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DISTRICT MAGISTRATE AND ANR.

v.

R. KUMARAVEL

AUGUST 4, 1993

B

[KULDIP SINGH AND P.B. SAWANT, JJ.]

*Preventive Detention : Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982.*

C

*S.3—Detention Order—Relevant and vital material—Consideration of—Telegram—Authenticity of—Held, unless confirmed by subsequent signed document, contents of telegram have no authenticity and cannot be considered for assessing value of other authentic documents.*

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Two persons, reported in the records of the district administration as habitual criminals, were detained under Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982, on the ground that they committed violent crimes against the police personnel in a crowded locality at 3.00 P.M. on 25.11.1991 and thereby acted in a manner prejudicial to the maintenance of public order.

E

The detenues challenged their detention by way of *habeas corpus* petitions before the High court on the ground that the orders of detention were vitiated for non-consideration of vital documents and non-application of mind inasmuch as the relevant and vital documents, namely, the telegram sent on their behalf to various authorities complaining that they were taken in to police custody at 11.00 a.m. on 25.11.1991, were neither considered by the detaining authority nor copies thereof were supplied to the detenues.

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The District Magistrate in his counter affidavit stated that the detenues were arrested only after the incident that took place at 3.00 p.m. on 25.11.1991 and the telegrams referred to had been booked late in the evening after the arrest had been made.

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The High Court allowed the petitions and quashed the orders of detention holding that the telegrams were relevant and vital material which

should have been placed before the detaining authority and since the grounds of detention did not disclose that the detaining authority had taken the telegrams into consideration the detention was vitiated. The State filed the appeals by special leave.

Allowing the appeals, this Court

**HELD : 1.1.** The orders of detention could not be challenged on the ground that some material contained in a telegram simplicitor was not taken into consideration by the detaining authority. The High Court was, therefore, not justified in quashing the detention orders. [483-C-D]

**1.2.** A telegram by itself is not an authentic document. It is like an unsigned/anonymous communication. Contents of telegrams, unless confirmed by a subsequent signed application, representation or an affidavit, have no authenticity at all and cannot be taken into consideration for assessing the value of the other authentic documents on the record. [483-A]

**1.3.** There is nothing on the record to show that before the detention orders were passed any other communication was sent to the detaining authority or to the police, confirming the contents of the telegrams. The detention orders were passed by the detaining authority on the basis of the material placed before it. [482-G-H; 483-B]

**2.** The grounds of detention mentioned that the bail application filed on behalf of the detenues was dismissed. The detaining authority had applied its mind to the bail application which contained the averment that the detenues were arrested at 11.30 a.m. on 25.11.1991. The detaining authority had before it the case of the detenues that they were arrested at 11.00 a.m./11.30 a.m. In this view of the matter the challenge based on the telegrams loses its relevance. [482-E-F]

**3.** Since the detenues were released as a result of the High Court judgment, it would not be in the interest of justice - due to lapse of time - to further execute the detention orders and to detain them for undergoing the remaining period of detention. It would, however, be open for the detaining authority to consider afresh, keeping in view the circumstances and their activities, the question of detention in accordance with law. [483-D-E]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 516-517 of 1993.

From the Judgment and Order dated 5.2.1992 of the Madras High Court in Writ Petition Nos. 16838 and 16839 of 1991.

B K. Subramanian, K.V. Vishwanathan and K.V. Venkataraman for the Appellants.

K.K. Mani and B. Kumar for the Respondents.

The Judgment of the Court was delivered by

C KULDIP SINGH, J. Special leave granted in both the petitions.

D R. Ramanathan and G. Jothisankar were detained under Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Durg Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act 1982 (the Act). The orders of detention were passed in respect of both the detainees by the District Magistrate, Thanjavur under the Act. The detainees challenged the detention by way of *habeas corpus* petitions before the Tamil Nadu High Court. By a Common judgment dated February 5, 1992, the High Court allowed both the petitions and quashed the detention orders. These appeals, by way of special leave petitions, are by the State of Tamil Nadu against the judgment of the High Court.

F Both the detainees were reported in the records of the District Magistrate as habitual criminals having history-sheet of committing various crimes. The occurrence which has been made the ground-case in the detention orders, is alleged to have taken place on November 25, 1991 at 3.00 p.m. It is not necessary for us to go into details of the said occurrence, suffice it to say that the detainees allegedly committed violent crimes in a crowded locality against the police personnel and thereby acted in a manner prejudicial to the maintenance of public order. Both the detainees were detained on the basis of the same ground-case. The detainees challenged the orders of detention before the High Court *inter alia* on the following ground:-

H "The relevant and vital documents, namely, the telegrams sent on behalf of the detainees to the police authorities, the Chief Minister, the High Court and other authorities wherein it was complained

that the detenues were taken in police custody at 11.00 a.m. on November 25, 1991, were neither placed before the detaining authority nor the copies of the said telegrams were supplied to the detenues in spite of the request in that respect made by them in their representations. The detention order was thus vitiated for non-consideration of vital documents and non-application of mind." A B

According to the detenues the telegrams were sent to various authorities including the District Magistrate, Thanjavur wherein it was complained that the detenues were taken by the police to the Thanjavur West police Station at 11.00 a.m. on November 25, 1991 and were being kept in police custody illegally. The ground of detention while narrating the occurrence of the ground-case specifically stated that the said occurrence took place at 3.00 p.m. on November 25, 1991 and the detenues were arrested by the police thereafter. According to the High Court if the contents of the telegrams to the effect that the detenues were taken in police custody at 11.00 a.m. are correct, then the detenues could not have participated in any occurrence at 3.00 p.m. on the same day. The High Court, therefore, came to the conclusion that the telegrams sent on behalf of the detenues were relevant and vital material which should have been placed before the detaining authority. Since the grounds of detention did not disclose that the District Magistrate had taken the telegrams into consideration, the detention was vitiated. The High Court allowed the writ petitions and quashed the detention on this short ground. C D E

We do not agree with the reasoning and the conclusions reached by the High Court. F

The detenues filed bail application before the Judicial Magistrate, Thanjavur on November 26, 1991. Para 1 of the bail application is as under:—

"The two petitioners taken into custody by the respondent at about 11. 30 a.m. from the compound of the Sessions and District Judges' Court, Thanjavur." G

It is thus obvious that the detenues had specifically mentioned in the bail application that they were arrested by the police at 11.30 a.m. H

A The District Magistrate in his counter affidavit filed before the High Court deposed as under:-

B "As regards the averments in paragraph 4 of the affidavit, I submit that the detenues was not arrested at 11.00 A.M. in the court premises as alleged. He and his associate were arrested only after the incident that took place at 3.00 P.M. on 25.11.1991. The telegrams referred to had been booked only after the arrest has been made, i.e., late in the evening. I have also persued the bail application filed on behalf of the detenu which contains the averments that the detenu was arrested at 11.30 A.M. and I am also

C aware that it is a false statement of the detenu as he was arrested only at 3.00 P.M. Telegrams were sent at 4.45 P.M. only. This respondent has not referred to the telegrams and not relied on the telegrams in order to arrive at the subjective satisfaction and hence they are not material documents and the detenu cannot contend

D that he has been deprived of making effective and meaningful representation. All the documents relied in the grounds of detention have been furnished to the detenu. Hence, the contention to the contrary is not sustainable in law and is denied."

E Learned Advocate-General appearing for the State of the Tamil Nadu has taken us through the grounds of detention. It has been mentioned in para 3 of the grounds that the bail application filed on behalf of the detenues was dismissed by the Judicial Magistrate, Thanjavur on November 26, 1991. It is thus obvious that the District Magistrate had applied his mind to the bail application which contained the averment that the

F detenues were arrested by the police at 11.30 A.M. on November 25, 1991. The District Magistrate had before him the case of the detenues that they were arrested by the Police at 11.00/11.30 A.M. In this view of the matter, the argument of the learned counsel for the detenues based on the telegrams loses its relevance.

G We may examine the argument of the learned counsel for the detenues from another angle. The detenues have based their case solely on the fact that the contents of the telegrams sent on their behalf were not taken into consideration by the detaining authority. There is nothing on the record to show that before the detention orders were passed any other

H communication was sent to the detaining authority or to the police, con-

firming the contents of the telegrams. A telegram by itself is not an authentic document. It is like an unsigned/anonymous communication. Unless a telegram is confirmed by a subsequent signed application, representation or an affidavit, the contents of the telegrams have no authenticity at all and the same cannot be taken into consideration for assessing the value of the other authentic documents on the record. The detention orders were passed by the District Magistrate on the basis of the material placed before him by the police authorities. Any material received by the District Magistrate in the shape of telegrams could not be taken into consideration by him in the absence of any subsequent communication confirming the same. We are, therefore, of the view that the orders of detention could not be challenged on the ground that some material contained in a telegram simplicitor was not taken into consideration by the detaining authority

The High Court was, therefore, not justified in quashing the detention orders on the ground discussed above. We set aside the reasoning and conclusions reached by the High Court on the above said issue.

The detainees were released, as a result of the High Court judgment, in February 1992. We of the view that it would not be in the interest of justice - due to lapse of time - to detain the respondents for undergoing the remaining period of detention under the impugned detention orders. We, therefore, direct that the impugned detention orders shall not be further executed as a result of our judgment. It would, however, be open for the detaining authority to consider afresh, keeping in view the present circumstances and activities of the respondents, the question of detention in accordance with law. We allow the appeals in the above terms.

R.P.

Appeals allowed.