

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-11-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE J.A.K. SAMPATH KUMAR

H.C.P.NO.742 OF 2006

Mallika
W/o. Sornavelu

.. Petitioner

Vs.

1. District Magistrate & District
Collector, Tirunelveli District.

2. The State of Tamil Nadu, rep. by
the Secretary to the Government,
Prohibition & Excise Department,
Fort St. George, Chennai 600 009.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India call for the records relating to the detention order in M.H.S. Confidential No.6/2006 dated 12.07.2006 passed by the first respondent and quash the same and direct the respondent to produce the body of the person of the detenu namely Sornavelu, S/o. Muthaiah Thevar, before this Court, now detained in the Central Prison, Palayamkottai under Tamil Nadu Act 14/1982 and set him at liberty.

For Petitioner : Mr.B. Kumar
Senior Counsel for
Mr.V. Sanjeevi

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor
- - -

J U D G M E N T

P.K. MISRA, J

The order of preventive detention dated 12.7.2006 in respect of the husband of the petitioner is under challenge in the present Habeas Corpus Petition. Such order was passed by the District

Magistrate and District Collector, Tirunelveli district on the allegation that the detenu is a "Sand Offender" as contemplated under Tamil Nadu Act 14 of 1982. The relevant portion of the order is extracted hereunder :-

"Whereas the aforesaid individual is found indulging in an activity prejudicial to the maintenance of public order, the details of which are set out in detail in the grounds of detention.

Now, therefore, in exercise of the powers conferred by Sub Section (1) of section 3 of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) read with the orders issued by the Government in G.O.(D)No.131, Prohibition and Excise (XVI) Department, dated the 18th April 2006 under sub-section (2) of section 3 of the said Act, I hereby direct that the said Thiru. Sornavelu aged 43, Son of Muthaiah thevar, Amman Koil Street, Thirumalaikolunthupuram, Palayamkottai Taluk, Tirunelveli District who is "Sand Offender" be detained at the Central Prison, Palayamkottai."

2. In the grounds of detention, it has been indicated that Crime No.204/2006 under Section 21(1)(5) of Mines and Mineral (Development and Regulation) Act, 1957 read with Rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959, Section 379 IPC and 3 & 4 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 was registered at 10.30 a.m. on 6.7.2006. Subsequently, at 12.00 hours, the police intercepted lorry TN57-2269, allegedly belonging to the detenu, loaded with sand. At 15.30 hours on the same day, the detenu was arrested and subsequently his confession statement was recorded and he was remanded to judicial custody.

3. In the Habeas Corpus Petition it has been asserted that as a matter of fact the detenu was arrested between 11.30 p.m. and 12.00 midnight of 5.7.2006, even though it is stated as if he was arrested at 3.30 p.m. on 6.7.2006. It has been specifically stated that on the early morning of 6.7.2006 itself, 26 persons, including the detenu, and 12 lorries, including the lorry allegedly belonging to the detenu, were in Armed Reserve police parade ground and the Press have taken photographs of such persons and the lorries and as a matter of fact these aspects were telecasted in various TV channels, including Sun T.V. Channel, wherein it was indicated that all such persons had been arrested in the night of 5.7.2006. Similarly in almost all the newspapers circulated in the State like Dhina Thanthi, Dhina Malar, news items was published as if those persons were arrested in the night of 5.7.2006 and the fact that they were paraded

in the morning of 6.7.2006. On the basis of the above, it was specifically asserted that the sponsoring authority had placed false materials before the detaining authority by indicating as if the detenu was arrested at 3.30 p.m. on 6.7.2006, on the basis of the so called Crime No.204/2006 under Section 21(1)(5) of Mines and Mineral (Development and Regulation) Act and by falsely projecting as if the police had intercepted the lorry at 12.00 hours (12 noon) on 6.7.2006. It is therefore contended that the order of detention is based on palpably false details furnished by the sponsoring authority.

4. The second ground of challenge is on the basis of the allegation that no material had been produced to indicate that the detenu was the owner of the lorry allegedly involved in the crime. It is also submitted that the representation sent to the respondents had not been considered properly, even though it is the requirement in law that adequate attention is to be bestowed on the representation made by the detenu.

5. Last but not the least, it is contended that the District Collector should not have exercised the power of detention by exercising jurisdiction under Section 3(1) read with 3(2) of the Act as on the date of passing the order of detention, the authority to pass the orders of detention in respect of Sand Offender had not been delegated by the State Government to the concerned District Magistrate-cum-District Collector and, therefore, the exercise of power is without jurisdiction.

6. Since the last question raised goes to the very root of the matter and is more or less based on question of law, we deem it necessary and proper to bestow our attention to the said contention first.

7. For the aforesaid purpose, a brief narration of the Legislative amendment in respect of Act 14 of 1982 is required to be undertaken. The Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 was amended by Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates (Amendment) Ordinance, 2006, which was published by the Government in the Gazette on 5.7.2006 (Subsequently, such Ordinance has been made a Statutory law). By virtue of such Ordinance, in Section 2 of the principal Act after sub-clause (iv), the following sub-clause has been inserted, namely, 2(1)(iv-A):

"(iv-A) in the case of a sand-offender, when he is engaged, or is making preparations for engaging, in any of

his activities as a sand-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order.".

Similarly, after clause (g), the following clause has been inserted as (gg):

"(gg) "sand-offender" means a person, who commits or attempts to commit or abets the commission of offences in respect of ordinary sand punishable under the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) or under the Tamil Nadu Minor Mineral Concession Rules, 1959."

In Section 3 of the principal Act, in sub-clause (1), after the expression "immoral traffic offender" the expression "or sand-offender" has been inserted. Apart from the above, other consequential amendments have been carried out. The net result of such amendment is that Section 3(1) is to be read as follows :-

"3. Power to make orders detaining certain persons.-
(1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or forest-offender or goonda or immoral traffic offender or sand offender or slum-grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained."

8. Since in the present case, the Collector has purported to exercise power under Section 3(2), which has remained unaltered, it is also necessary to extract such provision.

"3(2) If, having regard to the circumstances prevailing, or likely prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period, from time to time, by any period not exceeding three months at any one time."

9. In the background of the aforesaid Legislative changes, the contention of the petitioner is to the effect that the District Magistrate-cum-District Collector under the impugned order has purported to exercise his power under Section 3(1) of the Act 14 of 1982 read with the orders issued by the Government in G.O.(D)No.131, Prohibition and Excise (XVI)Department, dated the 18th April 2006 under sub-section (2) of Section 3. According to the learned Senior Counsel, the District Magistrate-cum-District Collector has purported to exercise a non-existent power as on the date of the impugned order, the District Magistrate-cum-District Collector was yet to be authorized to exercise power under Section 3(1) in respect of "Sand Offenders". Learned Senior Counsel for the petitioner has contended that the Ordinance came into force with effect from 5.7.2006 and the authorization relied upon by the District Collector is dated 18.4.2006 and obviously the District Collector could not have been authorized by notification dated 18.4.2006 to exercise the power under Section 3(1) in respect of "Sand Offenders" and the authorization had expressly authorized the Collector to make orders of preventive detention relating to Boot-leggers or Drug Offenders or Forest Offenders or Goondas or Immoral Traffic Offenders or Slum Grabbers or Video Pirates and not with respect of Sand Offenders. It is submitted by him that in the absence of any such notification authorizing the Collector to make orders detaining the sand offenders, such power could not have been exercised by the District Magistrate-cum-District Collector.

10. A counter affidavit has been filed on behalf of the first respondent, namely, the District Collector, on 8.11.2006. Subsequently a counter affidavit has been filed on behalf of the State Government on 13.11.2006. In such counter affidavit filed on behalf of the State it is submitted that by G.O.(D)No.131, Prohibition and Excise (XVI)Department dated 18.4.2006 powers have been delegated to the Collector of Tirunelveli under sub-section (2) of Section 3 of Act 14 of 1982. In the counter affidavit filed by the District Collector, similar reference has been made to G.O.(D)No.131, Prohibition and Excise (XVI)Department dated 18.4.2006 and it has been stated that powers vested by G.O.(D)No.131, Prohibition and Excise (XVI)Department dated 18.4.2006 are sufficient to detain a person under the provisions of Act 14 of 1982.

11. During the course of hearing of the present Habeas Corpus petition, learned counsel appearing for the respondents has produced before us the G.O.(D)No.131, Prohibition and Excise (XVI) Department. The very preamble of such G.O. itself indicates that the Collector had invited the attention of the Government to the necessity for issuing necessary notification authorizing the Collector to exercise power of issuing orders detaining Boot-leggers,

Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates. Obviously, at that stage, he could not have sought for authorization to pass any order in respect of a sand offender because no such provision was existing at that stage. On the basis of such request, the Government had passed the G.O. authorizing such District Magistrate-cum-District Collector to pass orders of detention in respect of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates and obviously at that stage also there was no question of authorising the Collector to pass any order of detention relating to the so called sand offenders because the statute was yet to be amended.

12. Learned counsel appearing for the State has submitted that the purport of the G.O.(D)No.131, Prohibition and Excise (XVI) Department dated 18.4.2006 is to authorise the District Magistrate-cum-District Collector to exercise power under Section 3(1) and since the provisions contained in Section 3(1) had been amended on 5.7.2006 to include Sand Offender, it cannot be said that the District Magistrate has acted beyond his statutory powers.

13. We do not think such a contention on the part of the counsel for the State can be countenanced. The delegation of authority as contemplated in Section 3(2) is to be done having regard to the circumstances prevailing in any area within the limits of the District Magistrate or likely to prevail in any area within such limits. When the order of delegation specifically authorises a District Magistrate to pass any order detaining persons with regard to boot-leggers, drug offenders, forest offenders, goondas, immoral traffic offenders, slum grabbers and video pirates, it cannot be envisaged that the District Magistrate is also authorised to pass any order of detention in respect of any other person. Such submission is therefore without any substance.

14. It is also submitted by the counsel appearing for the State that under Section 3(3) any order made by an officer as contemplated under Section 3(2) is required to be reported to the State Government together with the grounds and other particulars and no such order made by the delegated officer remains in force for more than 12 days, unless in the meantime such order has been approved by the State Government. It is therefore contended that since the order has been approved by the State Government, even assuming that the District Magistrate did not have the authority to pass the order of detention, since such order has been approved by the State Government, the ultimate order passed by the State Government should prevail and the detention need not be quashed.

15. Even though such a submission may appear attractive on the face of it, on a deeper scrutiny, such a submission cannot be accepted. If an authority passes an order without jurisdiction, such order can be considered to be null and void and merely because such order has been subsequently approved by a superior authority (such as appellate authority or likewise), the initial order cannot become valid. In other words, a void order can never become valid merely because it is subsequently approved by some superior authority. For the aforesaid purpose, reference can be made to the decision of the Supreme Court reported in AIR 1976 SC 1899 (BARADAKANTA MISHRA v. HIGH COURT OF ORISSA AND ANOTHER), wherein it was observed :-

"25. ... If the order of the initial authority is void an order of the appellate authority cannot make it valid. The order of the Governor used the word "confirm". The appellant filed appeals to the Government. The appeals were dismissed. The confirmation by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void."

The aforesaid principle would apply with much more vigour in the case of order of preventive detention as such order of detention is to be passed in accordance with Article 22 of the Constitution of India and the provisions contained in the statute, which are required to be construed strictly since the liberty of a citizen is in peril.

16. In the above view of the matter, since the District Magistrate had no jurisdiction to pass any order of detention in respect of a sand offender under Section 3(1) of the Act, the order of detention is liable to be quashed.

17. In view of the above conclusion, it is not necessary to deal with other contentions raised by the petitioner, even though prima facie it appears that the detenu as well as several other persons were actually taken into custody in the night of 5/6.7.2006 rather than at 3.30 p.m. on 6.7.2006.

18. It may also be noticed in this connection that even though specific and pointed averments have been made in the affidavit on behalf of the petitioner in paragraph 5, in the counter affidavit filed on behalf of the District Magistrate there has been no specific denial whatsoever and it has been merely stated as follows :-

"4. As regards the averments made in para 5 to 8 of the affidavit, it is submitted that the petitioner may be put to strict proof of the averments putforth in these paragraphs, the facts referred to in this paragraph are not at all materials considered by the Detaining Authority at the time of passing detention order."

19. The fact that vague denial has been made itself prima facie indicates that the averments are true. At any rate, various newspaper reports which have been produced before us clearly support the averments made by the petitioner. Be that as it may, since the order of preventive detention has been found to be void, it is not necessary to consider as to whether the above aspect has the effect of vitiating the order of detention. Similarly the other point raised by the petitioner also need not be decided.

20. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the order of detention is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to the Government,
Prohibition & Excise Department,
Fort St. George, Chennai 600 009.
2. The District Magistrate & District
Collector, Tirunelveli District.
3. The Superintendent of Central Prison,
Central Prison, Palayamkottai
4. The Joint Secretary to Government,
Public (Law and Order)
Fort St. George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.V.Sanjeevi, Advocate, SR.59001

ssv (co)

dv/14.12.06

JUDGMENT IN HCP.NO.742/2006