

February 2011

Jayalakshmi v. State of Tamil Nadu
(DB) (C. Nagappan, J.)

283

2011 (1) MWN (Cr.) 283 (DB)

IN THE HIGH COURT OF MADRAS

C. Nagappan & P.R. Shivakumar, JJ.

H.C.P. No.433 of 2010

15.7.2010

Jayalakshmi W/o. Madhavan

.....*Petitioner*

Vs.

1. State of Tamil Nadu, rep. by Secretary to Government Home, Prohibition and Excise Department, Fort St. George, Chennai-600 009. 2. Commissioner of Police, Chennai City Sub-urban Area, St. Thomas Mount, Chennai-600 016
.....*Respondents*

Preventive Detention
T.N. Act 14 of 1982

Non-application of mind on part of Detaining Authority — In absence of physical production of Accused, direction as to produce on future date cannot be construed to be order extending remand — Order of detention vitiated.

Criminal Procedure
S.167

Remand extensions — Orders should not be passed without production of Accused in person or through video conferencing.

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 (T.N. Act 14 of 1982), Section 2(1)(f) — “Goonda” — Order of detention — Challenge to — Detenu’s arrest and initial remand on 11.1.2010 for period upto 25.1.2010 correctly mentioned in grounds of detention — However, his remand extension upto 8.2.2010 not supported by material — Order of Magistrate dated 25.1.2010 to effect “*Accused not produced. Inform authorities to produce Accused on 8.2.2010*” wrongly construed by Detaining Authority to be order extending remand upto 8.2.2010 — Had Detaining Authority applied its mind, it would have observed that Accused was not produced, but directed to be produced on 8.2.2010 — Failure to do so amounts to non-application of mind on part of Detaining Authority — Order of detention vitiated. (Paras 5 & 9)

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 167 — Remand and extension of Remand — Condition — Physical production of Accused before Magistrate necessary for first remand after arrest — For subsequent remands *i.e.* remand extensions, Accused may be produced before Magistrate either in person or through media of

MADRAS WEEKLY NOTES (CRIMINAL)

284

2011 (1) MWN (Cr.)

electronic linkage — No order of remand or remand extension to be made without such production — Magistrates, despite repeated instructions in form of judicial orders and administrative directions in this regard, issuing orders extending remands without physical production of Accused or directing Accused to be produced on a future date without seeing Accused — Judicial Magistrate directed not to pass any order for extension of remand without production of Accused either in person or through video conferencing — Registry directed to circulate copy of order to all lower Courts. (Para 8)

**P.K. Ilavarasan for P. Anandan and Satheesh, Advocates for Petitioner.
Hasan Md. Jinnah, Additional Public Prosecutor for Respondents.**

Finding — H.C.P. allowed.

Prayer : Petition under Article 226 of the Constitution of India seeking to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the Second Respondent in No.9/BDFGISSV/2010 dated 29.01.2010 against Petitioner's husband, who is confined at Central Prison, Puzhal, Chennai and set aside the same and to direct the Respondents to produce the detenu Madhavan, son of T. Govindaraj before this Hon'ble Court and set the detenu at liberty.

JUDGMENT

C. Nagappan, J.

1. The wife of the detenu-Madhavan is the Petitioner in this Habeas Corpus Petition and she has challenged the order of detention passed by the Second Respondent, in No.9/BDFGISSV/2010 dated 29.01.2010.

2. On the recommendation made by the Sponsoring Authority citing nine adverse cases in Crime No.82/2009, V-1, Villivakkam Police Station, Crime No.273/2009, T-9, Pattabharam Police Station, Crime No.449/2009, S-8, Adambakkam Police Station, Crime No.550/2009, S-8, Adambakkam Police Station, Crime No.821/2009, S-7, Madipakkam Police Station, Crime No.823/2009, S-7, Madipakkam Police Station, Crime No.519/2009, T-11, Thiruninravur Police Station, Crime No.524/2009, T-11, Thiruninravur Police Station, Crime No.584/2009, T-11, Thiruninravur Police Station and the ground case in Crime No.16/2010, T-11, Thiruninravur Police Station, and after looking into the materials available, the Second Respondent, the Commissioner of Police, Chennai City Sub-urban Area, St. Thomas Mount, Chennai-600 016, formed an opinion that the detenu Madhavan was to be termed as GOONDA since his activities are prejudicial to the maintenance of public order as contemplated under Section 2(1)(f) of the Tamil Nadu Act 14 of 1982 and in order to prevent him from indulging in such activities in future, the Order of detention, dated 29.01.2010, was passed. The said Order is under challenge in this Petition.

3. The order of detention is challenged on various grounds. The main submission of the learned Counsel for the Petitioner is that the Detaining Authority, in paragraph No.3 of the grounds of detention, has observed that

February 2011

Jayalakshmi v. State of Tamil Nadu
(DB) (C. Nagappan, J.)

285

the detenu was arrested on 10.01.2010 and produced before the Judicial Magistrate-II, Thiruvallur on 11.01.2010 and remanded till 25.01.2010 in the ground case *viz.* Crime No.16/2010 and his remand period was further extended up to 08.02.2010; that and the said observation with regard to the extension of remand in the ground case is not supported by material and that hence the order of detention is vitiated.

4. The learned Additional Public Prosecutor submits that the order remanding the detenu in the ground case was made on 11.01.2010 and a copy of the same has been supplied to the detenu; that on 25.01.2010, the detenu/Accused was not produced in the said case and the Judicial Magistrate-II, Thiruvallur, passed an order recording the non-production of the Accused and directing the authorities to produce him on 08.02.2010; that a copy of the said order is found in page No.181 of the booklet and that based on the said order, the observation regarding extension of remand in the ground case has been made.

5. There is no controversy with regard to the date of arrest of the detenu in the ground case in Crime No.16/2010 and his initial remand on 11.01.2010 for the period upto 25.01.2010. The contention of the learned Counsel for the Petitioner is that the observation in the grounds of detention that the remand was extended till 08.02.2010 is not supported by material. The document to which our attention was drawn by the Additional Public Prosecutor as the material for the said observation, is found in page No.181 of the booklet and the same is sought to be interpreted as an order extending the remand of the detenu. The order dated 25.01.2010 passed by the Judicial Magistrate-II, Thiruvallur, reads as follows:

“Accused not produced. Inform authorities to produce the Accused in 8.2.2010.”

The above order is not one extending the remand of the detenu. The Detaining Authority has wrongly construed the above order as one extending the remand of the detenu up to 08.02.2010. Had the Detaining Authority applied its mind, it would have observed that the Accused was not produced, but, however, he was directed to be produced on 08.02.2010. Failure to do so, shows non-application of mind on the part of the Detaining Authority, which vitiates the order of detention and on that ground alone the order of detention is liable to be set aside.

6. Before parting with the case, we would like to observe that we noticed orders similar to the order dated 25.01.2010 in the present case, passed by the learned Judicial Magistrates on the jail warrants when the Accused were not produced before the Judicial Magistrate for extension of remand. Time and again, it is reiterated that the Judicial Magistrates should not pass orders of remand without the production of the Accused, either in person or through video conferencing.

MADRAS WEEKLY NOTES (CRIMINAL)

286

2011 (1) MWN (Cr.)

7. Section 167, Cr.P.C. which deals with the remand of the Accused and extension of remand contains a Proviso to the effect that no Magistrate shall authorise detention of an Accused person, if the Accused is in police custody unless the Accused is physically produced before him and if the Accused is detained other than in the custody of police unless the Accused is produced before him either in person or through the media of electronic linkage. For the purpose of better appreciation, the Proviso (b) to sub-section (2) of Section 167, Cr.P.C as amended by the Central Act 5/2009 reads as follows:

“(b) no Magistrate shall authorise detention of an Accused in custody of the Police under this Section unless the Accused is produced before him in person for the first time and subsequently every time till the Accused remains in the custody of the Police, but the Magistrate may extend further detention in judicial custody on production of the Accused either in person or through the medium of electronic video linkage.”

Thus it is made clear that for the first remand after arrest, physical production of the Accused before the Magistrate is necessary and for subsequent remands, namely remand extensions, the Accused may be produced before the Magistrate, either in person or through the media of electronic linkage. Even prior to the amendment, the un-amended Proviso (b) also provided such a condition for the remand or remand extension. No order of remand or remand extension should be made without such production indicated supra. Time and again repeated instructions have been issued in the form of judicial orders as well as administrative directions regarding the production of the Accused for remand and remand extension. Despite such instructions, we come across instances of such orders being passed, by the Judicial Magistrates either extending the remand or directing the Accused to be produced on a future date without seeing the Accused. We emphasize the point that the learned Judicial Magistrates shall not pass any order on the Application seeking for extension of remand without the production of the Accused either in person or through video conferencing. In the event of any deviation coming to our notice, it will be viewed seriously leading to action being taken.

8. We are forced to make the observation out of anguish, in the light of the fact that we have come across a number of such instances in the recent past. The Registry is directed to circulate a copy of this order to all the lower Courts in Tamil Nadu and Puducherry, after obtaining order from My Lord, The Hon’ble Chief Justice.

9. In the result, the Habeas Corpus Petition is allowed and the impugned order of detention, dated 29.01.2010, passed by the Second Respondent is set aside. The detenu Madhavan, son of T. Govindaraj is ordered to be set at liberty forthwith, unless his continued custody is required in connection with any other case.