

**MuniyammaA. Vs. State of Tamil Nadu Rep. by Its Secretary to Government Home**

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**Court :** Chennai

**Decided On :** Sep-24-2010

**Judge :** M.CHOCKALINGAM; M.SATHYANARAYANAN, JJ.

**Acts :** Constitution Of Indian - Article 226

**Appeal No. :** H.C.P.No.905 of 2010

**Appellant :** MuniyammaA.

**Respondent :** State of Tamil Nadu Rep. by Its Secretary to Government Home

**Advocate for Def. :** Mr.Babu Muthu Meeran, Adv.

**Advocate for Pet/Ap. :** Mr.C.C.Chellappan, Adv.

**Judgement :**

1. This petition challenges an order of detention made by the second respondent dated 3.5.2010, whereby the petitioner's brother Chitrarasu was ordered to be detained under Act 14/82 terming him as a Goonda as described under the provisions of the Act.

2.The Court heard the learned Counsel for the petitioner and looked into all the materials available and in particular, the order under challenge.

3.It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the detenu is involved in two adverse cases namely (1) H1 Washermenpet PS Cr.No.216/2010 under Sections 341, 384 and 506(2) IPC and (2) H6 Dr.R.K.Nagar PS Cr.No.309/2010 under Sections 147, 148, 341, 307 and 506(2) IPC and also in a ground case in Crime No.310/2010 of H6 Dr.R.K.Nagar PS registered under Sections 341, 353, 336, 427, 307 and 506(2) IPC for an occurrence that had taken place on 28.4.2010, and he was arrested and remanded to judicial custody, the detaining authority on scrutiny of the materials placed, made the order under challenge after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order.

4.The grounds urged by the learned Counsel for the petitioner are that from the particulars available, it could be seen that the ground case in Crime No.310/2010 was registered by H6 Dr.R.K.Nagar PS at about 1.00 P.M. on 28.4.2010, when, according to the prosecution, the occurrence has taken place; that the arrest is also shown to have been made at about 12.00 P.M.; but the arrest memo as found in the booklet, contained Crime No.310/2010; that if really the arrest was actually made at that time and the FIR was registered subsequently at about 1.00 P.M., after an hour by H6 Dr.R.K.Nagar PS, the arrest memo could not have contained the crime number; and that under the circumstances it was a situation where the detaining authority should have called for a clarification, but failed to do so. Added further the learned Counsel that there was a special report filed, but it did not contain the date; that in the second adverse case and in the ground case, no bail application was made; but the detaining authority has stated that there was a real possibility of his coming out on bail; that all would indicate the non-application of mind on the part of the authority and hence the order has got to be set

aside.

5.The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

6.As could be seen above, the detaining authority has made the order under challenge after recording the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order since he was involved in two adverse cases and one ground case. As rightly pointed out by the learned Counsel for the petitioner, on scrutiny of the materials available, it could be seen that Crime No.310/2010 was registered by H6 Dr.R.K.Nagar PS for an occurrence that took place on 28.4.2010, on the very day at about 1.00 P.M., as could be seen from the copy of the FIR. As could be seen from the arrest memo as found in the booklet, the arrest was made at about 12.00 P.M. an hour earlier to the registration of the case. If to be so, before assigning Crime No.310/2010, the crime number could not have been entered in the arrest memo, but it is found so. Under the circumstances, the detaining authority should have called for a clarification, and it was a duty cast upon him. But he has not considered that aspect of the matter. It would be indicative of the non-application of the mind on the part of the detaining authority.

7.Apart from the above, the special report did not contain the date. Thus the detenu was not aware when it was actually made. The same did not enable him to understand when it was made before or at the time after the passing of the order.

8.As far as the third ground is concerned, this Court is unable to see force in the same. It is true that in the second adverse case and in the ground case, no bail application was made. The learned Additional Public Prosecutor for the State brought to the notice of the Court that all the particulars pertaining to the similar cases were actually furnished as found in the order. In such circumstances, the observation made by the detaining authority that there was a real possibility of the detenu coming out on bail cannot be said to be without basis or cogent material. Hence the third ground was not available to the petitioner. But, as far as the ground Nos.1 and 2 are concerned, this Court is of the considered opinion that on those grounds, the order has got to be set aside.

9.Accordingly, the order of detention passed by the second respondent is set aside, and the detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

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