

Joseph Vs. the State of Tamilnadu

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Court : Chennai

Decided On : Jun-18-2014

Judge : V.Dhanapalan

Appellant : Joseph

Respondent : The State of Tamilnadu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

18. 06.2014 CORAM: THE HONOURABLE MR. JUSTICE V.DHANAPALAN and
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM H.C.P.No.3349 of 2013
Joseph ... Petitioner vs.

1. The State of Tamilnadu, rep. by its Secretary to Government, Home Prohibition and Excise Department, Secretariat, Chennai 600 009.

2. The Commissioner of Police, Chennai Police, Egmore, Chennai 600 008. ...
Respondents Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records of the detention made in Memo No.1761/BDFGISSV/2013 dated 29.11.2013 passed by the Commissioner of Police, Chennai Police, Egmore, Chennai-8 the second respondent herein and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Ruban, son of Joseph, aged 23 years now confined in Central Prison, Puzhal II, Chennai at liberty. For Petitioner :

Mr.R.Balakrishnan For Respondents : Mr.P.Govindarajan Addl. Public Prosecutor

ORDER

(Order of the Court was made by V.Dhanapalan,J.) The petitioner is the father of the detenu. The detenu has been branded as a ".Goonda". under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in Memo No.1761/BDFGISSV/2013 dated 29.11.2013.

2. The detenu came to adverse notice in the following cases: S.No.Police Station and Crime No.Sections of Law 1 P-6 Kodungaiyur Police Station Crime No.196/2009 341, 324, 307 and 506(ii) IPC @ 147, 148, 302 r/w 120(b)IPC2P-3 Vyasarpadi Police Station Crime No.1580/2013 147, 148, 341, 392, 506(ii) IPC The ground case alleged against the detenu is one registered on 27.11.2013 by the Inspector of Police, P-6 Kodungaiyur Police Station in Crime No.2013/2013 for offences under Sections 448, 341, 294(b), 336, 427, 397, 307 and 506(ii) IPC.

3. Though the learned counsel for the petitioner raised several grounds to assail the impugned order of detention, he mainly focused his arguments on the question of delay in consideration of the petitioner's representation, which has not been properly explained by the respondents. Therefore, it would vitiate the rights guaranteed under Article 22(5) of the Constitution of India.

4. We have heard Mr.P.Govindarajan, learned Additional Public Prosecutor on the above point and perused the records.

5. On a perusal of the list informing the course of consideration of the petitioner's representation, it is seen that the Detention Order was passed on 29.11.2013; the detenu made a representation to the detaining authority on 11.12.2013 and it was received by the competent authority on 13.12.2013; remarks were called on 13.12.2013 and only on 31.12.2013 remarks were received and file was submitted on 03.01.2014; the Deputy Secretary dealt with it on 03.01.2014; on 10.01.2014, the Minister (Electricity, Prohibition and Excise) dealt with it and rejected it on 24.01.2014 and it was sent to the detenu on 27.01.2014.

6. Verification of the above dates and events would clearly show that there is unexplained delay of more than fifteen (15) days between 13.12.2013, the date on which remarks were called for and 31.12.2013, the date on which remarks were received, excluding holidays. The said delay is not explained by the competent authority. Therefore, it is apparent that there has been an inordinate and unexplained delay in consideration of the petitioner's representation and the same contradicts the requirement of Article 22(5) of the Constitution of India and the consequence thereof is in infringement of the right of Article 21 of the Constitution of India.

7. Accordingly, the impugned detention order passed by the second respondent in Memo No.1761/BDFGISSV/2013 dated 29.11.2013 is hereby quashed and the Habeas Corpus Petition is allowed. The detenu, namely Ruban in this case is set at liberty forthwith, unless his custody is required in connection with any other case.

8. However, in view of serious offences involved in this matter, it is open to the prosecution to effectively contest the matter before the Regular Court, uninfluenced by the above order. It is also made clear that this order shall not confer any right or advantage whatsoever to the detenu to claim anything before the Regular Court. (V.D.P.,J.) (G.C.,J.) vga 18.06.2014 Index : Yes/No To 1. The State of Tamilnadu, rep. by its Secretary to Government, Home Prohibition and Excise Department, Secretariat, Chennai 600 009.

2. The Commissioner of Police, Chennai Police, Egmore, Chennai 600 008.

3. The Public Prosecutor, High Court of Madras, Chennai 600 104.
V.DHANAPALAN,J.

and G.CHOCKALINGAM,J.

vga H.C.P.No.3349 of 2013 Dated:

18. 06.2014

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