



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2018

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

HCP [MD].No.1493 of 2017

S.Bhuvaneshwari : Petitioner

Vs.

1.State of Tamil Nadu, rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector and District Magistrate,
Collectorate Office,
O/o.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.

3.The Superintendent,
Central Prison, Tiruchirappalli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, To calling for the entire records in detention order passed in P.D.No.30/2017, dated 04.10.2017, on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner husband, namely, Sankar alias Sankar Ganesh, S/o. Balakrishnan, male, aged 31 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.VIMALA, J]

The petitioner is the wife of the detenu viz., Sankar alias Sankar Ganesh, S/o.Balakrishnan, aged 31 years. The detenu has been detained, as per the order of the second respondent, dated 04.10.2017, under Section 2(b) of the Tamil Nadu Act 14 of 1982, branding him as "Boot Legger". 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 Additional Public Prosecutor for the respondents. We have also perused the records carefully.

3.Though a number of grounds have been raised in the affidavit filed in support of the petition to assail the Order of Detention, the learned counsel for the petitioner mainly relies on the contention that the Detaining Authority, who received a representation dated 06.10.2017 from the petitioner, who is none other than the wife of the detenu, without referring the same to the Government, chose to pass an order of rejection rejecting the said representation on 13.11.2017, namely, after the Detention Order was approved by the Government and that the said rejection order should be viewed as one passed by an authority which had become functus officio.

4.We have considered the above submissions and heard the learned Additional Public Prosecutor on the submission made by the learned counsel for the petitioner.

5.Admittedly, the order of rejection dated 13.11.2017 was passed by the Detaining Authority and the Detention Order was approved by the Government on 15.10.2017. As such, there is substance in the contention of the learned counsel for the petitioner that the rejection order dated 13.11.2017 came to be passed by the Detaining Authority, who had then become functus officio. In this regard, the learned counsel for the petitioner drew our attention to the order of a Division Bench of this Court dated 27.02.2013 in H.C.P.(MD)No.96 of 2013 (Indira vs. The Additional Secretary, Government of India and others) and another order of a Division Bench of this Court in H.C.P.(MD)No.488 of 2008 [Ravinthiran @ John Ravinthiran vs. State of Tamil Nadu] reported in 2009(1) MLJ (Cr1) 721].

6.The relevant passages in the above said judgment in Ravinthiran's case relied on by the learned counsel for the petitioner are extracted hereunder:

"5. Section 3(3) of the Tamil Nadu Act 14 of 1982 reads as follows:

"(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."

No doubt, as prescribed above, the Detaining



Authority has rightly forwarded the file for approval to the Government within 12 days and it was approved on 15.4.2008. But, it is seen that the Detaining Authority, after approval of the detention on 15.4.2008, failed to forward the representation to the Government but proceeds to dispose of the same on 24.4.2008, which exercise is totally unwarranted on his part. In such a situation, the Detaining Authority has no power to deal with or pass orders on the representation. It is useful to extract here the observation of the Division Bench in the case as *Rajeswari v. Secretary to Government, Prohibition and Excise Department and Another (supra)*.

"5.....

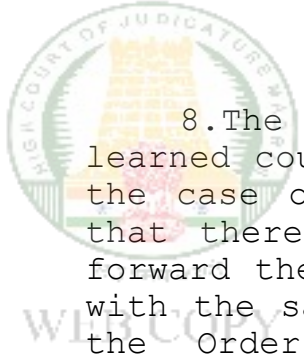
It is true that the Government approved the detention order on 18.11.2005. In such circumstances, having received the representation on 21.11.2005 by the District Collector, it is but proper on his part to forward the same to the Government, since after approval of the detention order by the Government, he has no power to pass an order on the representation....."

Likewise, in *Puranlal Lathanlal v. Union of India* (1958) Crl.LJ 283, it was held thus:

"the detaining authority is obliged to forward all the subsequent materials having a bearing on the matter to the Government and to the Board and that otherwise the action of the detaining authority in withholding of subsequent information tending to falsify or belie the earlier materials on which the detention order was passed, would stand unchallenged and there is a danger of withholding all materials on the matter in issue in order to sustain the order of detention, which would definitely lead to a situation where the personal right and liberty of a person would be at stake at the hands of the Executive and the safeguard provided by the Constitution for the protection thereof would be impaired."

6. Thus, when the Detaining Authority, exceeding his powers, has erroneously taken up the exercise of dealing with the representation and further, when such representation was not considered by the Government, we are of the considered view that the detenu is greatly prejudiced and his valuable right is taken away; as a result, the ultimate order of detention is vitiated."

7. A perusal of the detention order would go to show that the Detaining Authority himself considered the representation and passed the order of rejection on 13.11.2017, after the Detention Order came to be approved by the Government on 15.10.2017 itself.



8.The above said ratio found in the judgment relied on by the learned counsel for the petitioner squarely applies to the facts of the case on hand. Relying on the same, this Court, hereby, holds that there is failure on the part of the Detaining Authority to forward the representation to the Government and his option to deal with the same and reject the same, that too, after the approval of the Order of the Detention by the Government, is without jurisdiction and hence, on the said ground alone, the Order of Detention is liable to be set aside.

9.In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in P.D.No.30/2017, dated 04.10.2017, is quashed. The detenu, namely Sankar alias Sankar Ganesh, S/o. Balakrishnan, aged 31 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.
- 3.The District Collector and District Magistrate,
Collectorate Office,
O/o.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 4.The Superintendent,
Central Prison,
Tiruchirappalli.(In duplicate for communication to the detenu)
- 5.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
HCP [MD].No.1493 of 2017
01.02.2018