

Petchiammal Vs. 1.The State of Tamil Nadu Rep. by Its

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Court : Chennai

Decided On : Aug-03-2015

Judge : S.Nagamuthu

Appellant : Petchiammal

Respondent : 1.The State of Tamil Nadu Rep. by Its

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 03.08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR.JUSTICE V.S.RAVI H.C.P(MD)No.402 of 2015 Petchiammal .Petitioner versus 1.The State of Tamil Nadu rep.

by its Secretary to Government, Home, Prohibition and Excise Department, Fort St.

George, Chennai ?.

600 009.

2.The District Magistrate and District Collector, Dindigul District, Dindigul.Respondents Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records relating to the detention order passed by the second respondent in Detention Order No.15/2015, dated 10.03.2015 and quash the same and direct the

respondents to produce the detenu Thiru.Sankar, son of Kamatchi Thevar, male, aged 46 years who is detained at Central Prison, Madurai before this Court and set him at liberty and pass such further or other orders. For Petitioner : Mr.B.Pandiarajan For Respondents : Mr.T.Mohan, Addl.Public Prosecutor :

ORDER

(Order of the Court was made by S.NAGAMUTHU, J.) The petitioner is the wife of Mr.Sankar, Son of Kamatchi Thevar of Sundara Asari Street, Sedapatti, Athoor Taluk, Dindigul District.

The detenu has been detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982 (Tamil Nadu Act No.14 of 1982).by the order of the District Magistrate and District Collector, Dindigul District, Dindigul in Detention Order No.15/2015, dated 10.03.2015.

Challenging the same, the petitioner is before this Court, seeking a direction to set the detenu at liberty.

2.We have heard the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3.Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his arguments on the ground that in this case, though it is stated that arrest was made at 12.15 hours on 04.02.2015, whereas the FiRs, Information Report was registered at 13.00 hours on 04.02.2015, the arrest memo has strangely contained the crime number of the case.

The learned counsel for the petitioner would further submit that this would go to show that all the records were prepared on the spot and arrest would not have been made, as it is alleged at 12.15 hours on 04.02.2015.

This aspect has not been duly considered by the detaining authority, the learned counsel for the petitioner contended.

The learned counsel for the petitioner would further submit that a Division Bench of this Court in P.Susila v.

The District Magistrate and District Collector, Karur District, Karur and Other, while dealing with an identical situation, has quashed the detention order, on the ground that the detaining authority had not considered the above facts, while arriving at the subjective satisfaction.

4.The learned Additional Public Prosecutor would however vehemently oppose this Habeas Corpus Petition.

According to him, though it is true that arrest was made at 12.15 hours and though it is true that the case was registered at 13.00 houRs.there is nothing strange in mentioning the crime number in the arrest memo, because the arrest memo was prepared at the Police Station.

5.We have considered the above submissions.

6.According to the FiRs.Information Report in this case, the arrest of the detenu was made at Athoor Pirivu between Sempatti ?.

Kannivadi Road on 04.02.2015 at 12.15 houRs.According to the FiRs.Information Report, after the accused was arrested on the spot, he was brought to the Police Station and thereafter FiRs.Information Report was registered at 01.00 p.m.on 04.02.2015.

Therefore, the contention of the learned Additional Public Prosecutor that there is nothing strange in the arrest memo containing the crime number, cannot be accepted, because, even according to the records, the arrest memo was prepared on the spot, where the detenu was arrested, as soon as the arrest was effected.

It is not explained to the Court as to how the officer, who arrested the detenu had come to know of the crime number so as to make a mention about the same in the arrest memo.

As rightly pointed out by the learned counsel for the petitioner, in identical situation, a Division Bench presided over by Hon'ble Mr.Justice P.K.Misra, as he

then was, in P.Susila v.

The District Magistrate and District Collector, Karur District, Karur and Other reported in 2005 M.L.J.(Cri.) 49, has quashed the proceedings.

In paragraph No.7 of the said Judgment, the Division Bench has held as follows: ?In the present case, we find that the ratio of the latter decision would not be applicable as there is no material before this Court, giving similar explanation.

As a matter of fact, the petitioner has raised a specific contention in the petition regarding the aforesaid discrepancy in Ground No.8, which is to the following effect: ?.The authority failed to have noted that the Arrest Memo contains the crime number.

It is non-application of mind because before registering this case, the same was prepared.

He was arrested on 7.00 hours.The case registered on 13.00 hours?.The only explanation in relation to such ground is furnished in para 12 of the counter, which is as follows: ?.Regarding the averment putforth in Ground (h) of the affidavit, is specifically denied as false.

At the time and place of occurrence after the arrest of the accused, the sponsoring authority informed the reason for his arrest and after that necessary written arrest memo were given to him and also in his relative after filling up the crime No.and other particulars.Further it is stated that the accused was arrested on 15.5.2004 at 07.00 hours.He was brought to station at 13.00 hours is correct.

Hence this contention is an incorrect one?.A perusal of the aforesaid averment in the counter clearly indicates that there is no explanation as to how the crime number could be given in the arrest memo which was supposed to have been prepared at the time of arrest.

Therefore, in the absence of any explanation, the ratio of the latter decision is not applicable, which is distinguishable on facts.

7. In our considered view, the view taken by the said Division Bench in P.Susila's Case squarely applies to the facts of the present case.

In this case also, as we have already pointed out, there is no explanation as to how crime number could find a place in the arrest memo, which was prepared on the spot, where the detenu was arrested, as soon as the arrest was effected.

In such view of the matter, falling in line with the Judgment of the Division Bench in P.Susila's case, we are inclined to set aside the impugned order of detention.

8. In the result, the Habeas Corpus Petition is allowed and the impugned order of Detention in No.15/2015, dated 10.03.2015, passed by the District Magistrate and District Collector, Dindigul District, Dindigul, is quashed.

The Detenu, Sankar, Son of Kamatchi Thavar, is directed to be released forthwith, unless his presence is required in connection with any other case.

To 1. The Secretary to Government, Home, Prohibition and Excise Department, Government of Tamil Nadu, Fort St.

George, Chennai ?.

600 009.

2. The District Magistrate and District Collector, Dindigul District, Dindigul.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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