STATE OF TAMIL NADU AND ANR. A

v.

R. SASIKUMAR

(Criminal Appeal No. 465 of 2001)

JULY 9, 2008 B

[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB ALAM, JJ.]

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982; S.3(1): C

Order of detention – Challenge to, on ground of non-consideration of representation by Commissioner of Police – Allowed by High Court – Correctness of – Held: High Court order proceeds on presumption – Merely because two of the addressees received the representation, it cannot be presumed that Director General of Police also received it – Representation to Advisory Board could be made only after order of detention had been passed and served on detenu and not before as claimed by the mother of detenu – Hence, High Court committed an error in quashing order of detention. D E

Respondent was allegedly detained under s.3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982. Mother of the detenu challenged the order on the ground that before passing of the order of detention by the authorities, a representation had been filed by her and a copy thereof was marked to the Director General of Police and other authorities which was not considered by he detaining authority. The High Court allowed the petion quashing the order of the detention. Hence, the resent appeal. F G

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A Appellant-State contended that there was no question of any representation even before the order of detention was passed and there was no question of sending it to the Advisory Board.

Partly allowing the appeal, the Court

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HELD: 1.1 The High Court's order proceeds on presumption. Merely because two of the addressees had received the representations that in no way shows that the Director General of Police had received the representation. [Para 4] [602-G]

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Sri Anand Hanumathsa Katar v. Additional District Magistrate and Ors. 2006 (10) SCC 725 – relied on.

1.2 The question of making a representation to the Advisory Board arises only after the order of detention had been passed and served on the detenu. The High Court therefore, was clearly in error in quashing the order of detention. [Para 5] [607-F,G]

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1.3 Several incidents have been referred to in the order of detention and the last of such instances was of 22.6.1999. The detention order was passed on 9.7.1999 and, therefore, it cannot be said to be relatable to stale incidents. The impugned order of the High Court is therefore quashed. Since the impugned order of the High Court was passed more than 8 years back, considering the nature of the order of detention which is essentially preventive in character, it is appropriate for the State Government and the detaining authority to consider whether there is any need to take the detenu back to detention for serving the remainder of the period of detention which was indicated in the order of detention. However, this Court express no opinion on that aspect. [608-A,B,C]

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State of T.N. and Anchter v. Alagar 2006 (7) SCC 540 relied on.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 465 of 2001 A

From the final Order dated 24.3.2000 of the High Court of Judicature at Madras in Habeas Corpus Petition No. 1262 of 1999

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R. Sundaravaradan, V.G. Pragasam, S.J. Aristotle and Prabu Ramasubramanian for the Appellants.

K.K. Mani (A.C.) C.K.R. Lenin Sekar and Mayur R. Shah for the Respondents.

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The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court allowing the Habeas Corpus Petition filed by the respondent questioning the order of detention i.e. Detention Order 519/BDFGIS/ D 99 dated 9.7.1999 passed by the Commissioner of Police, Chennai.

2. Background facts in a nutshell are as follows:

The respondent (hereinafter referred to as the 'detenu') E was detained under sub-section (1) of Section 3 of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short the 'Act'). The only point urged before the High Court was that an order of detention was F passed on 9.7.1999 and on 6.7.1999 the mother of the detenu had sent a representation to the Chief Minister of Tamil Nadu. A copy of the representation was marked to the Director General of Police, Chennai, the Advisory Board under the Act as well as the Chief Justice of the High Court. It was, therefore, submitted G that there was evidence of dispatch of the representation and since it was not considered by the detaining authority the order of detention was bad.

The stand of the detaining authority was that the representation was not sent to the detaining authority and, therefore, there H

A was no question of considering the same before passing the order of detention.

The High Court found that since two of the authorities had received the representation it must be presumed that the Director General of Police would have received the represen-
B tation in the usual course. A presumption was drawn that the Director General of Police had been served the representation and accordingly it was held that the Director General of Police must have received the representation and since that was not taken note of, there was violation of Article 22(5) of the Consti-
C tution of India, 1950 (in short the 'Constitution'). Accordingly, the order of detention was quashed.

The State of Tamil Nadu and the detaining authority have challenged the correctness of the order of the High Court. No-
D tice was issued by this Court on 4.9.2000. When the matter was taken up subsequently on 11.12.2000, it was noted that the detenu was not represented and there was no appearance on behalf of the detenu, though he was served. The Bench also noted that the period of detention was also over and the detenu had been released. The Court further noted that it would be
E proper to appoint Mr. K.K. Mani, Advocate as Amicus Curiae.

3. Learned counsel for the appellants submitted that the approach of the High Court is clearly wrong. There was no question of any representation even before the order of detention
F was passed and there was no question of sending it to the Advisory Board.

4. Learned Amicus Curiae submitted that since the representations sent to the Chief Minister and the Advisory Board amongst others had been received, the High Court found that
G the Director General of Police is presumed to have received the notice. Therefore, impugned order cannot be faulted. We find that the High Court's order proceeds on presumption. Merely because two of the addressees had received the representations that in no way shows that the Director General of Police
H had received the representation. Additionally, as rightly submit-

ted by learned counsel for the appellant-State, before the order of detention was passed there is no question of sending a representation to the Advisory Board. This appears to be clever use to create evidence to contend non-application of mind. This is a classic case, (such cases are increasing by leaps and bounds) where red-hearings are intentionally drawn to deflect the course of justice. In *Sri Anand Hanumathsa Katar v. Additional District Magistrate and Ors.* (2006 (10) SCC 725) it was observed by this Court as follows:

> "11. At this juncture it would be relevant to take note of paras 17 to 19 of Union of India v. Paul Manickam (2003 (8) SCC 342) They read as follows: (SCC pp. 354-55)
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> > "*17.* Coming to the question whether the representation to the President of India meets with the requirement of law, it has to be noted that in *Raghavendra Singh* v. *Supdt., District Jail, Kanpur (1986 (1) SCC 650)* and *Rumana Begum* v. *State of A.P. (1993 Supp. (2) SCC 341)* it was held that a representation to the President of India or the Governor, as the case may be, would amount to representation to the Central Government and the State Government respectively. Therefore, the representation made to the President of India or the Governor would amount to representation to the Central Government and the State Government. But this cannot be allowed to create a smokescreen by an unscrupulous detenu to take the authorities by surprise, acting surreptitiously or with ulterior motives. In the present case, the order (grounds) of detention specifically indicated the authority to whom the representation was to be made. Such indication is also a part of the move to facilitate an expeditious consideration of the representations actually made.
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> > *18.* The respondent does not appear to have come

with clean hands to the court. In the writ petition there was no mention that the representation was made to the President; instead it was specifically stated in paragraph 23 that the representation was made by registered post to the first respondent on 11-5-2000 and a similar representation was made to the second respondent. Before the High Court in the writ petition the first and the second respondents were described as follows:

'*1*. State of Tamil Nadu,

rep. by its Secretary,

Government of Tamil Nadu,

Public (SC) Department,

Fort St. George,

Chennai, 600 009.

2. Union of India,

rep. by its Secretary,

Ministry of Finance,

Department of Revenue,

New Delhi.'

19. As noted supra, for the first time in the review application it was disclosed that the representation was made to the President of India and no representation was made to the State of Tamil Nadu or the Union of India who were arrayed in the writ petition as parties. This appears to be a deliberate attempt to create confusion and reap an undeserved benefit by adopting such dubious device. The High Court also transgressed its jurisdiction in entertaining the review petition with an entirely new substratum of issues. Considering the limited scope for review, the

High Court ought not to have taken into account factual aspects which were not disclosed or were concealed in the writ petition. While dealing with a habeas corpus application undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings the court has to take serious note of unclean approach. Whenever a representation is made to the President and the Governor instead of the indicated authorities, it is but natural that the representation should indicate as to why the representation was made to the President or the Governor and not the indicated authorities. It should also be clearly indicated as to whom the representation has been made specifically, and not in the manner done in the case at hand. The President as well as the Governor, no doubt are constitutional Heads of the respective Governments but the day-to-day administration at respective levels is carried on by the Heads of the Departments/Ministries concerned and designated officers who alone are ultimately responsible and accountable for the action taken or to be taken in a given case. If really the citizen concerned genuinely and honestly felt or was interested in getting an expeditious consideration or disposal of his grievance, he would and should honestly approach the real authorities concerned and would not adopt any dubious devices with the sole aim of deliberately creating a situation for delay in consideration and cry for relief on his own manipulated ground, by directing his representation to an authority which is not directly/immediately concerned with such consideration."

12. Paras 17 to 19 of *Union of India* v. *Chaya Ghoshal (2005 (10) SCC 97)* are also relevant. They read as follows: (SCC pp. 106-07)

A "*17*. While dealing with a habeas corpus application, undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings, the
B court has to take serious note of unclean approach. Whenever a representation is made to the President or the Governor instead of the indicated authorities, it is but natural that the representation should indicate as to why the representation was made to the
C President or the Governor and not to the indicated authorities. It should also be clearly indicated as to whom the representation has been made specifically. The President as well as the Governor, no doubt are constitutional Heads of the respective Governments but day-to-day administration at respective levels is
D carried on by the Heads of the Department/Ministries concerned and designated officers who alone are ultimately responsible and accountable for the action taken or to be taken in a given case. If really the citizen concerned genuinely and honestly felt or is
E interested in getting an expeditious consideration or disposal of his grievance, he would and should honestly approach the real authorities concerned and would not adopt any dubious devices with the sole aim of deliberately creating a situation for delay in
F consideration and cry for relief on his own manipulated ground, by directing his representation to an authority which is not directly/immediately concerned with such consideration.

G *18*. Where, however, a person alleging infraction of personal liberty tries to act in a manner which is more aimed at deflecting the course of justice than for protection of his personal right, the court has to make a deliberate balancing of the fact situation to ensure that the mere factum of some delay alone is not made
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use of to grant relief. If a fraud has been practised or perpetrated, that may in a given case nullify the cherished goal of protecting personal liberty, which obligated this Court to devise guidelines to ensure such protection by balancing individual rights and the interests of the nation, as well.

19. In *R. Keshava* v. *M.B. Prakash ((2001 (2) SCC 145)* it was observed by this Court as follows: (SCC p. 154, para 17)

> '*17.* We are satisfied that the detenu in this case was apprised of his right to make representation to the appropriate Government/ authorities against his order of detention as mandated in Article 22(5) of the Constitution. Despite knowledge, the detenu did not avail of the opportunity. Instead of making a representation to the appropriate Government or the confirming authority, the detenu chose to address a representation to the Advisory Board alone even without a request to send its copy to the authorities concerned under the Act. In the absence of representation or the knowledge of the representation having been made by the detenu, the appropriate Government was justified in confirming the order of detention on perusal of record and documents excluding the representation made by the detenu to the Advisory Board. For this alleged failure of the appropriate Government, the order of detention of the appropriate Government is neither rendered unconstitutional nor illegal. "

5. The question of making a representation to the Advisory Board arises only after the order of detention had been passed and served on the detenu. The High Court therefore, was clearly in error in quashing the order of detention.

6. Another point which has been urged is that the incidence referred to in the order of detention is stale and could not have

A formed the foundation for the order of detention. We find that several incidents have been referred to in the order of detention and the last of such instances was of 22.6.1999. The detention order was passed on 9.7.1999 and, therefore, it cannot be said to be relatable to stale incidents. The impugned order of the High Court
B is therefore quashed. Since the impugned order of the High Court was passed more than 8 years back, considering the nature of the order of detention which is essentially preventive in character, it is appropriate for the State Government and the detaining authority to consider whether there is any need to take the detenu
C back to detention for serving the remainder of the period of detention which was indicated in the order of detention. We express no opinion on that aspect. In *State of T.N. and Another v. Alagar* [2006 (7) SCC 540] it was noted as follows:

> "**9.** The residual question is whether it would be appropriate
D to direct the respondent to surrender for serving remaining period of detention in view of passage of time. As was noticed in *Sunil Fulchand Shah* v. *Union of India (2000 (3) SCC 409)* and *State of T.N.* v. *Kethiyan Perumal (2004 (8) SCC 780)* it is for the appropriate State to consider whether the
E impact of the acts, which led to the order of detention still survives and whether it would be desirable to send back the detenu for serving remainder period of detention. Necessary order in this regard shall be passed within two months by the appellant State. Passage of time in all cases cannot be a
F ground not to send the detenu to serve remainder of the period of detention. It all depends on the facts of the act and the continuance or otherwise of the effect of the objectionable acts. The State shall consider whether there still exists a proximate temporal nexus between the period of detention
G indicated in the order by which the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the present order."

7. The appeal is allowed to the aforesaid extent.

H S.K.S. Appeal partly allowed.