

Uthandi Vs. the District Magistrate and District Collector and anr.

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Court : Chennai

Decided On : Aug-10-2005

Reported in : 2005(4)CTC188

Judge : K.P. Sivasubramaniam and ;S.K. Krishnan, JJ.

Acts : Tamil Nadu Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1982 - Sections 3; Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981; ;[Constitution of India](#) - Article 22

Appeal No. : H.C.P. No. 175 of 2005

Appellant : Uthandi

Respondent : The District Magistrate and District Collector and anr.

Advocate for Def. : K. Doraisamy, Public Prosecutor

Advocate for Pet/Ap. : T.S.R. Venkat Ramana, Adv.

Disposition : Petition allowed

Judgement :

K.P. Sivasubramaniam, J.

1. The brother-in-law of the detenu seeks the release of K. Subramaniam, the detenu, who has been detained as a Goonda under the Tamil Nadu Act 14 of 1982.

2. A contention was raised on behalf of the petitioner Mr. T.S.R. Venkat Ramana, that non-mentioning of the period of detention in the order of detention would vitiate the order of detention and would be violative of the provisions of the Tamil Nadu Act 14 of 1982.

3. The said contention is mainly based on the judgment of the Supreme Court in Commissioner of Police v. Gurbux Anandram Biryani . In that case, the Supreme Court was dealing with the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981. While interpreting Section 3 of the Act, the Supreme Court held that the requirement of the detaining authority to detain the detenu for an initial period of detention can extend upto three months at a time and it was open to the detaining authority to detain the detenu even for a lesser duration than three months. The Supreme Court proceeded further to observe that the said situation necessitated the period of detention to be specified and unless that was indicated in the order, the detention order will be vitiated.

4. Strong reliance is placed on the above judgment in support of the contention that in the absence of mentioning of the period of detention in the order of detention itself, the order of detention will be vitiated, and in this impugned order of detention, the period was not mentioned.

5. Learned Public Prosecutor appearing for the State drew the attention of this Court to a direct judgment of a Division Bench of this Court as well as that of the Supreme Court which are dealt with below and contended that in terms of the specific provisions of the Tamil Nadu Act, such a requirement was not necessary. The judgment of the Supreme Court relied on by the learned counsel for the petitioner has been specifically overruled by the Supreme Court in a subsequent judgment.

6. Learned Public Prosecutor would also refer to the judgment of a Constitution Bench of the Supreme Court in *Ujagar Singh v. State of Punjab*, : [1952]1SCR756 , and sought to place reliance on the observation that the detention order not specifying any definite period of detention was not a material omission which would render the order invalid.

7. Mr. T.S.R. Venkat Ramana, learned counsel for the petitioner, while replying to the contentions of the learned Public Prosecutor, contends that the observations of the Supreme Court in *T. Devaki v. Government of Tamil Nadu*, : 1990 CriLJ1140 , holding that the Maharashtra Act is identical in terms of Section 3 of the Tamil Nadu Act, was not correct and that the further expression that the observations in *Commissioner of Police v. Gurbux Anandram Biryani* that the scheme of the Maharashtra Act was different from other corresponding Acts were not correct, according to the learned counsel, were not consistent on a perusal of all the Acts. Reference was made to the relevant provisions under the Maharashtra Act and the Tamil Nadu Act.

8. Learned counsel also refers to the Constituent Assembly debates pertaining to Article 22 and particularly to the speech of Dr. B.R. Ambedkar emphasizing that the period of detention should be mentioned in the order of detention.

9. We have considered the submissions of both sides.

10. It is not necessary to refer to the judgment of the Constitution Bench in *Ujagar Singh v. State of Punjab*, : [1952]1SCR756 , in view of the fact that the judgment in *T. Devaki v. Government of Tamil Nadu*, : 1990 CriLJ1140 , is directly on the point in issue. In that judgment, the Supreme Court had specifically dealt with the scope of the Tamil Nadu Act 14 of 1982, and after extracting Section 3, had ultimately disagreed with the observations contained in *Commissioner of Police v. Gurbux Anandram Biryani* on which, strong reliance is placed by the learned counsel for the petitioner. It is also seen that a Division Bench of this Court, in *Kala v. The Commissioner of Police, Madras* 1985 CrL.J. 133 had also held that it was not necessary to mention the period of detention in the order of detention itself.

11. In the face of a judgment of a Division Bench and a judgment of the Supreme Court dealing with the provisions of the Tamil Nadu Act 14 of 1982 specifically, it is not open to this Court to entertain any submission to the contra. The attempt on the part of the learned counsel for the petitioner to rely on the principle of 'per incurium' cannot be entertained, having regard to the basic principle that principles relating to per incurium can be invoked only as between the Courts of equal jurisdiction and not as against the judgment by the Supreme Court on the very same provisions arising for consideration before this Court. It is all the more so when the Supreme Court had specifically referred to the provisions under the Tamil Nadu Act 14 of 1982 and after having extracted the said provision, had overruled the earlier judgment in the case of Commissioner of Police v. Gurbux Anandram Biryani . The Supreme Court had proceeded further to specifically hold that there was no need to mention the period of detention. That being so, it is not open for this Court to entertain any submission to the contra.

12. However, we are inclined to agree with one of the other submissions raised by the learned counsel for the petitioner. A perusal of paragraph 5 of the order of detention discloses that though the detaining authority has mentioned that if the detenu comes out on bail, he will involve in such activities again, there is no observation of either the possibility of the detenu filing a bail petition or the imminent possibility of the detenu coming out on bail. In the said background, this Court has repeatedly held that failure to mention the imminent possibility of the detenu filing a bail petition and coming out on bail would amount to non-application of mind on the part of the detaining authority, namely, the following judgments:

(i) Thirumavalavan v. Government of Tamil Nadu 1995 MLJ (Crl.) 228; and

(ii) Meganathan v. District Collector, Karur and Anr., Order in H.C.P. No. 33 of 2005 dated 16.4.2005.

13. With the result, we are inclined to hold that the order of detention is vitiated by non-application of mind of the detaining authority regarding the imminent possibility of the detenu coming out on bail.

With the result, the Habeas Corpus Petition is allowed and the order of detention is set aside. The respondents are directed to release the detenu forthwith unless his custody is required in connection with any other case.

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