

Vasanth Alias S. Vasanth Kumar Vs. State of Tamil Nadu and ors.

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Court : Chennai

Decided On : Jul-15-1999

Reported in : 2000CriLJ772

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

Acts : Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 - Sections 2 and 3(1)

Appeal No. : H.C. Petn. No. 50 of 1999

Appellant : Vasanth Alias S. Vasanth Kumar

Respondent : State of Tamil Nadu and ors.

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

Advocate for Pet/Ap. : I. Subramanian, Adv.

Disposition : Petition allowed

Judgement :

V.S. Sirpurkar, J.

1. The petitioner himself is a detenu. He was 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 14 of 1982) hereinafter called Act 14 of 1982 by order dated 29-10-98 passed by the Commissioner of Police, Chennai, so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. In support of this order, a number of grounds have been suggested wherein it is suggested that while the said person was residing along with one Sengottaian, he committed the murder of Annapoornam, wife of Sengottaian on or about 21-11-1996 along with two other accused persons. It is practically on the basis of this case alone that order is passed. It is stated that a confession has been made by one Vinothkumar alias Vinoth and on that basis, the petitioner Vasanth alias Vasanthkumar came to be arrested and on the basis of his confession one more person namely Vinoth alias Vinothkumar alias Kutty son of Selvaraj came to be arrested. It is suggested that the stolen properties from the house of Mr. Sengottaian were recovered from these accused persons, which amounted to Rs. 1.5 lakhs. In the grounds, the detaining authority has given the details as to how the murder was committed. On the basis it is suggested in the grounds that the accused persons including the present petitioner were involved in a number of cases, though those cases were not registered against them and therefore the detaining authority was of the opinion that the petitioner was habitually committing crime and was dubbed as such a Goonda as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. It is on account of that the petitioner came to be detained.

3. Learned counsel appearing on behalf of the petitioner firstly drew our attention to the detention order itself and pointed out that the order itself is defective. The Learned counsel particularly drew our attention to the first paragraph of the order where the satisfaction of the Commissioner of Police is normally recorded. The para runs as follows :

Whereas, I, P. Kalimuthu, I.P.S., Commissioner of Police, Chennai City, am satisfied that with respect to the person known as Thiru. Vasanth alias Vasanthkumar, aged 22, s/o Selvaraj, No. 5, Lake Area, 6th Street, Nungambakkam, Chennai-34 and that with a view to preventing him from acting in

any manner prejudicial to the maintenance of public order, it is necessary to make the following order.

From this the learned counsel points out and in our opinion, firstly, that this cannot be said to be a display of the satisfaction of the detaining authority inasmuch, as apart from defective English, this order suffers from casualness. There is nothing to suggest in this paragraph that the Commissioner of Police was satisfied that the petitioner was a Goonda as contemplated under Section 2(f) of the Act 14 of 1982 at the time when the order was made.

4. The Learned Public Prosecutor however, invited our attention to the second paragraph and more particularly the last three lines therein which are to the following effect..I hereby direct that the said Goonda Thiru Vasanth alias Vasanthkumar son of Selvaraj be detained and kept in Central Prison, Chennai.

The Learned Public Prosecutor suggests that the Commissioner of Police had in fact described the petitioner as a Goonda in the second paragraph where he prescribes the action taken on the basis of his satisfaction. Unfortunately, if there is no satisfaction recorded in the order, the concerned person against whom the action is proposed is either a Goonda, a Bootlegger or a forest offender, then there would be no question of going further and taking an action. The expression of that satisfaction is lacking in this order. Ordinarily, we would not find the order to be defective merely because a word here or a term there is missing. However at least in so far as the order of detention is concerned, the authority has to be extremely careful because, that order results into incarceration of a citizen and deprives him of his rightful liberty. Unfortunately in this case, due care and caution do not appear to have been taken. It also does not appear that the concerned authority was satisfied that the petitioner at the relevant time was a Goonda. A mere description in the second paragraph of the order would not convince us of his satisfaction. On this ground alone, the petition is liable to be allowed.

5. However, things do not stop here. The Learned counsel points out that in order to be dubbed as a Goonda under Section 2(f) of the Tamil Nadu Act 14 of 1982 there has to be a habitual criminal activity on the part of the concerned person. When we see the ground, we see that not a single case is registered against the

petitioner excepting the ground case, In which the incident has taken place only on 21-11-96. Though it is suggested in the grounds that the petitioner had committed number of activities which were criminal and which amounted to the criminal offences, there is nothing on record to suggest that inference. In the absence of any other case being there against the petitioner merely on the basis of one adverse case it would be incorrect to dub the petitioner as a Goonda. On that count also, it will have to be held that there was no material to suggest that the petitioner was dubbed as a Goonda when the order was passed against him. In view of this, there would be no question of continuing the further incarceration of the petitioner. The petitioner succeeds. The detention order is set aside. The petitioner be set at liberty forthwith unless he is required in any other case.

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