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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1317 of 2015

RajaLakshmi

.. Petitioner

Vs.

1.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

2.The State rep. by
the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The Inspector of Police,
K.K.Nagar Crime Police Station,
Trichy.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records pertaining to the impugned detention order passed by the first respondent in his proceedings in C.No.34/Detention/CPO/TC/2015 dated 27.08.2015 and quash the same and direct the respondents to produce the detenu namely Sakthivel S/o.Kannan, aged about 23 years, who is now detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.T.Senthilkumar

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor.

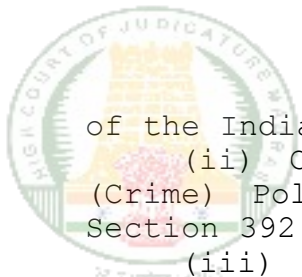
O R D E R

[Order of the Court was made by P.R.SHIVAKUMAR, J.]

The petitioner is the sister of the detenu. The detenu has been detained by the first respondent by his order in C.No.34/Detention/CPO/TC/2015, dated 27.08.2015, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.505 of 2015 registered on the file of K.K.Nagar (Crime) Police Station for offences punishable under Sections 392 r/w 397 of the Indian Penal Code and the following three adverse

<https://hcservices.ecourts.gov.in/hcscservices/cases>

(i) Crime No.629 of 2015 registered on the file of Cantonment (Crime) Police Station, Trichy City, for an offence punishable under Section 392



of the Indian Penal Code;

(ii) Crime No.630 of 2015 registered on the file of Cantonment (Crime) Police Station, Trichy City, for an offence punishable under Section 392 of the Indian Penal Code; and

(iii) Crime No.504 of 2015 registered on the file of Cantonment (Crime) Police Station, Trichy City, for an offence punishable under Section 392 of the Indian Penal Code.

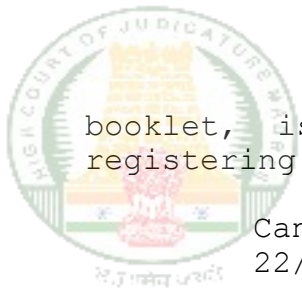
2.The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case as well as in the adverse cases, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3.The order of detention is sought to be assailed on several grounds listed in the affidavit filed in support of the Habeas Corpus Petition. However, the learned counsel for the petitioner mainly relies on the following contention:

"The detaining authority took notice of three adverse cases, besides the ground case, to arrive at a conclusion that the detenu is a "Goonda" as described under Section 2(f) of the Act 14 of 1982. While referring to the first adverse case viz., a case registered as Crime No.629 of 2015 on the file of Tiruchirappalli Cantonment (Crime) Police Station, the penal provision under which the case came to be registered was noted by the detaining authority as Section 392 IPC. Though the copy of the First Information Report available at page Nos.1 and 2 of the booklet refers to the said penal provision under which the act alleged was made punishable in respect of the first adverse case, the copy of the complaint, based on which the said First Information Report was drawn, which is available at Page No.3 of the booklet, contains an endorsement regarding the registration of the case to the effect that a case was registered in the above said crime number for an offence under Section 379 IPC. There is also absence of alteration report. When the endorsement made on the complaint is in conflict with the particulars noted in the printed First Information Report, the detaining authority ought to have taken note of the same and called for clarification. The failure on the part of the detaining authority to call for such a clarification regarding the said discrepancy will show non-application of mind on the part of the detaining authority and the subjective satisfaction regarding the necessity to clamp an order of detention shall be termed as mechanical without application of mind.

4.The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

5.As rightly contended by the learned counsel for the petitioner, the first adverse case in Crime No.629 of 2015 is said to have been registered on the file of Tiruchirappalli Cantonment (Crime) Police Station for an offence under Section 392 IPC in the grounds of detention. At Page Nos.1 and 2 of the booklet, a copy of the First Information Report in the first adverse case is found. The recitals found therein at <https://hcservices.ecourts.gov.in/hcservices/> are to the effect that the case was originally registered on 22.07.2015 at 17.00 hours for an offence under Section 392 IPC. However, the original complaint, a copy of which is available at page No.3 of the



booklet, is found with an endorsement made by the Police Officer registering the case to the following effect:

"Received the complaint and registered a case in Cantonment Crime P.S. Crime No.629/2015 U/s.379 IPC on 22/7/15 at 17.00 hrs."

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6.As rightly contended by the learned counsel for the petitioner, the said discrepancy was not noticed by the detaining authority. Had the detaining authority noticed the said discrepancy, the detaining authority would have invited a clarification from the sponsoring authority. As no such clarification was sought, as rightly contended by the learned counsel for the petitioner, there was non-application of mind on the part of the detaining authority and the order came to be clamped mechanically without any application of mind. On that score alone, the order of detention is liable to be set aside.

7.In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 27.08.2015, made in C.No.34/Detention/CPO/TC/2015, by the first respondent, the Commissioner of Police, Tiruchirappalli City, Tiruchirappalli and directs the release of the detenu, by name Sakthivel S/o.Kannan, aged about 23 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Secretary to Government,Home, Prohibition and Excise Department, Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,Tiruchirappalli City,Tiruchirappalli.
- 3.The Superintendent, Central Prison, Tiruchirappalli. (In duplicate for communication to detenu)
- 4 The Joint Secretary to Government Public (Law and Order)Department, Fort St.George, Chennai.
- 5.The Inspector of Police,K.K.Nagar Crime Police Station,Trichy.
- 6.The Additional Public Prosecutor,Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN
H.C.P (MD) No.1317 of 2015
04.12.2015

AM/22.01.2016/PM.MP/3P/8C