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STATE OF TAMIL NADU AND ANR.

v.

ALAGAR

JULY 6, 2006

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[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Preventive Detention :

C

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982:

D

Section 3(1)—Order of detention—Requirement for placing of material by sponsoring authority before detaining authority—Held, sponsoring authority having appeared before detaining authority and placed material before him, High Court's view that there should have been a forwarding letter or an additional affidavit is clearly without any basis.

Preventive Detention :

E

Order of High Court quashing detention order set aside—Surrendering of detenu to serve remainder period of detention—Held, State Government to consider this aspect and pass appropriate orders.

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A detention order was passed against the respondent under Section 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, since he was identified as a 'Goonda' as defined under the Act. The said order was challenged before the High Court on the ground that in the affidavit sworn by the sponsoring authority and sent to the detaining authority, there was no mention of the remand order but the order of detention refers to the said fact. The High Court quashed the detention order holding that sponsoring authority should have sent the document relating to remand alongwith a forwarding letter or should have filed an additional affidavit. Aggrieved, the State filed the present appeal.

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Allowing the appeal, the Court

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HELD : 1. The order of remand was placed by the sponsoring authority before the detaining authority. The High Court's view that there should have been a forwarding letter or an additional affidavit is clearly without any basis. Order of the High Court is set aside. [312-G-H; 313-A]

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2. As regards surrendering of detenu for serving remaining period of detention in view of passage of time, the State shall consider whether there still exists a proximate temporal nexus between the period of detention 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. [313-B-E]

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Sunil Fulchand Shah v. Union of India & Ors., [2000] 3 SCC 409 and *State of T.N. and Anr. v. Kethiyan Perumal*, [2004] 8 SCC 780, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1067 of 1999.

D

From the Final Order dated 20.4.1999 of the Madras High Court in II.C.P. No. 1298/1998.

V.G. Pragasam and Subramonium Prasad (NP) for the Appellants.

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The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this Appeal is to the judgment rendered by a Division Bench of the Madras High Court quashing the order of detention passed by the District Magistrate and Collector, Virudhunagar, Tamil Nadu under Section 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 (in short the 'Act').

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The order of detention was passed as the respondent was identified as a "Goonda" as defined in the Act. It was indicated in the order of detention that it had come to the notice of the detaining authority that a large number of cases were registered against him and on 27.4.1998 he acted in a manner prejudicial to the maintenance of public order. The order of detention was challenged before the High Court by filing a petition under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). The only plea taken was that the sponsoring authority had sworn to an affidavit dated 15.6.1998

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A and had forwarded the same to the detaining authority with the material for consideration of the detaining authority. In the said affidavit there could not have been any mention of the order of remand dated 24.6.1998. But in the order of detention reference was made to the said fact. The Detaining Authority produced the records to show that in fact the Sponsoring Authority had appeared before the Detaining Authority on 26.6.1998 and the file clearly indicated that the order of remand was brought to the notice of the Detaining Authority before he passed the order of detention on 26.6.1998. The High Court perused the original file but was of the view that the Detaining Authority should have sent the document in question i.e. order relating to the remand along with a forwarding letter and in any event an additional affidavit was required to be filed. Therefore, it was held that the order of detention was not sustainable.

Mr. V.G. Pragasam, learned counsel for the appellants submitted that the order of remand had been brought to the notice of the detaining authority by the Sponsoring Authority before the order of detention was passed. On a hypo-technical ground that, though the same was brought to the notice of the Detaining Authority, there should have been a forwarding letter to the Detaining Authority or at least an additional affidavit should have been filed the order of detention should not have been quashed. The order, therefore, is clearly unsustainable.

E There is no appearance on behalf of the respondent-detenu in spite of notice.

F We find that there is no dispute regarding the production of the order of remand dated 24.6.1998 when the sponsoring authority appeared before the detaining authority who passed the order of detention on 26/6/1998. As a matter of fact in the grounds of detention it have been clearly noted as follows :

G “The accused was remanded to judicial custody in Central Prison, Madurai for a period of 15 days upto 12.5.1998 and the remand has been extended upto 30.06.1998 and the accused is in Central Prison, Madurai.”

H This clearly establishes, that as has been noted in the file which was produced before the High Court, the order of remand was placed by the Sponsoring Authority before the Detaining Authority. The High Court’s view that there should have been a forwarding letter or an additional affidavit is

clearly without any basis.

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There is no dispute that the sponsoring authority had placed the material before the Detaining Authority. That being so the High Court should not have quashed the order of detention.

The order of the High Court is accordingly set aside.

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The residual question is whether it would be appropriate 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 and Ors.*, [2000] 3 SCC 409, and *State of T.N. and Anr. v. Kethiyam Perumal*, [2004] 8 SCC 780, it is for the appropriate State to consider whether the 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 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 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.

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Appeal is allowed.

R.P.

Appeal allowed.