Powanammal vs State Of Tamil Nadu And Anr on 15 January, 1999

Equivalent citations: AIR 1999 SUPREME COURT 618, 1999 AIR SCW 218, 1999 CRILR(SC MAH GUJ) 98, 1999 CRILR(SC&MP) 98, 1999 (1) SCALE 49, 1999 SCC(CRI) 231, 1999 (1) LRI 49, 1999 (1) ADSC 17, 1999 CRIAPPR(SC) 93, 1999 (2) SCC 413, 1999 (2) SRJ 64, (1999) 1 JT 31 (SC), (1999) 10 SUPREME 450, (2000) 1 EASTCRIC 266, (1999) 1 EFR 490, (1999) 1 PAT LJR 90, (1999) 1 RECCRIR 694, (1999) 1 SCJ 624, (1999) 1 SCALE 49, (1999) 1 ALLCRILR 725, (1999) 2 MADLW(CRI) 749, (1999) 1 CURCRIR 14, 1999 (1) ANDHLT(CRI) 196 SC

Bench: K. T. Thomas, D.P. Wadhwa, S.S.M. Quadri

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           CASE NO.:
Appeal (crl.)  35 of 1999

PETITIONER:
POWANAMMAL

RESPONDENT:
STATE OF TAMIL NADU AND ANR.

DATE OF JUDGMENT: 15/01/1999

BENCH:
K. T. THOMAS & D.P. WADHWA & S.S.M. QUADRI

JUDGMENT:
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JUDGMENT 1999 (1) SCR 104 The Judgments of the Court were delivered by QUADRI, J. Leave is granted.

The appellant is the mother of the detenue, Smt. Lakshmi, who was detained by order No. B.D.F.G.I.S. No. 38/98 dated 12th April, 1980, passed by the second respondent, under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas Immoral Traffic Offenders and Slum Grabbers Act, 1982 (for short, "Tamil Nadu Act 14 of 1982"). Her challenge to the said order in a petition under Article 226 of the Constitution HCP No. 659 of 1998, before the Division Bench of the High Court of Madras having been unsuccessful, she is before us by special leave against the order of the High Court dated October 5, 1998, dismissing the said petition.

The detenue was ordered to be detained by the second respondent on the ground that she was a bootlegger within the meaning of the said Act and was indulging in activities prejudicial to the

maintenance of public health and public order. He referred to four cases filed under Section 4 of the Tamil Nadu Prohibition Act, 1937 in which she was found guilty and was fined, Rs. 250 in two cases and Rs. 350 in two cases. On the day when she was served with the impugned order of detention, she was in judicial remand in connection with, a case filed under Sections 4(1)(1) and 4(1-A) of the Tamil Nadu Prohibition Act, 1937 which was filed on the allegation that she was selling liquid in bottles which contained chloral hydrate, 99.2 mg% weight/volume, which was injurious to the health of the consumers. The only ground urged before us by Mr. K.K. Mani, the learned counsel appearing for the appellant, is that the detenue was denied the right to make effective representation because the order dated 5.4.1998 remanding the detenue to judicial custody relied upon by the second respondent in the grounds of detention was passed in English but the Tamil version of that document was not supplied to her even though she specifi-cally demanded for the same as she did not know English at all.

Mr. N. Natarajan, learned senior counsel for the State of Tamil Nadu, argued that as the grounds of detention and the said document were translated and explained in Tamil to the detenue no prejudice was caused to her in making an effective representation due to not supplying Tamil version of the remand order.

The short question that falls for our consideration is whether failure to supply Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

The contention of Mr. Mani is founded on clause 5 of Article 22 of the Constitution of India which reads thus :

> "22(5). When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

It imposes twin obligations on the authority making the order of detention in respect of a person. They are : (1) to communicate to such person the grounds on which the order of detention has been made and (2) to afford him the earliest opportunity of making a representation against the order.

The law relating to preventive detention has been crystallized and the principles are well neigh settled. The amplitude of the safeguard embodied in Art. 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenue but also to supplying their translation in script or language which is understandable to the detenue. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. (See Hadibandhu Das v. District Magistrate, Cuttack & Anr., [1969] 1 SCR 227).

However, this court has maintained a distinction between a docu-ment which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued deten-tion, the detenue need not show that any prejudice is caused to him. This is because non- supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the oppor-tunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenue's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document, would equally apply to furnishing translated copy of the docu-ment in the language known to and understood by the detenue, should the document be in a different language.

In Chaju Ram v. The State of Jammu & Kashmir, [1970] 1 SCC 536, the order of detention was challenged on the ground, inter alia, that the detenue was not explained of the grounds of his detention in the language known to him and, therefore, he was deprived of his right of making a representation. This court held that when dealing with a detenue who could not read and understand English or any language at all that the grounds of detention should be explained to him as early as possible in the language he understood so that he could avail himself of the statutory right of making a representation. The contention that the document in English was handed over to the detenue who affixed his thumb in token of having received it was held not in compliance with the requirement of law which gave a very valuable right to the detenue to make a representation which right was frustrated by handing over to him the grounds of detention in an alien language. The above decision is not authority for supporting the conteution canvassed by Mr. Natarajan that explaining the contents of the document, relied upon in the grounds of detention, in the language understood by the detenue, absolves the detaining authority of the duty to furnish translation of such document in the language understood by the detenue. The judgment of this Court in MAT. L.M.S. Ummu Saleema v. Shri B.B. Gujaral & Ors., [1981] 3 SCC 317 also does not help the respondents because that case dealt with supply of documents and materials which find a casual or passing reference in the course of narration of facts in the grounds of detention but are not relied upon by the detaining authorities in making the order of detention. We have already held above that not furnishing copies of such documents would not vitiate the order unless the detenue shows that he was prejudiced in making an effective representation due to non-supply of such documents.

Here it will be appropriate to refer to the following decisions :

> In Prakash Chandra Mehta v. Commissioner and Secretary, Govern-ment of Kerala & Ors., AIR (1986) SC 687, the order of detention was passed under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The grievance of the detenue was that the grounds of detention were served in English and that the annexures to the grounds were in Malayalam and that he could understand only Gujarati; so he pleaded that his continued detention was bad. It was held that it was imperative that the grounds must be communicated in a language understood by the person concerned so that he could make effective representation.

It was pointed out that the plea that he did not know anything except Gujarati was merely the ipse dixit of the detenue and that the detaining authority came to the conclusion that he knew both Hindi and English and so averred in his affidavit and the detenue was merely feigning ignorance of English. On those facts it was held that communication of the grounds of detention in English and subsequently in Hindi was valid and that as the gist of the annexures which were in Malayalam, had been stated in the grounds of detention, so the detention was not vitiated. In the instant case there is no such finding of the detaining authority about detenue not knowing English. Mentioning about the order of remand in the grounds, in our view, does not amount to giving the gist of that document.

In Madan Lal Anand v. Union of India, AIR (1990) SC 176, one of the grounds of challenge to the order of detention was non-supply of copies of documents. The detaining authority relied upon three civil miscellaneous applications filed in a civil revision petition. Copies of the miscellaneous petitions were supplied to the detenue but the copy of the civil revision petition in which the miscellaneous petitions were filed, was not furnished. It was observed that mentioning of civil revision petition in the grounds of detention was merely to identify the miscellaneous applications and having regard to the facts and circumstances of that case the detenue was not prejudiced due to non-supply of the copies of the documents to him and further, the other revision petitions, copies of which were not supplied, were mentioned to point out the fact of shifting of the factory premises without giving any specific address of the factory and that fact in the grounds of detention did not necessarily require the detaining authority to supply copies of the revision petitions. On those facts it was held that non-supply of the document did not cause any prejudice to him. This case falls in the aforementioned second category of documents.

Kamarunnissa v. Union of India, AIR (1991) SC 1640 was also a case arising under Section 3 of the COFEPSA Act. There the documents that were not supplied to the detenue were merely referred to in the grounds of detention and were not relied upon by the detaining authority while arriving at the subjective satisfaction. The observation of the court that mere statement that the documents were not supplied was not sufficient and that the detenue must show that non-supply of documents has im-paired his right to make representation, has to be understood having regard to the fact that the document therein were merely referred to in the grounds of detention but were not relied upon by the detaining authority for reaching subjective satisfaction.

Adverting to the facts of this case, the appellant has made a repre- sentation for supply of Tamil version of the copy of order of remand and specifically stated that the detenue could not understand the English language. Admittedly, the Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenue need not show that any prejudice was caused to her due

to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detenue.

For the above reasons, in our view, non-supply of Tamil version of English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed.

D.P. WADHWA, J. The only contention raised to challenge the order of detention is that the detenu was not supplied with the remand order in Tamil when she was served with the order of detention and the grounds of detention. It is not disputed that the detenu was supplied with Tamil translation of the order, grounds and the documents. Grievance, however, is that she was not supplied with the Tamil translation of the remand order.

The detenu was arrested on April 5, 1998 under Section 4(l)(i) and Section 4(1)(A) of the Tamil Nadu prohibition Act, 1937. She was produced before the Magistrate on the same day and was remanded till April 17, 1998. In the narration of events in the grounds of detention it is stated that the detenue "was produced for remand before the Judicial Magistrate Thirukalukundam on 5.4.98 on the same day and she was ordered to be remanded till 17.4.98 and she was lodged in Special Prison for Women Vellore". Detaining authority in the grounds then mentions : "I am aware that Thirumathi Lakshmi is in remand and there is imminent possibility that she may come out on bail for the offence under section 4(l)(i) & 4(1-A) Tamil Nadu Prohibition Act, 1937 by filing bail applica-tion in the court. I am also aware that in similar cases accused are enlarged on bail by the same court or the superior court after lapse of some time, and if she comes out on bail she will indulge in such further activities in future as well which will be prejudicial to the maintenance of public health and public order." It only shows that the detaining authority was aware that the detenue was on remand and that she was likely to be released on bail and that bail was usually granted by courts in such cases and on her release on bail she was likely to indulge in the prejudicial activities. It is not that the order of remand was the basis on which order of detention of the detenue under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Goondas, Forest-offenders, Im-

moral Traffic Offenders and Slum Grabbers Act, 1982 (Act 14 of 1982) was made. In any case the order of remand was reproduced in the grounds which admittedly were supplied to the detenue in Tamil and also explained to her. The remand order itself reads as under :

"Accused produced. No complaint of ill treatment by the Police. Remanded till 17.4 .98." On notice being issued counter affidavit has been filed by the detain-ing

authority. With reference to the objection raised by the detenue that she was not given Tamil version of the order of remand the detaining authority has replied as under :

"This document (remand order) has been explained in Tamil to the detenue and there is an endorsement that it has been explained to her and she has understood the same. Hence it is not correct to state that the detenue has not understood the contents of the documents at page 81 namely the remand order. It is further humbly submitted that generally whenever a person is produced before the Trial Court at the time of remand the Learned Magistrate used to question only in Tamil, which is the official Language of Tamil Nadu Government. Then the learned Magistrate will remand a person and will inform the date of remand to the person remanded before him. I further humbly submit the averment "no complaint of ill-treatment by Police" in the remand order itself clearly shows that it is not the word of the Learned Trial Magistrate of his own. The Learned Trial Magistrate has put the question to the detenue in Tamil whether the person was ill- treated. The reply given by the person has been recorded in the remand order. The reply has been incorporated in the remand order itself as "no complaint of ill-treatment". Hence the above said endorsement of the Learned Trial Magistrate in the remand order will clearly show and prove that the detenue under-stood the proceedings before the Trial Court at the time of remand and she understood the same also. Hence the non furnishing the copy of the remand order in Tamil Language to the detenue will not cause any prejudice to the detenu in making an effective representation. It is further humbly submitted that the detenue herself appeared before the Advisory Board personally. In the representation dated 18.5.98 given before the Advisory Board she has not stated that she did not understand the contents of the documents namely the remand order dated 5.4.98. She has not made any grievance even before the honourable advisory Board. Hence it has to be presumed that she knew very well that she was remanded till 17.4.98 and she has not made any complaint against the police at the time of remand. Hence non furnishing of the copy of the remand order in Tamil will not cause any prejudice to the detenue."

The detenue did not choose to file any rejoinder to the counter affidavit filed by the detaining authority though opportunity was granted to her. From the record it is apparent that it was not necessary to supply to the detenue a copy of the order of remand and that no prejudice has been caused to the detenue on account of non-supply of Tamil translation of the order of remand. As rightly pointed out by the detaining authority that not only that the remand order which finds mention in the grounds which were given to the detenue in Tamil, the Magistrate also did tell the detenue of the order of remanding her. It may be noticed that the grounds recite that the detenue had earlier on four different occasions been convicted under Sections 4(l)(i) and 4(l)(b) of the Tamil Nadu Prohibition Act, 1937.

In Prakash Chandra Mehta v. Commissioner and Secretary, Govern-ment of Kerala and Others, [1985] Supp. SCC 144, while Hindi translation of the grounds of detention was served on the

detenue there were six annexures which were supplied to the detenue and were in Malayalam. The detenue did not know the Malayalam language. It was, therefore, con-tended that there was violation of the provisions of Article 22 of the Constitution inasmuch as grounds were not communicated to the detenue in a language understood by him. The Court said : "The Constitution requires that the grounds must be communicated. Therefore it must follow as an imperative that the grounds must be communicated in a language understood by the person concerned so that he can make effective repre-sentation". The Court further said that it was a salutary principle to be kept in mind that "there is no rule of law that commonsense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed". In a writ petition challenging the detention on behalf of the detenue it was contended that the detenue did not understand English or Hindi or Malayalam and that he did understand only Gujarati language. This Court repelled this contention and observed that gist of the annexures which was given in Malayalam language had been stated in the grounds. The detaining authority had come to the conclusion that the detenue knew both Hindi and English. The Court rejected other grounds of attack to the detention which was under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. I am tempted to quote the following observations in the judgment (see paras 82 and 83) :-

> "Preventive detention unlike punitive detention which is to punish for the wrong done, is to protect the society by preventing wrong being done. Though such powers must be very cautiously exercised not to undermine the fundamental freedoms guaranted to our people, the procedural safeguards have to be ensured that, yet these must be looked at from a pragmatic and commonsense point of view. The exercise of the power of preventive detention must be strictly within the safeguards provided. We are governed by the Constitution and our Constitution embodies a particular philosophy of government and a way of life and that necessarily requires understanding between those who exercise powers and the people over whom or in respect of whom such power is exercised. The purpose of exercise of all such powers by the Government must be to promote common well-being and must be to subserve the common good. It is necessary to protect therefore the individual rights insofar as practicable which are not inconsis-tent with the security and well-being of the society. Grant of power imposes limitation on the use of the power. There are various procedural safeguards and we must construe those in proper light and from pragmatic commonsense point of view. We must remem-ber that observance of written law about the procedural safeguards for the protection of the individual is normally the high duty of public official but in all circumstances not the highest. The law of self preservation and protection of the country and national security may claim in certain circumstances higher priority.
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> 83. As has been set out by Thomas Jefferson "To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means "(Thomas Jefferson, Writings (Washington Ed.) v. 542-545 and The Constitution Between Friends by Louis Fisher 47.) By the aforesaid approach both

> justice and power can be brought together and whatever is just may be powerful and whatever may be powerful may be just."

In this view of the matter I find myself unable to agree with the view taken by my learned Brother Justice Quadri that detention of the detenue is void and that it should be quashed. Procedural safeguards have been complied with. I would, therefore, rather dismiss the appeal.

In view of the majority decision the Appeal is allowed. V.S.S. Appeal allowed.