

State of T. N. and Another

Vs

C. Subramani

Criminal Appeals Nos. 549 with 550 and 551 of 1992

(Kuldip Singh, N. M. Kasliwal JJ)

08.09.1992

JUDGEMENT

KASLIWAL, J.:-

1. Special leave granted.

2. All the above appeals by the State of Tamil Nadu and the District Magistrate and Collector, District Salem are directed against the judgment of the Madras High Court dated 9-3-1992. Though these cases relate to three different detenus namely C. Subramani, A Vadivel alias Sundara Vadivel and M Selvam, but we are disposing of all the cases by one common order as the facts and grounds of challenge are almost identical.

3. The facts in brief are that five persons including the aforesaid three respondents joined together, agreed and conspired to sell 'Thinner' as arrack by rendering the said Thinner containing methyl alcohol for human consumption and they agreed to share the huge profit. 7 persons died as a result of consuming liquor. Investigation conducted by the police officials clearly revealed that the respondents and their associates had been systematically indulging in manufacturing and sale of such illicit liquor thereby endangering human life and public health and as such acting in a manner prejudicial to the maintenance of public order. The District Magistrate and Collector of Salem District passed an order of detention under Ss. 3(1) and 3 (2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982 (hereinafter referred to as 'the Act') on 23-10-1991 for detention of the respondents. The detenus-respondents challenged their order of detention on several grounds, but the High Court quashed the order of detention simply on the ground that the representation submitted by the detenu dated 25-11-1991 was disposed of after long delay which remained unexplained and directed the respondents to be set at liberty. The State of Tamil Nadu and the District Magistrate, Salem have filed the above appeals challenging the order of the High Court.

4. The High Court in the impugned order has dealt with this question on the basis of the counter affidavit filed on behalf of the Government itself according to which a representation was submitted by the detenu on 25-11-1991 which was received by the Government on 27-11-1991 through the Superintendent, Central Prison, Salem. Para wise remarks on the said representation were called for from the Government dated 28-11-1991. The para-wise remarks received by the Government on 5-12-1991 vide letter dated 3-12-1991. The Government examined the representation along with the parawise remarks and the connected file was submitted to officers on 10-12-1991. The Under

Secretary to Government passed orders in the file on 10-12-1991 and Deputy Secretary to Government passed orders in the file on 11-12-1991. The Secretary passed orders on 12-12-1991. The file was received in the Office of the Chief Minister on 13-12-1991. The Chief Minister passed orders on 21-12-1991 rejecting the request of the detenu. The rejection order was issued vide Government letter dated 23-12-1991 and it was served on the detenu on 27-12-1991.

5. While considering the above explanations submitted by the Government, the High Court took the view that there was no explanation for the delay of 6 days from 28-11-1991 to 5-12-1991. Even after receipt of the parawise remarks the connected file was submitted to the officers on 10-12-1991. Though 7-12-1991 and 8-12-1991 are stated to be holidays, no reason was given for not putting up the file before the officers on 6-12-1991. Thus, there was a delay of 2 days. The High Court then observed that the file reached the Office of the Chief Minister on 13-12-1991 and the Chief Minister passed the orders only on 21-12-1991 rejecting the request and the rejection order was issued vide Government letter dated 23-12-1991 which was served on the detenus on 27-12-1991. The High Court thus found that there was no explanation for the delay of 8 days in the Office of the Chief Minister for passing the order of rejection of the representation. The High Court placed reliance on *Gazi Khan alias Chotia v. State of Rajasthan*, 1991 SCC (Cri) 24: (1990) 3 SCC 459: (AIR 1990 SC 1361) and *Aslam Ahmed Zahir Ahmed Shaik v. Union of India*, (1989) 2 Crimes 111 : (1989) 3 SCC 277: (AIR 1989 SC 1403) and *Mohinuddin alias Moin Master V. District Magistrate, Beed*, 1987 SCC (Cri) 674: (1987) 4 SCC 58 : (AIR 1987 SC 1977) and held that there was delay at every stage, in any event, the delay in getting parawise remarks as well as the delay in the disposal of the representation in the Office of the Chief Minister will certainly vitiate the impugned orders of detention.

6. We have heard learned counsel for the parties. It was contended by the Learned Additional Solicitor General on behalf of the appellants that the High Court was not correct in the facts and circumstances of this case in holding that there was unexplained inordinate delay in dealing with the representations filed by the detenus. It was submitted that the High Court in this case has laid emphasis on the delay for two periods, one the delay of 6 days from 28-11-1991 to 5-12-1991 and the second of 8 days from 13-12-1991 to 21-12-1991 in the Office of the Chief Minister. It has been contended on behalf of the appellants that though the High Court has mentioned the two periods and has counted the total days of those periods but did not deal at all with the explanation given in detail for those periods by the Government. The appellants have given the chronology of the dates in dealing with the representation as under:-

28-11-1991 Parawise remarks called for from the District Magistrate and Collector, Salem District by the State Government.

29-11-1991 Representation of the detenu received by the District Magistrate and Collector, Salem District, from the Central Prison.

29-11-1991 Remarks of the sponsoring authority called for by the District Magistrate and Collector, Salem District.

30-11-1991 Remarks sent by the sponsoring authority to the District Magistrate and Collector, Salem District.

3-12-1991 Report sent by the District Magistrate and Collector, Salem District on the basis of the parawise remarks to the State Government.

5-12-1991 Report of the District Magistrate and Collector, Salem District received by the State Government.

10-12-1991 File put up to the officers (7-12-91 and 8-12-91 being holidays).

10-12-1991 File dealt by the Under Secretary.

11-12-1991 File dealt by the Deputy Secretary.

12-12-1991 File approved by the Secretary.

13-12-1991 (Friday) File received by the office of the Chief Minister.

14-12-1991 Saturday.

15-12-1991 Sunday.

16-12-1991 & Statewide Collectors and Superintendents of Police conference presided over and participated by the Chief Minister.

17-12-1991 Superintendents of Police conference presided over and participated by the Chief Minister.

19-12-1991 Chief Minister participated in the official University function.

21-12-1991 (Saturday) Orders passed by the Chief Minister rejecting the representation of the detenu.

22-12-1991 (Sunday)

23-12-1991 Orders issued by the Government.

7. On the basis of the above chronology of the events, Learned Additional Solicitor General submitted that the periods from 28-12-1991 to 3-12-1991 is clearly explained inasmuch as the parawise remarks were called from the District Magistrate by letter dated 28-11-1991 the District Magistrate himself had also received the representation of the detenu on 29-11-1991. The District Magistrate had called the remarks of the sponsoring authority i.e. the Inspector of Police and the remarks were sent by the sponsoring authority to the District Magistrate on 30th November, 1991. The District Magistrate then sent the report on the basis of parawise remarks to the State Government on 3-12-1991. The said report was received by the State Government on 5-12-1991. It was thus, submitted that the matter was dealt with by three different authorities with utmost speed and promptitude and there was no question of any delay in the aforesaid period. As regards the second period, it was submitted that the file was received in the Office of the Chief Minister on Friday, the 13th December, 1991, 14th and 15th were Saturday and Sunday. On 16th and 17th December, 1991, the Chief Minister was busy in the State-wide conference of District Collector and Superintendents of Police which was held for the purpose of discussing and taking policy decision on the law and order problem in the State especially in the light of LTTE militant activities. It was also pointed out that on 19th December, 1991, the Chief Minister was busy in an official function of the University and thereafter the Chief Minister had passed the order rejecting the representation on 21-12-1991 itself though, the same was Saturday, 22nd December, 1991 was Sunday and orders were issued by the Government on 23-12-1991.

8. The chronology of the events dealing with the representation as mentioned above clearly shows that there was no delay at all in dealing with the representation leading to an inference of any supine indifference, slackness or callous attitude in considering the representation. The High Court wrongly applied the ratio of the cases decided by this Court which have been referred in the impugned orders of the High Court. The question of delay in dealing with the representation is a question of fact which depends on the facts and circumstances of each case. In Mohinuddin alias Moin Master v. District Magistrate, Beed (AIR 1987 SC 1977) (supra) this Court was dealing with a representation which was received by the Chief Minister on September 22, 1986, but was not considered and disposed of by the Chief Minister till November 17, 1986. The delay in that case was nearly one month and 25 days and the same was considered as unexplained, unreasonable delay in disposal of the representation. In Gazi Khan alias Chotia v. State of Rajasthan, (AIR 1990 SC 1361) (supra), this Court held that there was no explanation for the delay from July 3 to July 9, 1989 for 7 days taken by the Assistant Secretary to the Government merely to put up a note on the basis of the comment of the District Magistrate. The Court was not satisfied in respect of such delay of 7 days which had occurred at the hands of the Assistant Secretary. In Aslam Ahmed Zahire Ahmed Shaik's case (AIR 1989 SC 1403) (supra), the Superintendent of Central Prison of Bombay to whom the representation was handed over by the detenu on June 16, 1988 for mere onward transmission to the Central Government took a period of 7 days. This Court in the above circumstances held that the Superintendent of Central Prison, Bombay had callously ignored and kept the representation in cold storage, unattended for a period of 7 days, and as a result of that, the representation reached the Government 11 days after it was handed over to the Jail Superintendent. Thus, the above cases render no assistance to the respondents-detenus in the facts of the present case.

9. It may be noted that a recent Constitution Bench of this Court in K. M. Abdulla Kunhi and B. L. Abdul Khade'r v. Union of India, State of Karnataka, (199 1) 1 SCC 476: (AIR 1991 SC 574) has dealt with the question of the time taken in dealing with the representation and the words "as soon as may be" occurring in Clause 5 of Article 21 of the Constitution this Court has observed as under (Para 12 of AIR).-

"The words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

10. Thus, the question of any period taken in dealing with the representation has to be decided in the particular facts and circumstances of each case and it cannot be determined on the basis of any rigid period of time uniformly applicable to all cases. A leeway has to be given in considering such representation by the Government and no inference of delay leading to the violation of constitutional mandate enshrined in Clause (5) of Article 22 can be drawn unless it shows that the authorities dealing with the representation had adopted, an attitude of leisureness, supine indifference, slackness unduly protracted procrastination or callous attitude in considering such representation. Thus, in the facts of the present cases, we are clearly of the view that the Government has

sufficiently explained the period spent in dealing with the representation of the detenues. The High Court was wrong in quashing the order of detention on the aforesaid ground.

11. In view of the fact that the High Court quashed the order of detention on the ground of unexplained delay in dealing with the representation of the detenu, no other grounds challenging the order of detention were argued before the High Court as such, we permitted the learned counsel appearing for the detenues to argue before us any other ground challenging the detention orders. The learned counsel pressed only one more ground challenging the detention order. It was submitted that the detaining authority did not furnish the documents relating to case Cr. No. 1026/ 1991 wherein the detenu was one of the accused. All the documents made available to him were relating to case Cr. No. 1027/ 1991. It was thus, contended that failure to furnish the F.I. R., remand report and 173 Criminal Procedure Code documents relating to Cr. No. 1026 of 1991 vitiated the detention order. Learned Additional Solicitor General in this regard relied on the counter-affidavit of the detaining authority namely the District Magistrate himself filed in the High Court. In the counter-affidavit, it was clearly stated that the detenu was under misapprehension that he was an accused in Cr. No. 1026/1991 and as such he should be supplied also documents relating to the said case. As a matter of fact, he is not an accused in that case and as such non-supply of documents relating to that case has not caused any prejudice to him in making an effective representation as contemplated under Article 22(5) of the Constitution. Besides, only a passing reference has been made to the other case and the detaining authority has not relied upon the same for arriving at his subjective satisfaction to detain the petitioner herein. The order of detention relied upon only materials connected with Cr. No. 1027/1991 in which the detenu is the accused and the relevant documents have been furnished to him. It was also further explained in the counter-affidavit of the detaining authority himself that actually Cr. No. 1027/1991 was registered against one Selvam and Ponnuswami and the said Ponnuswami has died. Only on investigation and the confessional statement given by the petitioner and his associates, it came to light that petitioner and his associates are involved in Cr. No. 1027/1991. The petitioner and his associates were remanded only in Cr. No. 1027/1991. Hence, the non-furnishing of documents relating to Cr. No. 1026 / 1991 with which the detenu is not concerned, does not vitiate the order of detention passed against the detenu. It was further stated that the order of detention was passed only with reference to the activities of the detenu and his associates which were prejudicial to the maintenance of Public order and the detenu and his associates were involved only in Cr. No. 1027/1991. The order of detention was passed by him only after application of mind. No extraneous and irrelevant materials were taken into consideration as alleged by the petitioner. In view of the above explanation given by the detaining authority himself in the counter-affidavit filed before the High Court in case of all the above detenues, we find no force in the contention of the learned counsel for the detenues challenging the order of detention on the aforesaid ground. No other ground challenging the order of detention was argued before us by the learned counsel for the detenues.

12. In the circumstances mentioned above, we allow these appeals, set aside the orders of the Madras High Court dated 9-3-1992 passed in Writ Petition No. 17506/1991 filed by C. Subramani, Writ Petition No. 17507/1991 filed by A. Vadivel alias Sundaravadivel and Writ Petition No. 17508/1991 filed by M. Selvam. We also hold that the detention order dated 23-10-1991 passed by the District Magistrate, Salem - the detaining authority in respect of the above mentioned detenues-respondents C. Subramani, A. Vadivel alias Sundaravadivel and M. Selvam was perfectly valid and passed in accordance with law. The appellants State of Tamil Nadu and the District Magistrate, Salem are free to take appropriate action against the aforesaid detenues in accordance with law. Appeals allowed.

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