

**Lakshmi Vs. the State and anr**

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**Court :** Chennai

**Decided On :** Nov-23-2011

**Judge :** M.Jaichandren; S.Nagamuthu, Jj.

**Acts :** Tamil Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 - Section 3(1); [Constitution of India](#) - Articles 22(5), 21

**Appeal No. :** HABEAS CORPUS PETITION(MD).No.641 of 2011

**Appellant :** Lakshmi

**Respondent :** The State and anr

**Judgement :**

1. The petitioner is the wife of the detenu, by name Udaiyar, S/o.Madasamy, aged about 28 years, who has been detained under Section 3(1) of the Tamil Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short Tamil Nadu Act 14/1982), on the orders of the first respondent, by his proceedings in M.H.S.Confdl.No.21 of 2011, dated 30.06.2011. Now, he has been lodged at Central Prison, Palayamkottai, Tirunelveli District.

2. After the Detention Order was passed, the detenu made a representation to the Government on 28.07.2011 and the same was received by the Government on

01.08.2011, upon which remarks were called for from the Detaining Authority on 02.08.2011 and the remarks were received by the Government on 04.08.2011. Thereafter, the said representation was dealt with by the Deputy Secretary on 05.08.2011 and the same was rejected by the Hon'ble Minister on 12.08.2011. The rejection letter was served on the detenu on 17.08.2011. In this aspect, there was a delay of seven days, out of which, two days were holidays. Even if allowance is given for those two days, which were holidays, still there was a delay of five days. Seeking to quash the said Detention Order and to set the detenu at liberty, the petitioner has come up with this Habeas Corpus Petition.

3 Even though several grounds were raised in the Habeas Corpus Petition, the learned Senior Counsel for the petitioner would mainly focus his argument on the ground of delay between 05.08.2011 and 12.08.2011 in considering the representation of the detenu. The learned Senior Counsel for the petitioner would submit that there was a delay of seven days, as detailed above and the same remains unexplained. According to the learned Senior Counsel, the said unexplained delay has caused serious prejudice to the detenu, and therefore, the Detention Order is liable to be quashed.

4. The learned Additional Public Prosecutor has produced a proforma detailing the dates and events. In the said proforma, it has been admitted that the representation of the detenu was received on 01.08.2011, remarks were called for from the Detaining Authority on 02.08.2011 and the remarks were received by the Government on 04.08.2011. The remarks were dealt with by the Deputy Secretary on 05.08.2011, but the Hon'ble Minister rejected the representation of the detenu on 12.08.2011.

5. From the narration of the above facts and the rival contentions, it is crystal clear that there was a delay of seven days between 05.08.2011 and 12.08.2011 in considering the representation. Even if allowance is given to the two days holidays, still, there remains a delay of five days, which has not been explained by the respondents at all.

6. At this juncture, it is relevant to refer to few decisions of the Hon'ble Apex Court and the same are as follows: (i). In *Rashid sk. v. State of West Bengal* reported in

1973 (3) SCC 476, the Hon'ble Supreme Court has held as follows:

The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

(ii) In *Ram Sukrya Mhatre v. R.D.Tyagi*, 1992 Supp (3) SCC 65, the Hon'ble Supreme Court has held thus;-

the right to representation under Article 22(5) of the [Constitution of India](#) includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the [Constitution of India](#).

(iii) In *Aslam Ahmed Zahire Ahmed Shaik v. union of India and others* reported in 1989 SCC (Cri) 554 the Hon'ble Supreme Court has held as follows:- The supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the government which received the representation 11 days after it was handed over to the jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible. ....

When it is emphasised and re-emphasised by a series of decisions of the Supreme Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the

representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5).

(iv). In *Tara Chand v. State of Rajasthan*, 1980 (2) SCC 321 and *Raghavendra Singh v. Superintendent, District Jail*, 1986 (1) SCC 650, the Apex Court held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. (v). In yet another decision of the Hon'ble Apex Court reported in 1999 (1) SCC 417 (*Rajammal v. State of Tamil Nadu*), it is held as follows:- It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words as soon as may be in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is preempted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to the permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the [Constitution of India](#) is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen.

(vi) In *K.M.Abdulla Kunni v. Union of India*, 1991 (1) SCC 476, it is held as follows:-

That part, it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

7. In view of the above settled position of law, the Detention Order is liable to be quashed on the sole ground of delay, as detailed above. In view of the fact that we are inclined to quash the proceedings on the ground of delay alone, we do not propose to go into the other grounds raised in this Habeas Corpus Petition.

8. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the first respondent, in his proceedings in M.H.S.Confdl.No.21 of 2011, dated 30.06.2011 is quashed. The detenu, by name, Udaiyar, S/o.Madasamy, aged about 28 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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