

In the High Court of Judicature at Madras

Dated: 29/04/2004

Coram

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice S.R.SINGHARAVELU

Habeas Corpus Petition NO.16 of 2004

Perumal Jeyaraman ..Petitioner

-Vs-

1.The State of Tamilnadu rep.by
the Secretary to the Government
Public (SC) Department
Fort.St.George, Chennai-9.

2.The Union of India, by the
Secretary to the Government
Ministry of Finance, Dept.of
Revenue, New Delhi.

3.The Superintendent of Central
Prison, Chennai-3. ..Respondents

PETITION under Article 226 of The Constitution of India praying for
the issuance of a Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.B.Kumar, SC for Mr.S.Palanikumar

For Respondents 1 & 3 : Mr.A.Navaneethakrishnan, APP

For Respondent-2 : Mrs.Vanathi Srinivasan, ACGSC

:O R D E R

S.R.SINGHARAVELU,J

One Perumal Jeyaraman was detained under the Conservation of Foreign
Exchange and Prevention of Smuggling Activities Act (Central Act 52 of 1994)
by an order dated 25.11.2003 in order to prevent him from indulging in any
activities of smuggling goods in future.

2. On 5.11.2003, the Officers of Directorate of Revenue Intelligence
(DRI), Chennai, upon verification, ascertained the stay of the detenu in
Shanthi Bhavanam Lodging House, 1112, EVR Periyar High Road, Periyamet,

Chennai. Upon conduct of search and upon opening the packages available in a polythene bag with the detenu, it was found that he was in illegal possession of 35 numbers of cell phones and 250 numbers of computer processors. Upon interrogation, the detenu gave a statement that he had travelled to India for about 50 times and except in one or two occasions, he had transported the goods without paying customs duty and had also divulged the future plan of one Kumar.

3. Therefore, the order of detention was clamped against him and in paragraph 1(vii) of the order of detention, it has been stated as follows :
"You were arrested by the DRI Chennai on 6.11.2003...you were produced before ACMM, EO1, Egmore, Chennai, who remanded you to judicial custody till 20.11.2003. During remand, you have not made any complaints of ill-treatment by the officers and did not retract your statementOn the request of the DRI on 20.11.2003, your remand period was further extended till 4.12.2003."

4. Mr.B.Kumar, learned Senior Counsel for the detenu, at the outset, pointed out that the first remand of the detenu was made on 6.11.2003 and that was till 20.11.2003. Thereafter, this remand period was further extended that too upto 4.12.2003. It is during the second extension period between 20.11.2003 and 4.12.2003, the order of detention was clamped on 25.11.2003. According to him, this order of remand extension is a material that was based for arriving at the subjective satisfaction that there was a compelling necessity to pass a detention order after apprehending the likelihood of the detenu being released on bail. The copy of this basic material has not been furnished to the detenu. Instead, what was supplied was both the Tamil and English versions of the letter dated 20.11.2003 of the Special Public Prosecutor (Customs), which contained the substance that on production of the detenu on 20.11.2003 before ACMM, EO1, Egmore, his remand was extended till 4.12.2003. This is only a substance of the order of extension of remand and not the order itself. Learned Senior Counsel further submitted that the non supply of the very order of extension of remand affected not only the subjective satisfaction of the detaining authority, but also deprived the detenu of his right to make an effective representation.

5. In this connection, learned Additional Public Prosecutor relied upon the judgment in the case of Vadivel Vs. State of Tamilnadu, etc. & another (2000 I LW (Cri) 443) wherein the following observations were made by a Division Bench of this Court :

"It is clear that there were materials sufficient before the detaining authority to show that on the date when he passed the order of detention, the detenu was in remand. The detaining authority has to be only satisfied of that fact. He has to arrive at the subjective satisfaction and form an opinion about the detenu being remanded on the basis of the particulars furnished to him. The particulars furnished by the sponsoring authority are sufficient and enough from which the detaining authority can easily gather necessary information and be aware of the detenu being on remand on the date of passing of the order. It is not necessary that the detaining authority should insist upon the remand order. Nor it can be stated that only on the

basis of the remand order, necessary information and awareness can be gathered by the detaining authority."

6. Learned Additional Public Prosecutor also relied upon the judgment dated 20.11.2003 in HCP.NO.808 of 2003 of a Division Bench of this Court wherein it has been held as follows :

"In the light of the above pronouncements we have to consider the contention advanced by the learned Senior Counsel. According to the learned Senior Counsel the respondents have failed to furnish the remand extension as well as the order rejecting the bail. In this case, as seen from the paper book, a special report submitted alone has been placed before the detaining authority to show that the detenu is still a remand prisoner and remand has been extended. The said document has been admittedly furnished. Rejection of bail which is later in point of time to the clamping of detention is neither relied upon nor referred to. Therefore, the two documents in respect of which emphasis has been made, in our considered view, need not be furnished to the detenu and at any rate the same has not in any manner resulted or caused prejudice to the detenu. Those documents in respect of which the contention has been advanced by the learned Senior Counsel are neither relied upon documents nor material documents which are required to be furnished. Hence, this contention advanced by the learned Senior Counsel has to fail."

7. Per contra, learned Senior Counsel for the detenu relied upon the judgment in the case of Irudhi (a) Irudayanathan and another Vs. State of Tamilnadu, etc. and another (1994 II LW (Crl) 618) wherein the question for decision was framed as follows :

"The question for decision in these cases was whether the detenus are entitled to communication of material on which the detaining authority based his conclusion, if the detenu was either in remand or enjoying liberty, having been released on bail, or would it be sufficient, if the detaining authority was aware of remand or bail of the detenu, on some material which he had taken note of while arriving at his subjective satisfaction though not communicated to the detenu, which communication according to the State, will not be necessary."

The answer, after citing various judgments of the Apex Court, that was arrived at in the above case was as follows :

"Our answer to the question posed is that the basic factual material on which conclusions stood arrived at, about remand of the detenu at the time when the impugned order was passed, must necessarily be communicated to the detenu, failure of which would be sufficient to vitiate the order of detention. Of course, those factual constituents need not have to be detailed in the grounds, for exhibition of awareness therein would suffice."

8. Although the answer that was made was in favour of the detenu in the Irudhi's case, a overall reading of the entire judgment and the principles culled out from various case laws of the Supreme Court, not only as found in Irudhi's case but also in 2000 I LW (Crl) 443 (supra) would go to show that the answer to the question before us is to be made only against the detenu.

9. In taking out first Irudhi's case, we find that it had dealt with

so many case laws of the Apex Court. First it had taken into consideration the observations made in the case of Ravi and another Vs. Government of Tamilnadu (1994 LW CrI 67) wherein the affidavit of the sponsoring authority that was or was not taken as a material relied upon has not been made clear. It was on that ground, the observations made in that case were taken as not useful to Irudhi's case.

10. Another case that was relied upon was that of the Division Bench of our High Court in the batch cases in WP.No.10781 of 2002 dated 18 .3.1994 (R.Vinayagam and others Vs. State of Tamilnadu). In that case, the judgment in the case of Abdul Sathar Ibrahim Manik's case (AIR 1991 SC 2261) was dealt with. In those cases decided by the Division Bench of our High Court, there was no dispute that the sponsoring authority in the affidavit filed before the detaining authority had stated that the concerned detenus were in remand. It was not known as to whether the affidavits of the sponsoring authority had been supplied to the detenus concerned in those cases. It is in that background, the Division Bench had observed that in the circumstances, they did not consider the non placing of the remand order or non supply of the same to the detenus would in any way vitiate the order of detention. By considering the above cases with that of Abdul Sathar Ibrahim Manik's case, it was held in Irudhi's case that it was unable to find any verdict rendered in Abdul Sathar Ibrahim Manik's case on the question of communication of the basic fact of remand of the detenu in the case decided by it.

11. In paragraph 27 of the judgment in Irudhi's case, it was found as follows :

"We have already held, that in Abdul Sathar Ibrahim Manik's case (AIR 1991 SC 2261), the specific question involved in these two habeas corpus petitions, was not in issue and thereafter the decision of another Division Bench of this Court in WP.No.10781 of 1992, etc. dated 1 6.3.1993, stated to be found on the decision in Abdul Sathar Ibrahim Manik's case (AIR 1991 SC 2261), cannot stand in the way of our pronouncing verdicts in these two habeas corpus petitions. There will be no need to refer to a Full Bench. As a matter of fact, we are in agreement with the view of the same Division Bench taken in the earlier case (Ravi and another Vs. Government of Tamilnadu and another (1993 LW (CrI) 67)."

12. Similar observation was made in paragraph 25 of the judgment in Irudhi's case, after dealing with the decision rendered in the case of Bal Chand Bansal Vs. Union of India (AIR 1988 SC 1175). It reads as follows :

"It is apparent from these factual details that when the impugned order of detention was passed, there was material placed before the detaining authority of the pending bail application of the detenu and the fact of the detenu being in remand. In this case, Supreme Court had not considered the aspect of communication of that basic material, to the detenu, for the verdicting process related to compelling necessity. To reiterate, the factual details mentioned in the grounds, obviously must have been communicated to the detenu, and hence there was no ground urged on the question of communication. This decision cannot help the case of respondents."

13. Yet another case law in the case of Kubic Darusz Vs. Union of

India (1990 SCC CrI.227) was dealt with in Irudhi's case and at the end of paragraph 19, what was found is as follows :

"It is apparent from the observations of the Supreme Court that if the substance of remand order was available before the detaining authority and that substance stood communicated to the detenu, non placing of the remand order before the authority, cannot be hence held to have affected either the subjective satisfaction of the authority or the right of the detenu to make a detailed representation."

14. Similarly, the decision of the Supreme Court in the case of Shalini Soni Vs. Union of India (AIR 1981 SC 431) was also dealt with in Irudhi's case and what was concluded was as follows :

"Thus, there cannot be a second opinion, that apart from conclusions of fact, grounds have a factual constituent also. Therefore, communication of essential factual constituents of the grounds, would be the prime need. By their very nature, grounds are conclusions of facts and not a complete detailed recital of all the facts, and hence supply of those basic facts to the detenu, assume considerable importance under Article 22(5) of the Constitution. We are of the firm opinion, that specific conclusions, cannot be on non communicated material, for then prejudice to the detenu would be writ large."

15. Again, upon consideration of the decisions made in in the case of M.Ahamedkutty Vs. Union of India (1990 SCC (CrI) 258), in the case of Merugu Satyanarayana Vs. State of A.P. (AIR 1982 SC 1543), and in the case of Gayathri Vs. Commissioner of Police, Madras (AIR 1981 SC 1672), what was opined in paragraph 24 of Irud hi's case was as follows :

"This Court has consistently taken the view, that the affidavit of the sponsoring authority, when it is in the nature of a mere forwarding letter, there will be no need to supply a copy of that affidavit to the detenu. However, if that affidavit alone is the basic material, on which conclusions have been arrived at, in the grounds, then the affidavit of the sponsoring authority must have to be supplied, since the said document, in that event, would form the basic material on which conclusions to detain, had been arrived at."

16. Thus, after perusing the opinions found in Irudhi's case found at paragraphs 19, 24 and 25, it would go only to support the view that was later on taken by the Division Bench of our High Court in 2000 I LW (CrI) 443 (supra) and the decision in the circumstances of the present case would go only against the detenu. Even in the latter case law, due consideration was made in respect of the principles enumerated in the case of Pownammal Vs. State of Tamilnadu (1999 SCC (CrI) 2 31) and in the case of D.K.Basu Vs. State of West Bengal (1997 SCC (CrI) 92).

17. A overall reading of the entire catena of case laws would go to show that the non supply of copy of the order of extension of remand as found in this case will not vitiate the order of detention and especially when it was very specifically shown as not a matter that was relied upon by the detaining authority; and more so, when a copy of the letter of the Public

Prosecutor in respect of the remand extension was that that was relied upon and regarding which, a copy was already supplied. Therefore, the order of detention will not get vitiated.

18. Accordingly, the habeas corpus petition is dismissed confirming the order of detention.

Index : Yes

Internet : Yes

To

1.The Secretary to Government of Tamilnadu, Public (SC) Department
Fort.St.George, Chennai-9.

2.The Secretary to Union of India, Ministry of Finance, Dept.of Revenue,
New Delhi.

3.The Superintendent of Central Prison, Chennai-3.

4.The Joint Secretary, Public (Law & Order) Dept., Secretariat, Chennai-9.

5.The Public Prosecutor, High Court, Madras.

RS

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