

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2004

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THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

H.C.P.No.714 of 2004

J.Indira .. Petitioner

-vs-

1. The District Magistrate and
District Collector
Perambalur District
Perambalur.

2. The Secretary to Government of Tamil Nadu
Prohibition & Excise Department
Fort St. George
Chennai-600 009. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus to produce the detenu namely Jothi, who is detained as per the order of detention passed by the first respondent in Cr.M.P.No. 39/2004 dated 21.5.2004 and confined at Central Prison Trichy, and set him at liberty and for a further direction to call for the records relating to the above-said order and and set aside the same.

!For Petitioner : Mr.K.Manivasakam

^For respondents : Mr.Abudu Kumar Rajarathinam
Govt. Advocate (Criminal Side)

:ORDER

The wife of the detenu who has been detained as a Goonda under the Tamil Nadu Act 14 of 1982 is the petitioner in the above Habeas Corpus Petition.

2. Learned counsel for the petitioner raised the following contentions which are dealt with below.

3. Learned counsel contends that though there is no delay in the disposal of the first representation, the second representation has not been expeditiously disposed. We have seen the date particulars relating to the second representation dated 23.6.2004. The representation was received on 30.6.2004 and remarks from the Collectorate were called for on the very next day. The communication was received by the Collectorate on 5.7.2004 and on 6.7.2004, remarks were called for from the sponsoring authority. The sponsoring authority furnished the remarks on 8.7.2004 and sent by post to the Government and received by the Government on 15.7.2004. Thereafter, on consideration by the other authorities, the representation was rejected on 20.7.2004. Apart from the fact that the representation is a second representation and no fresh points have been raised, we also find that the representation has been disposed of as expeditiously as possible. Hence, we are unable to sustain the said contention.

4. Learned counsel also contends that the second representation given by him was not placed before the Advisory Board and in this context, reference is made to the judgment of the Supreme Court in K.M. ABDULLA KUNHI V. UNION OF INDIA (1991 Crl.L.J. 790). We have perused the said judgment and the facts of the said decision discloses that the representation had been sent to the Government even before the convening of the Advisory Board and it is only in those circumstances, the Supreme Court had observed that the Government should have placed the representation before the Advisory Board. In fact, in the judgment itself, it is made clear that if the representation had been received by the Government after the Advisory Board had made its report, then there would be no question of sending the representation to the Advisory Board. Therefore, we are inclined to hold that the said judgment is not applicable to the present case.

5. Learned counsel next contends that no public order is involved in the offences for which the detenu had been charged with. All the adverse cases relate to cases of theft under Section 379, I.P.C. In the ground case alone, the detenu has been charged under Sections 341, 384, 379 and 506(ii), I.P.C. We are unable to sustain the contention of the learned counsel for the petitioner. A perusal of the adverse cases disclose that the detenu has been indulging in a series of theft cases of cycles and mopeds (TVS 50) and in all eight previous cases, the trial had been completed and he has been convicted and sentenced. It is also seen that he has been operating in the specified area in and around Trichy District. It cannot be disputed that Section 379, I.P.C. falls under the category of offences as specified under Section 2(f) of the Tamil Nadu Act 14 of 1982. Therefore, the contention that an offence under Section 379, I.P.C. would not constitute disruption of public order cannot be sustained. The detenu has been committing offences in public places and the repetition of the offences has been so frequent and the very fact that he has been convicted in as many as eight cases would be sufficient proof of causing disruption to the public order. We already had an occasion to deal with a similar issue in H.C.P.No.688 of 2004 (DHANDAPANI V. COMMISSIONER OF POLICE, CHENNAI AND ANOTHER) by order dated 23.9.2004. Repeated involvement under Section 379, I.P.C. was held sufficient to invoke Act 14 of 1982.

6. Learned counsel further contends that the entire action was

vitiated due to mala fides and in this context, reference is made to paragraph 3 of the grounds of detention. The detaining authority has stated that the investigation reveals that the detenu was affiliated to the erstwhile Tamil Nadu Liberation Army, a banned association, and on 29.4.2004, one Pandithurai, appeared before the Sub Inspector of Police, Thalavai, and reported that on 15.4.2004 he went to Thalavai Village for his personal work in his TVS 50 □ TN 46 □ 2093. He had parked his two wheeler at Ramakrishna Petrol Bunk and on his return back, he found the detenu trying to commit theft of that vehicle. When he apprehended him, the detenu shouted authoritatively and threatened to kill him by brandishing a knife. The detenu is also alleged to have left the place along with the robbed vehicle. With the result, the First Information Report was altered under Sections 341, 384, 379 and 506(ii), I.P.C. According to the learned counsel, the alteration of the charges would reveal that the sponsoring authority was not acting bona fide. We are unable to accept such contention. We do not find anything wrong in the alteration of the provisions under which the detenu was charged on the basis of the facts which have come to light on subsequent investigation. The mere fact that the charges were altered or added cannot be by itself proof of mala fides.

7. The further contention of the counsel for the petitioner is that the detenu could not have been available at large to commit the offences under the ground case which is alleged to have taken place on 16.4.2004. In this context, reference is made to the eighth adverse case. The order of detention states that with reference to the eighth adverse case in Crime No.10 of 2004, the detenu was convicted and sentenced to undergo rigorous imprisonment for twelve weeks by order dated 1.4.2004. Therefore, the detenu could not have been charged of having committed any theft on 16.4.2004. We are unable to sustain the said contention also, having regard to the details given in the detention order itself. Though by order dated 1.4.2004 the detenu was sentenced to undergo rigorous imprisonment for twelve weeks in Crime No.10 of 2004, it is stated clearly that the period of remand was set off under section 428 of the Criminal Procedure Code and the accused underwent the period of punishment. In fact, a perusal of the detenu's own confession statement at page 65 of the booklet discloses that after having suffered imprisonment for twelve weeks in Crime No.10 of 2004, he had come out on bail and that on 15.4.2004, he had committed theft of the vehicle concerned TVS 50 □ TN 46 □ 2093, on 15.4.2004. Therefore, we do not find any merit in the contention raised by the counsel for the petitioner.

8. The further contention is that no intimation was given regarding the arrest of the detenu to the blood relatives of the detenu. A perusal of the records discloses that intimation was duly given to the petitioner, namely, the wife of the detenu.

With the result, as we do not find any merit in any of the contentions raised by the learned counsel for the petitioner, the H.C.P. is dismissed.

Index: Yes

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To:

1. The District Magistrate and
District Collector
Perambalur District
Perambalur.

2. The Secretary to Government of Tamil Nadu
Prohibition & Excise Department
Fort St. George
Chennai-600 009.

3. The Superintendent
Central Prison
Tiruchirapalli.
(in duplicate for communication to detenu)

4. The Joint Secretary to Government
Public (Law & Order)
Fort St. George
Chennai-9.

5. The Public Prosecutor
High Court, Madras.

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