order of the learned Judicial Magistrate, dated 07.10.2011, was an authorization to detain the detenus in the respective prisons till 10.10.2011, they had detained them in the respective prisons, till 10.10.2011. On our part, we have also carefully gone through the order passed by the learned Judicial Magistrate, dated 07.10.2011. We express our unhappiness with regard to the way in which the order has been worded by the learned Judicial Magistrate. However, a comprehensive reading of the order of the learned Judicial Magistrate would surely give an impression that on 07.10.2011, the learned Judicial Magistrate had passed an order, authorizing the detention of the detenus, in the respective prisons, till 10.10.2011.

14. Therefore, we are of the considered view that there is no illegal detention, between 08.10.2011 and 10.10.2011. We also record our trust and hope that in future, the learned Judicial Magistrates in the State will realize their onerous responsibility, cast upon them, under the constitution, in discharge of their judicial functions, more particularly, while considering the request of the police for the remand of an accused, either to judicial

custody or to police custody, whenever any request is made, because such remand order deprives the right to life, as guaranteed in Article 21 of the Constitution of India.

15. At this juncture, we may refer to the principle "*actus curias neminem gravabit*" i e., an act of the Court shall prejudice no man. The Hon^{ble} Supreme Court, in *Alexander Rodger v. The comptoir D'escompte De paris*, (1869-71) LR 3 PC 455 at 475, has observed thus:-

Now, their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the Court does no injury to any one of the Suitors, and when the expression "the act of the Court" is used, it does not mean merely the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter upto the highest court which finally disposes of the case. It is the duty of the aggregate of those tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court.

16. As we have already narrated, in the instant case, there was no impromptitude on the part of the police. As we have already stated, after effecting formal arrest of the detenus on 03.10.2011, the Investigating Officer had promptly made a request to the learned Judicial Magistrate, on 04.10.2011 itself, for issuance of PT warrant.

The Prison Authorities had also produced the detenus before the learned Judicial Magistrate, on 07.10.2011. Thereafter, the detenus were produced before the learned Judicial Magistrate, on 10.10.2011, promptly, by the Prison Authorities. The detention of the detenus, between 08.10.2011 and 10.10.2011, is alleged to be illegal, because of the order of the learned Judicial Magistrate, which has not been happily worded. Thus, for the act of the learned Judicial Magistrate, no one can be prejudiced.

17. In such view of the matter, we do not find any reason to issue any direction for any action against the Prison Authorities. As we have already stated, the Habeas Corpus Petition has become infructuous.

In the result, this Habeas Corpus Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.