

Kumar Vs. State of Tamil Nadu

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Court : Chennai

Decided On : Apr-29-2014

Judge : V.Dhanapalan

Appellant : Kumar

Respondent : State of Tamil Nadu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

29. 04.2014 CORAM: THE HONOURABLE MR.JUSTICE V.DHANAPALAN and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM H.C.P. No.2313 of 2013
Kumar ... Petitioner Vs.

1. The State of Tamil Nadu, rep. by the Secretary, Home, Prohibition and Excise
Department, Fort St. George, Chennai 600 009.

2. The Commissioner of Police, The Commissioner Office, Egmore, Chennai 600
008 ... Respondents Petition filed under Article 226 of the Constitution of India
praying for a writ of Habeas Corpus to call for the records relating to the detention
order in Memo No.901/BDFGISSV/2013 dated 04.09.2013 passed by the
respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and
direct the respondent to produce the petitioner's grandson Selvam S/o
Gnanamani, aged about 22 years the detenu, now confined in Central Prison,
Puzhal, Chennai, before this Court and set the petitioner's grandson Selvam S/o

Gnanamani, aged about 22 years, the detenu herein at liberty. For Petitioner : Mr.K.Ilayaraja For Respondents : Mr.P.Govindarajan, Addl. Public Prosecutor

ORDER

(Order of the Court was made by V.DHANAPALAN, J.) The petitioner is the grandfather of the detenu and challenge is made to the order of detention dated 04.09.2013 made in No.901/BDFGISSV/2013 passed by the second respondent under which the detenu has been branded as a 'Goonda' and detained under sub-section (1) of section 3 of the Tamilnadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) read with the order issued by the Government in G.O.(D) No.120, Home, Prohibition and Excise (XVI) Department, dated 18.07.2013 under sub-section (2) of section 3 of the Tamil Nadu Act, 1982.

2. The detenu came to adverse notice in the following cases : Sl. No. Police Station & Crime No. Section of Law 1 P1 Pulianthope Police Station Cr. No.343/2012 341, 294(b), 307 & 506 (ii) IPC 2 G3 Kilpauk Police Station Cr.No.566/2013 397 IPC The ground case alleged against the detenu is one registered in Crime No.583/2013 under Sections 341, 323, 336, 427, 397 r/w 506(ii) IPC.

3. The detenu came to adverse notice on earlier occasions and on 28.07.2013, near Kilpauk, at about 18.00 hrs, he along with three others wrongfully restrained one Selvaraj and when the said Selvaraj questioned them, immediately, the detenu took out a knife and threatened him and asked his associate to take money from his pocket and on hearing the hue and cry of Selvaraj, the public came for his rescue. However, the accused created terror and panic at the spot and taking advantage of the same, they escaped from the spot in two motor cycles. Immediately, Selvaraj proceeded to G3 Kilpauk Police Station and lodged a complaint in this regard and a case was registered in Cr.No.583 of 2013 under Sections 341, 323, 336, 427, 397 r/w 506(ii) IPC. The Inspector of Police, took up investigation and during the course of which, he arrested the detenu on 29.07.2013 and produced before the XIV Metropolitan Magistrate Court, Egmore and the detenu was ordered to be remanded till 12.08.2013 and the remand was

further extended periodically till 06.09.2013. The detaining authority, on being satisfied upon the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public peace and public order, clamped the order of detention. Challenging the said order, petitioner is before this Court by way of this Habeas Corpus Petition.

4. The main thrust of the arguments made by the learned counsel for the petitioner is that there is total non application of mind on the part of the detaining authority to arrive at the subjective satisfaction as to the time of occurrence in respect of the ground case. He further contended that since there is variation in the translation of vital information, the same would deprive the detenu from making an effective representation for redressal of his grievance. Learned counsel pointed out that there is variation in the order made by the detaining authority at the end of paragraph No.3.

5. We have heard the learned Additional Public Prosecutor on the above submission of the learned counsel for the petitioner and perused the records.

6. For appreciating the contentions raised by the learned counsel for the petitioner, the relevant portion in para 3 of the English version of the detention order is extracted hereunder: ".end of the English version of the detention order, it has been stated as follows:- ".....By committing the above described grave crime, in the public, in a busy road cum residential and business area, in the busy day time, he has created alarm and a feeling of insecurity in the minds of the people of the area and thereby acted in a manner prejudicial to the maintenance of public order.". Whereas, end of para 3 of the vernacular version of the detention order would read as under: "./////nkw;go ga';fu Fw;wj;ij bghJ ,lj;jpy; gugug;ghd rhiy. FoapUg;g[kw;Wk; tpahghug; gFjpapy; RWRWg;ghd ,ut[neu;j;jpy; g[hpe;jjd; K:yk; mth; mg;gFjpghH; kf;fs; kdjpy; gPjpiaa[k; ghJfhg;gw;w jd;ik czh;ita[k; Vw;gLj;jp mjd; K:yk; bghJ xG';Fg; guhkhpg;g[f;F Fe;jfkhd tifapy; bray;gl;Ls;shh;"/ 7. From a reading of the above portion of the detention order, it is clear that the detaining authority while branding the detenu as Goonda has mentioned that the occurrence had taken place in the busy day time, While so, the Tamil version of the detention order shows that the occurrence had taken place at the busy night time viz.,

RWRWg;ghd ,ut[neu;jjpy; ///////////////. This shows that there is clear non application of mind on the part of the detaining authority and since there is variation, the same would deprive the detenu from making an effective representation for redressal of his grievance. Therefore, the defective translation would vitiate the order of detention and on this ground itself, the order of detention is liable to be quashed.

8. In the result, this Habeas Corpus Petition is allowed and the impugned detention order made in Memo No.901/BDFGISSV/2013 dated 04.09.2013 is set aside. The detenu - Selvam, S/o. Gnanamani, is directed to be set at liberty forthwith, unless his custody is required in connection with any other case. However, this order shall not preclude the prosecution from conducting cases effectively and shall not confer any right to the detenu before the Regular Court. (V.D.P.,J.) (G.C.,J.) 29.04.2014 Index : Yes/ Internet : Yes/ rg To :

1. The Secretary to Government, State of Tamil Nadu, Home, Prohibition and Excise Department, Fort St. George, Chennai 600 009.

2. The Commissioner of Police, The Commissioner Office, Egmore, Chennai 600 008 3. The Public Prosecutor, High Court of Madras, Chennai 600 104. V.DHANAPALAN, J.

and G.CHOCKALINGAM,J.

rg Order in HCP No.2313 of 2013 Dated:

29. 04.2014

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