

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1672 of 2017

M.Kirubapuri ... Petitioner/Brother of the
detenu

-vs-

- 1.The State of Tamil Nadu
rep. by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai - 600 007. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to produce the body of the detenu by name Ravichandran @ Ravendran, aged 42 years, S/o Manickam presently confined at Central Prison, Puzhal, before this Court and set him at liberty forthwith after calling for the records pertaining to the detention order dated 30.08.2017 made in No.552/BCDFGISSSV/2017 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.C.Munusamy
For Respondents: Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by RAJIV SHAKDHER, J.]

1. The petition seeks to challenge the Detention Order dated 30.08.2017. The allegation against the detenu is that he repeatedly indulged in cheating and forgery with respect to register pertaining land documents, Passport, Ration Card,

Election Commission Identity Card, etc.

2. It is the case of the Detaining Authority that, based on such like forged documents the detainee has possibly taken possession of immovable properties and then gone on to offer them for sale. A perusal of the impugned order would show that two adverse cases are noted as against the detainee. These being Cr.No.290 of 2009 and Cr.No.291 of 2009. In both cases the detainee has been accused of having committed offences u/s 419, 420, 465, 467, 468 r/w 471 & 120(B) I.P.C.

3. Insofar as the subject case is concerned, the same pertains, as indicated above, to cheating and forgery etc. This case has been registered as Cr.No.357 of 2009. Insofar as the Cr.No.357 of 2009 is concerned, the detainee is accused of having committed offences under Section 420, 465, 467, 468, 471 r/w 34 I.P.C. The detaining authority notes that in Cr.No.357 of 2009, the detainee had moved a bail application (Crl.M.P.No.140 of 2017) which was dismissed on 28.08.2017.

4. The impugned order further goes on to note that, another bail application was moved, being Crl.M.P.No.146 of 2017, which even, according to the detaining authority is pending adjudication. The detaining authority, it appears, has entertained an apprehension that the detainee may get released, in view of bail having been granted in case in Cr.No.357 of 2012 by the concerned court to another accused.

5. According to us, the State, in this case has clearly has misused its powers by taking recourse to powers conferred on it under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

6. Not only the adverse cases, but also the subject case, based on which powers have been exercised under the provisions of Tamil Nadu Act 14 of 1982, pertain mostly to offence of cheating and forgery. Even as per the detaining authority the alleged forcible possession of land taken by the detainee is based on forged documents.

6.1. Given these circumstances, we are unable to appreciate as to how the detainee's infraction of law could be construed as being prejudicial to the maintenance of public order. Furthermore, even if we were to accept the allegation that the detainee was involved in cheating and forgery, which led to him taking forcible possession of immovable, he could not in our view be categorised as a "Land Grabber". Pertinently, this is not even the case set up by the detaining authority.

7. What is even more disconcerting is the fact that the subject case, based on which powers of detention were exercised, is a case pertaining to 2009.

7.1. The detainee was arrested on 16.8.2017, albeit, after nearly eight (8) years. We have queried the learned Additional Public Prosecutor in this behalf. The learned Additional Public Prosecutor has submitted that the detention order could be passed only in August 2017, since the detainee was absconding. This submission only amplifies the point that the detainee could not have presented any threat to public order.

8. Given the aforesaid circumstances, we are, clearly, of the view that the State ought not to have exercised powers under the provisions of the Tamil Nadu Act 14 of 1982 in a case of this nature. Accordingly, we are inclined to quash the detention order.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.522/BCDFGISSV/2017, dated 30.08.2017, passed by the 2nd respondent is set aside. The detainee, namely, Thiru. Ravichandran @ Ravindran, male, aged about 42 years, is directed to be released forthwith unless his detention is required in connection with any other case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

10. The order passed by us today will be circulated by the learned Additional Public Prosecutor to the concerned authorities, so that, in future, no recourse is taken to such powers, unless the case, falls within the ambit of Tamil Nadu Act 14 of 1982.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

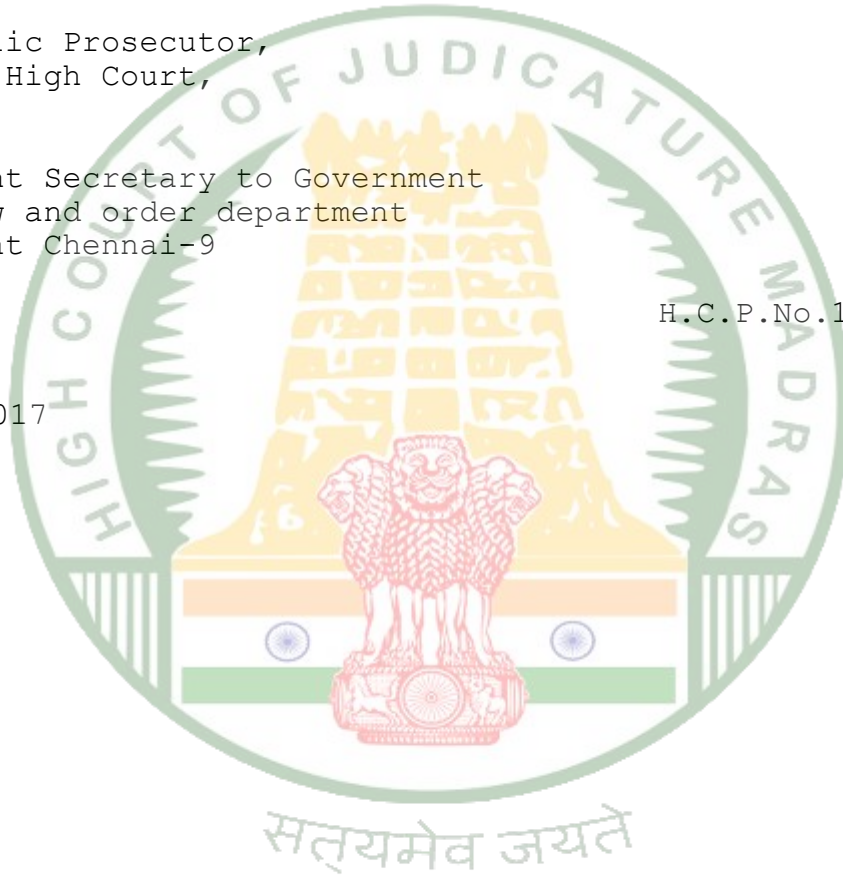
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To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
The Commissioner Office, Vepery, Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai-600 066.
- 4.The Public Prosecutor,
Madras High Court,
Madras.
- 5.The Joint Secretary to Government
Public Law and order department
Secretariat Chennai-9

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