

P. Muthuswamy Vs. State and anr.

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Court : Chennai

Decided On : Aug-03-1999

Reported in : 2000CriLJ140

Judge : V.S. Sirpurkar and ;V. Kanagaraj, JJ.

Acts : Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders and Slum Grabbers Act, 1982 - Sections 3(1) and 8; [Constitution of India](#) - Article 22(5)

Appeal No. : Habeas Corpus Petn. No. 16 of 1999

Appellant : P. Muthuswamy

Respondent : State and anr.

Advocate for Def. : G.M. Syed Fasiuddin, Addl. Public Prosecutor

Advocate for Pet/Ap. : D. Veera Sekaran, Adv.

Disposition : Petition allowed

Judgement :

V.S. Sirpurkar, J.

1. The detention order passed in respect of one Solai, son of Periasami, by District Magistrate and District Collector, Karur dated 28-11-1998 dubbing him to be a

'Bootlegger' and directing his detention under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders and Slum Grabbers Act, 1982 (hereinafter called as Act 14/82) is challenged in this petition.

2. The concerned authority has relied upon three adverse cases and a ground case. According to the ground case, the concerned detenu was arrested only on 11-11-1998, when a complaint was made against him by one of his customers that he purchased arrack from the detenu and he felt giddiness and had vomiting sensation and suffered on account of the drinking of that arrack. We are not required to go into the factual details particularly because the learned counsel has restricted himself to only one question. According to the learned counsel, in the representation which was sent on his behalf on 5-1-1999 to the State Government he had sought certain documents. The first document sought by the detenu was the extract of the general diary of the police station between 7-11-1998 and 11-11-1998. The second document sought was the search list dated 7-11-1998, while the third document sought for was the relevant entries of Food Distribution Register between 7-11-1998 and 11-11-1998. These documents were sought, as the contention of the detenu in the representation was that he was never arrested on 11-11-1998, but he was in fact in the police custody right from 7-11-1998 and while in custody he was searched and therefore, a search list was prepared. So also he was given food. Therefore, his name was to be found in the Food Distribution Register. The detenu probably wanted to buttress his contention that he was in the police custody already right from 7-11 -1998 to 11 -11 -1998 by producing these documents. His representation dated 5-1-1999 was rejected by the State Government on 12-1-1999. The learned counsel for the petitioner has shown the order rejecting the representation. However, he invited our attention to the portion 'Vernacular matter omitted'.

In English the true translation would be 'the District Collector, Karur has been requested to deliver those documents relating to the preventive detention of the detenu'.

3. From this the learned counsel submits that though the State Government had agreed to hand over the documents sought for in the representation, the said documents have never been supplied. This has caused prejudice to make a proper representation and has, therefore, breached the right under Article 22(5) of the [Constitution of India](#), thus rendering the further detention illegal.

4. The learned Additional Public Prosecutor, however, firstly submits that the State Government has never agreed to hand over the documents, which have been sought for in the representation and in fact the reference in the reply dated 12-1-1999 is not to the documents sought for by the detenu in his representation, but the documents which related to the preventive detention. This cannot be true for the simple reason that the detention itself is dated 28-11-1998. Therefore, it is not possible that the documents were not supplied to the detenu till 12-1-1999. We say this because of a specific provision in the Act 14/82 whereby the supply of the documents is a must as per Section 8 of the Act within 5 days of the date of detention. Section 8 ordains that the grounds of detention shall be made known to the petitioner within 5 days, granting him earliest opportunity of making himself a representation against the order. Thus, the State Government was aware that at least in the case of order dated 28-11-1998 the documents relating to the detention were already supplied. The reference to the documents in the order dated 12-1-1999 could, therefore, never have been in respect of the detention documents or the grounds as the case may be, but obviously to the documents sought for by the detenu in his representation. It will, therefore, have to be held that the State Government agreed to supply the documents sought for by the detenu in his representation because there are no other documents in question.

5. Once that position is available, then it will have to be seen as to whether in fact the documents have been supplied or not. According to the Additional Public Prosecutor, those documents were not supplied. However, his contention is that it was not necessary on the part of the State Government to supply those documents firstly because the grounds on which the detenu was detained made a detailed reference to the fact that the detenu was apprehended only on 11-11-1998 in pursuance of the F.I.R. by a customer of the detenu. He also points out the fact that the detenu was already in the custody of the police was never

disclosed by the detenu when the detenu was produced before the Magistrate for the first time or on any occasion when he was produced before the Magistrate for obtaining the remands or even in the bail application, which he subsequently filed. Therefore, it was not possible that the detenu was in the illegal custody of the police from 7-11-1998 to 11-11-1998. The learned Additional Public Prosecutor also invited our attention to the fact that this representation has been made not by the detenu but by someone else on behalf of the detenu and, therefore, wanted to draw an inference that the contention regarding the illegal custody was never raised by the detenu himself. The learned Additional Public Prosecutor also pointed out that there were sufficient grounds and even if it is considered that the concerned detenu was in the illegal custody of the police from 7-11-1998, since the Detaining Authority had before him the material to suggest that the detenu was selling illicit liquor, the sale of illicit liquor was sufficient to attract the provisions of the Act and to dub him as a 'bootlegger.' The learned Additional Public Prosecutor further drew our attention to the fact that what is to be tested is the subjective satisfaction of the Detaining Authority and according to him, it was clear that the Detaining Authority had actively applied his mind to the facts available before him, which were made available to him by the Sponsoring Authority. We are afraid that none of the contentions is relevant. Lastly, the learned Additional Public Prosecutor very forcefully submitted that none of those documents was relevant document, as they were not relied on documents and were of such nature as could have not affected the subjective satisfaction of the Detaining Authority. We are afraid that none of the contentions raised by the Additional Public Prosecutor is relevant for the simple reason that the State Government had in the first place agreed to supply those documents to the detenu. Once the State Government agrees to supply those documents to the detenu, it must keep its promise. Rightly or wrongly the State Government came to the conclusion that those documents were necessary in view of the representation by or on behalf of the detenu. Once it was of the opinion that the documents were necessary to be supplied and once it had also made a promise that it had instructed the Detaining Authority to supply the documents to the detenu, that promise was bound to be kept in order to enable the detenu to make a further representation or an effective representation. The points raised by the learned Additional Public Prosecutor may be relevant for the

purposes of testing the correctness or otherwise of the order. However, the fact cannot be disputed that the State Government in pursuance of the representation of the detenu agreed to supply the documents and did not ultimately supply the same. In this behalf, our attention was invited to the Division Bench decision of this Court in H.C.P. No. 412 of 1995, dated 2-8-1995, Arunachalam and Thangamani, JJ. The Division Bench in that case had observed that it was stated by the Detaining Authority that the document, viz., the bail order would be supplied to the detenu by the District Magistrate and Collector, North Arcot Ambedkar District. In spite of such a direction, the said order was not supplied to the detenu to facilitate making an effective representation. On this ground alone, the further detention was set aside. The following observations would be material :--

It may be that a bail rejection order need not have to be supplied always to the detenu merely because a demand stood made. However, when applying his mind, the Detaining Authority was under the impression that on the facts of this case, the detenu was entitled to be supplied with a copy of the order requisitioned. Further, this rejection order has some importance due to certain lapses in the grounds of detention with regard to the arrival of subjective satisfaction on the aspect of compelling necessity. This need not have to be gone into detail, for even on the basis of non-supply of a document directed to be supplied, we have to hold in favour of the detenu.

The observations would clearly bring out a situation that where the Detaining Authority State Government in this case chose to agree to supply the documents and promised their supply to the detenu and ultimately failed to supply the same, then the further detention would obviously be rendered illegal as that would amount to refusal of an opportunity to the detenu to make an effective representation. We are not on the merits of the claim of the detenu regarding the documents. However, even then if the detenu wanted to convince the Detaining Authority that he was not arrested on 11 -11 -1998, but was already in the custody of the police right from 7-11-1998, then the whole incident in the ground case would be rendered without any basis. In that view of the matter also, we feel that once the State Government had decided to supply the documents, the non-supply of the documents would be fatal to the further detention. We concur with the view

expressed by the Division Bench in the aforementioned case of 'Nani v. State of Tamil Nadu.' Accordingly, the writ petition will have to be allowed. The detention order is, therefore, set aside. The detenu is directed to be set at liberty forthwith unless required in some other matter by some other authority.

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