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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.01.2017
PRONOUNCED ON : 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
H.C.P.(MD)No.975 of 2016

M.Kalaiselvi

...Petitioner

Vs.

1.The Principal Secretary to Government,
Department of Home Excise and Prohibition (xiv),
Secretariat, Fort St. George,
Chennai.

2.The District Collector and District Magistrate,
Tirunelveli.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

.. Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the respondent No.2, vide his proceedings bearing MHS.Confdl.No.35/2016, dated 22.03.2016 under the Tamil Nadu Act 14 of 1982, quash the same and set at liberty of petitioner's husband Mr.Mariappan @ Kaduvetti, presently detained in Central Prison, Palayamkottai.

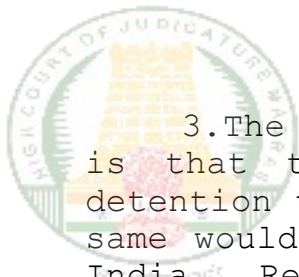
For Petitioner : Mr.S.Siva Ilayaraja
For Respondents : Mr.R.Rajarathinam,
State Public Prosecutor,
assisted by Mr.C.Mayilvahan Rajendran,
Additional Public Prosecutor

ORDER

(Order of the Court was made by R.SUBBIAH, J.)

The petitioner is the wife of the detenu, by name Mr.Mariappan @ Kaduvetti, aged about 32 years. The detenu has been detained, as per the order of the second respondent, dated 22.03.2016, under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned State Public Prosecutor appearing for the respondents. We have also perused the records carefully.



3. The main submission of the learned counsel for the petitioner is that the Government cannot direct or extend the period of detention upto the period of 12 months in one single stroke and the same would be violative of Article 22(4)(a) of the Constitution of India. Relying on the provision of Section 3(2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (hereinafter referred to as "the Act"), the learned counsel for the petitioner would further submit that the said proviso mandates the State Government to pass an order of detention at any one time not exceeding three months and hence, the detention order would be valid only for a period not exceeding three months and thereafter, it must be extended periodically, but, in the present case, the State Government, without making such periodical extension, at a single stroke has passed the order of detention upto 12 months and therefore, the detention order is liable to be quashed. In support of his contention, the learned counsel relied upon the decision of the Hon'ble Supreme Court in Cherukuri Mani Vs. the Chief Secretary to Government of Andhra Pradesh and others, reported in (2016) 2 SCC (Cri) 345, wherein the Hon'ble Supreme Court in paragraph No.12 has held as follows;

"12. Proviso to sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard."

4. Countering the above submissions made by the learned counsel for the petitioner, the learned State Public Prosecutor appearing for the respondents submitted that Section 3 of the Act deals only with the powers to make an order of detention and under Section 13 of the Act, the State Government is empowered to pass the detention order to a maximum period of 12 months at a single stretch and hence, there is no need to extend the detention order once in three months. Thus, he prayed for dismissal of the habeas corpus petition.

5. Keeping the submissions made on either side in mind, we have carefully gone through the entire materials available on record. Before considering the rival contentions, this Court is of the view that it would be appropriate to look into the provision of Section 3 of the Act, which reads as follows;



"3. Power to make orders detaining certain persons.-

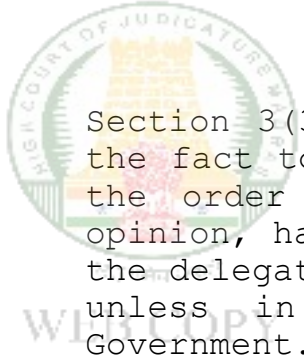
(1) The State Government may, if satisfied with respect to any bootleggers or cyber law offenders or drug-offender or forest-offender or goonda or immoral traffic offender, sand-offender, sexual offenders, slum-grabber or video pirates that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, or 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.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

6. A reading of the above provision makes it clear that Section 3(1) of the Act confers power on the State Government to detain a bootlegger or drug offender, or forest offender or goonda or an offender in immoral traffic or a slum grabber with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and Section 3(2) of the Act empowers the State Government to delegate the power as conferred on it under Sub Section (1) to a District Magistrate or a Commissioner of Police, based on the prevailing circumstances, however, such delegation shall not be made for a period more than three months. If the State Government is satisfied that it is necessary to extend the period of delegation, it may amend its order and extend the period from time to time by any period not exceeding three months at any one time.



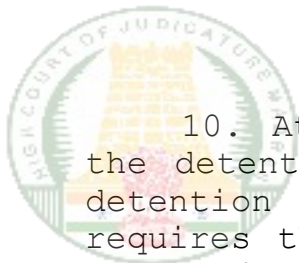
Section 3(3) of the Act requires the delegated authority to report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter forthwith. The order passed by the delegated authority shall not be in force for more than 12 days, unless in the meantime, it has been approved by the State Government.

7. In view of the above clear position, the contention of the learned counsel for the petitioner, by relying upon Section 3(2) of the Act that the detention order passed by the State Government would be valid only for a period not exceeding three months and the same should be extended periodically, is liable to be rejected, as sub-section (2) of Section 3 relates only to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. In fact, in the present case, as mandated in Section 3(2) of the Act, the State Government has extended the power of the delegated authority, periodically, by issuing G.O.(D).No.15, Home Prohibition and Excise (XVI) Department, dated 18.01.2016; G.O.(D).No.76, Home Prohibition and Excise (XVI) Department, dated 18.04.2016; G.O.(D).No.137, Home Prohibition and Excise (XVI) Department, dated 18.07.2016; and G.O.(D).No.196, Home Prohibition and Excise (XVI) Department, dated 18.10.2016. Thus, the power of the detaining authority at the time of passing the order of detention cannot be doubted.

8. So far as the contention of the petitioner that the State Government has no power to order or extend the period of detention upto the period of 12 months in one single stroke is concerned, this Court is of the view that it would be appropriate to look into the provision of Section 13 of the Act which reads as follows;

"13. Maximum period of detention.- The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under Section 12, shall be twelve months from the date of detention."

9. A bare perusal of the above provision makes it clear that the State Government can pass an order of detention or extend the detention order of a person for a maximum period of twelve months from the date of detention. Further, the State Government can revoke the detention order at any time, it may think proper. The Act does not say that the detention order of the State Government will be in force only for certain period and thereafter, it should / may periodically be extended upto the period of one year, as mandated under sub-Section (2) of Section 3 of the Act with regard to extension of delegation of power. However, sub-section (3) of Section 3 of the Act says that the detention order of the delegated authority will be valid only for 12 days and in the meantime, if the State Government approves that detention order, it will be in force.



10. At this juncture, a question may arise upto which period the detention order will be in force, after the forwarding of the detention order by the delegated authority?. The Act nowhere requires the detaining authority to specify the period for which a detenu is required to be detained. When conflicting decisions came with regard to the validity of the detention order on its failure to specify the period of detention, the three Judges Bench of the Hon'ble Supreme Court in T.Devaki Vs. Government of Tamil Nadu others, reported in (1990) 2 SCC 456, has categorically laid down that since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification and that in such cases, the detention is taken to be for the maximum prescribed period.

11. When the Act itself confers power on the State Government to pass or extend the period of detention upto the period of one year from the date of detention, without any obligation for periodical extension, as mandated under Section 3(2) of the Act for extension of delegation of power, it is clear that the State Government can pass or extend the order of detention, at a single stroke, upto the maximum period of one year from the date of detention, after following the due procedure mandated in the Act itself. At the same time, the State Government has also been empowered to revoke the detention order, at any time, it may think proper. In other words, it can be stated that before completion of the detention period, if the State Government thinks fit, it can revoke the detention order, at any time.

12. The learned counsel for the petitioner submitted that detention of a person upto the period of 12 months, without there being any periodical extension of three months, would be violative of Article 22(4) (a) of the Constitution of India.

13. Article 22(4) (a) of the Constitution of India reads as follows;

"22(4) No law providing for prevention detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed, as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7);
or



(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)."

14. A close reading of the said Article would reveal that the same authorises the Government to pass an order of preventive detention for a longer period than three months, provided the Government satisfies that there is sufficient cause for such detention based on the report of the Advisory Board. Here, in this case, the detention order was passed on 22.03.2016 and based on the report of the Advisory Board, the State Government has extended the detention order of the detenu upto a period of one year, vide G.O.Ms.No.2659, Home Prohibition and Excise (XIV) Department, dated 19.06.2016. That means, as mandated under the Act and also under Article 22(4)(a) of the Constitution of India, within a period of three months, the Government has passed / extended the detention order. Therefore, the contentions raised by the learned counsel for the petitioner assailing the order of detention do not merit acceptance and are liable to be rejected. The petitioner has not assigned any other valid reason / ground warranting interference with the order of detention. Thus, the detention order requires only approval at the hands of this Court.

15. In the result, this Habeas Corpus Petition fails and is liable to be dismissed and accordingly dismissed.

Sd/

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Principal Secretary to Government,
Department of Home Excise and Prohibition (xiv),
Secretariat, Fort St. George, Chennai.
 - 2.The District Collector and District Magistrate,Tirunelveli.
 - 3.The Superintendent,Central Prison,Palayamkottai,
Tirunelveli District.
 - 4 The Joint Secretary to Government,
Public (Law and Order) Department, Fort St. George,chennai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.
- +1CC to M/S.S.Siva Ilayaraja, Advocate, SR.No. 3845

Order made in
H.C.P. (MD) No.975 of 2016
Dated: 24.01.2017