

Smt. S. Gayathri

Vs

Commissioner of Police, Madras and Others

Criminal Appeal No. 594 of 1981

(O. Chinnappa Reddy, A.P. Sen, Baharul Islam JJ)

13.08.1981

JUDGMENT

CHINNAPPA REDDY, J. –

1. Shri Kumar Rajarathnam, learned counsel, who presented the detenu's case with clarity, argued that the detention of the appellant was vitiated by the delay in the consideration of his representation by the Government and by the delay of the grant of a hearing to him by the Advisory Board. On an examination of the material placed before us we find that there has been no delay about which any legitimate complaint can be made. The detenu made his representation on May 11, 1981. The representation was examined and rejected by the Government on May 15, 1981. On May 15, 1981, reference was made to the Advisory Board and on May 21, 1981, the Advisory Board directed the production of the detenu before them on June 2, 1981. This direction was given pursuant to the request of the detenu. The detenu was produced before the Advisory Board on June 2, 1981 and on June 3, 1981, the Advisory Board tendered its advice to the Government. We are unable to find any avoidable delay at any stage.

2. Another point which was strenuously urged by Shri Kumar Rajarathnam was that Ground 3 of the Grounds of Detention was so vague and bereft of particulars that it was impossible to make any representation in regard to that ground. The learned counsel urged that the detaining authority was taking shelter under Section 8(2) of the National Security Act alleging that the disclosure of the contents of the history sheet which was the document relied upon in support of the ground would be against the public interest as it would jeopardise the safety of the victims concerned. The learned counsel argued that in the circumstances of the case the failure to disclose the particulars of the acts complained of amounted to a failure to disclose the ground of detention and not merely a failure to disclose facts. He relied on a decision of the Kerala High Court [Balakrishnan v. District Magistrate, Kozhikode, 1975 KLT 20], to justify the distinction which he sought to make between non-disclosure of grounds and non-disclosure of facts. It was submitted that while it was permissible not to disclose facts if it was in the public interest, it was not permissible not to disclose grounds of detention.

3. At first blush we were impressed with the argument. But, a closer look at the grounds of detention has satisfied us that there is no real substance in the submission. What has been described by the learned counsel as the third ground of detention is really not a ground of detention distinct from grounds 1 and 2. It has to be necessarily read in conjunction with the earlier two grounds and so read it only means that the detenu has been continuing the type of unlawful activities mentioned in grounds 1 and 2 and that the victims were not willing to come forward to lodge complaints for fear of harm to themselves. If it is treated as a distinct ground of detention and if it is isolated from

the rest of the grounds there might be force in the submission of the learned counsel. But, in the circumstances of the case it is not possible to isolate the so-called third ground of detention from the rest of the grounds. It is not possible to style it as a ground of detention all by itself. We are, therefore, unable to agree with the submission of the learned counsel.

4. Yet another submission made on behalf of the detenu was that a copy of the affidavit of Somasundaram, Inspector of Police, Prohibition Enforcement Wings, which was mentioned in the order of detention as having been perused by the detaining authority was not supplied to the detenu. This affidavit we find was in the nature of a mere forwarding letter and not the basis of any of the grounds of detention. There was, therefore, no need to supply the detenu with a copy of the affidavit. The appeal is dismissed.

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