

A. MAIMOONA
v.
STATE OF TAMIL NADU AND ORS.

DECEMBER 16, 2005

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

National Security Act, 1980—Section 3(2)—Detention Order—Detenue's case that detention order vitiated for non-consideration of the representation made to the State Government and the Central Government by detenue and non-availability of adequate material—Held: Detention order was justified since adequate material was available for detention—There was nothing to show that representation was made to State Government, though the representation made to the Central Government was considered without delay—Hence, order of High Court calls for no interference.

Detention Order was passed against the husband of the appellant under the National Security Act, 1980 on the basis of the investigation carried out and the statement of the detenue that he was active member of a terrorist organisation. Appellant - wife of detenue-challenged the detention order on the ground of non-consideration of the representation made to the Detaining Authority and also to the Ministry by the detenue, and on non-availability of adequate materials to detain the detenue. High Court upheld the detention order holding that there was nothing to show that the detenu made representation to the State Government before the detention order and also to the Ministry of Home Affairs; and that adequate materials existed to justify the detention order. Hence the present appeal.

Appellant - wife of detenue reiterated her contention in the counter affidavit that the representation made on behalf of detenu was submitted in the Ministry of Home Affairs on 4.7.2005 through an advocate and since it was in Tamil, it was forwarded to the District Magistrate and Collector for getting it translated into English and on receiving it, the same was considered at various levels, and finally the Home Secretary rejected the representation of the detenu on 22.7.2005 and thereafter, the decision was communicated to the detenu and as such there was no unexplained delay in considering the representation.

A Dismissing the appeals, the Court

HELD: In the circumstances of the case, there is no unexplained delay or undue delay on the part of the Central Government in disposing of the representation made on behalf of the detenu. The representation submitted in the Ministry through an advocate was in Tamil, the same was forwarded to the concerned District Magistrate and Collector for getting it translated and as soon as the translation was received, the representation was considered at various levels without any delay and the same was disposed of in accordance with law. Furthermore, the appellant - wife of detenu - conceded that there was no material to show that a representation was made to the State Government before the detention order was considered by the detaining authority. Adequate materials existed for the detention of the detenu under the National Security Act, and as such the order of detention was justified and the order of High Court does not call for interference. [880-A-G; 881-A-B]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1673 of 2005.

From the Judgment and Order dated 11.7.2005 of the Madras High Court in H.C.P. No. 89 of 2005.

WITH

E Crl.A. No. 1675 of 2005.

V.G. Pragasam for the Appellant.

F B.R. Handa and S. Balakrishna, Navin Prakash, Ms. Sushma Suri, S.N. Jha, K.K. Misra and Subramonium Prasad for the Respondents.

The Judgment of the Court was delivered by

P.K. BALASUBRAMANYAN, J. Crl. A No. 1673 of 2005 @. S.L.P (Crl.) No. 4441 of 2005

G 1. Leave granted.

H 2. The appellant challenged the detention of her husband under Section 3 (2) of the National Security Act, 1980 before the High Court of Madras in Habeas Corpus Petition No. 89/50. The said petition was dismissed by the High Court after hearing both sides. Feeling aggrieved, the appellant has filed

this appeal by Special Leave.

3. On a report by Head Constable, Gopalakrishna of Nellikuppam Police Station while investigating an alleged crime, the husband of the appellant was taken into custody. On being questioned, Abdul Kader the husband of the appellant, made a statement which showed that he was an active member of a terrorist organization "Vidial Velli". It was also found that he was actively involved with that organization and other organizations like AI-Umma and SIMI, organizations which had been banned. In the light of the facts disclosed by the investigation and in view of the statement made by Abdul Kader, an order was passed by the detaining authority under the National Security Act for detention of the husband of the appellant. In the challenge in the High Court to the detention under the National Security Act, it was contended that the order of detention was liable to be set aside on the ground that the representation made prior to the detention order was not considered by the detaining authority and that vitiated the impugned order of detention. Secondly, though a representation was made to the Ministry of Home Affairs, the same was not considered and thirdly, the grounds of detention do not show any material to detain the detenu under the National Security Act. On behalf of the State it was submitted that no representation was made prior to the order of detention by the detenu and, therefore, there was no question of non-consideration of such a representation vitiating the order of detention. As regards the representation made to the Ministry of Home Affairs, there was nothing to show that any such representation was made before the order of detention was passed or immediately thereafter. On merits, it was submitted that there were adequate materials available to justify an order the National Security Act in the circumstances of the case.

4. The High Court found that there was nothing to show that the detenu had in fact made a representation to the State Government before the order of detention and the order cannot be held to be vitiated on the ground that the State Government has not disposed of the representation. The Court further found that there was no acceptable material to show that a representation was sent to the Union Ministry of Home Affairs and the contention in that regard lacked merit. The court also found that on a perusal of the materials including the statement made by the detenu in the case on hand and by the detenu in the connected case, it was clear that adequate material existed to justify the order of detention. Thus, the order of detention was upheld by the High Court and the writ petition filed by the appellant was dismissed.

A 5. The learned counsel for the appellant conceded that there was no material to show that a representation was made to the State Government before the order of detention was passed. Therefore, the first ground urged on behalf of the appellant in the High Court in support of the challenge to the order of detention need not detain us in this appeal. As regards the representation to the Central Government that the representation made on behalf of the detenu by his mother was submitted in the Ministry of Home Affairs on 4.7.2005 through an advocate. Since it was in Tamil and it could not be deciphered, it was forwarded to the District Magistrate and Collector of Cuddalore District, Tamil Nadu and the Government of Tamil Nadu for getting it translated into English. That was done on 5.7.2005 itself. A reminder was also sent on 13.7.2005. The English translation of the representation was received on 18.7.2005. It was put up before the Under Secretary on 19.7.2005. The case of the detenu and the representation were carefully considered and the matter was put up before the Deputy Secretary on 21.7.2005. With the comments of the Deputy Secretary it was put up before the Joint Secretary on 21.7.2005 itself. On the same day it was forwarded to the Special Secretary, Ministry of Home Affairs after being considered by the Joint Secretary. The Special Secretary after consideration by the Joint Secretary. The Special Secretary after consideration of the same put up the matter before the Home Secretary on 22.7.2005. The Home Secretary after considering all the relevant aspects, rejected the representation of the detenu on 22.7.2005. The decision was communicated to the detenu through Home Secretary, Tamil Nadu and Superintendent Central Prison, Cuddalore, Tamil Nadu by way of crash wireless message dated 25.7.2005. In the light of this affidavit, the learned counsel for the appellant argued that there was an unexplained delay from 13.7.2005 to 18.7.2005 in considering the representation. The learned counsel appearing for the Union of India submitted that since the representation received long after the order of detention through an advocate was in Tamil, the same forwarded to the soon as the translation was received, the representation was considered at various levels without any delay and the same was disposed of in accordance with law. In the circumstances of the case, we find that there is no unexplained delay or undue delay on the part Central Government in disposing of the representation made on behalf of the detenu which was handed over to the Ministry only on 4.7.2005. We therefore, find no merit in the argument raised in this regard on behalf of the appellant.

H 6. On a due consideration of the materials relied on by the Government and the reasons given by the High Court in refusing to interfere with the order of detention passed, we are of the view that adequate materials exist for the

detention of the appellant under the National Security Act. In that view, we do not find any merit in the argument that the order of detention was not justified on the materials available. A

7. Thus, we find no reason to interfere with the decision of the High Court. The decision of the High Court is confirmed and this appeal is dismissed. B

Crl. A No. 1675 of 2005 @ S.L.P. (Crl.) No. 4611 OF 2005

8. Leave granted.

9. No special or separate arguments were addressed in this appeal. The petition for Special Leave to Appeal is filed by Dowlath Beevi, the mother of the detenu-Bilal. The facts and circumstances are the same as in the case of Abdul Kader, dealt with above. In fact, both the basis of common question of fact and law raised. Here also the position is identical and the representation was made to the Ministry of Home Affairs by the mother of the detenu within in Tamil and presented through an advocate on 4.7.2005 and it was also dealt with in the same manner as was done in the case relating to Abdul Kader. The materials are also identical and it is in this context, that the learned counsel submitted that the arguments are common and the arguments dealt with in the earlier appeal would cover his case of our conclusion recorded earlier in respect of the order of detention of Abdul Kader, all that is called for is to hold that the High Court was justified in dismissing the with petition filed on behalf of the detenu—Bilal. In that view, we confirm the decision of the High Court in Habeas Corpus Petition No. 90 of 2005 and dismiss this appeal. C
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N. J.

Appeal dismissed. F