

REKHA

v.

STATE OF T. NADU TR. SEC. TO GOVT. & ANR.
(Special Leave Petition (Crl.) No . 576 of 2011)

MARCH 15, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Tamil Nadu Prevention of Dangerous Activities of Bottleggers, Drug- Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, and Slum Grabbers and Video Pirates Act, 1982 – s. 3 – Detention order under – Legality of – Conflict of opinion on the point that since no bail application was pending when the detention order u/ s. 3 was passed, hence, the detention order was illegal as the detenu was already in jail in a criminal case on the same facts – Matter referred to larger Bench.

T.V. Sravanan alias S.A.R. Prasana Venkatachaariar Chaturvedi vs. State through Secretary and Anr. (2006) 2 SCC 664; A. Shanthy(Smt.) vs. Govt. of T.N. and Ors. (2006) 9 SCC 711; Rajesh Gulati vs. Govt. of NCT of Delhi and Anr. (2002) 7 SCC 129; A. Geetha vs. State of T.N. and Anr. (2006) 7 SCC 603; Ibrahim Nazeer vs. State of T.N. and Anr. (2006) 6 SCC 64 – referred to.

Case Law Reference:

(2006) 2 SCC 664	Referred to.	Para 7
(2006) 9 SCC 711	Referred to.	Para 7
(2002) 7 SCC 129	Referred to.	Para 7
(2006) 7 SCC 603	Referred to.	Para 8
(2006) 6 SCC 64	Referred to.	Para 8

A CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No(s).576 of 2011

From the Judgment & Order dated 23.12.2010 of the High Court of Judicature at Madras in HCP No. 792 of 2010.

B WITH

SLP(Crl) NO. 1859 of 2011, 2237 of 2011, 540 of 2011, 578 of 2011, 580 of 2011, 584 of 2011, 676 of 2011

C K.V. Viswanathan, K.K. Mani, Abhishek Krishna, Mayur R. Shah, S. J. Aristotle, Ahanthem Rohen Singh, Bob, Prabhu Ramasubramanian, Priya, Aristotle, V.G. Pragasam, V. Mohana, Abhishek K., Vijay Prashant, G. Ananda Selvam, Andrew Jaimon, A. Santha, Kumaran, Ravindra Keshavrao Adsure, Guru Krishna Kumar, Akshat Hansaria, Mamta Chandel and Abhay Kumar for the petitioner.

D Altaf Ahmed, Promila, S. Thananjayam for the Respondents.

E The following Order of the Court was delivered

O R D E R

Heard learned counsel for the appearing parties.

F Leave granted.

These Appeals have been filed against the impugned common judgment of the High Court of Madras dated 23.12.2010.

G The facts have been stated in the impugned judgment and hence we are not repeating the same here.

H Mr. K.K. Mani, learned counsel appearing for some of the appellants in these Appeals, submitted that since no bail application was pending when the detention order in question

REKHA v. STATE OF T. NADU TR. SEC. TO GOVT. 887
& ANR.

under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bottleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, and Slum Grabbers and Video Pirates Act, 1982 was passed, hence the detention order in question was illegal as the appellant was already in jail in a criminal case on the same facts. Hence, there was no likelihood of his release.

It appears that there is some conflict of opinion on the aforesaid point.

Mr. K.K. Mani, learned counsel, has relied on judgments of this Court in *T.V. Sravanan alias S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Anr.*, (2006) 2 SCC 664; *A. Shanthy (Smt.) Vs. Govt. of T.N. and Ors.*, (2006) 9 SCC 711; and *Rajesh Gulati Vs. Govt. of NCT of Delhi and Anr.* (2002) 7 SCC 129, wherein it was held that if no bail application was pending and the detenu was already, in fact, in jail in a criminal case, the detention order under the preventive detention is illegal.

On the other hand, Mr. Altaf Ahmed, learned senior counsel appearing for the State of Tamil Nadu, has relied on the judgments of this Court in *A. Geetha Vs. State of T.N. And Anr.* (2006) 7 SCC 603; and *Ibrahim Nazeer Vs. State of T.N. and Anr.*, (2006) 6 SCC 64, wherein it has been held that even if no bail application is pending but if in similar cases bail has been granted, then this is a good ground for the subjective satisfaction of the detaining authority to pass the detention order.

Mr. K.K. Mani, learned counsel, has, however, submitted that in the decisions cited by him it was mentioned in the detention order that in similar cases bail had been granted. Despite this the detention order has been held to be illegal.

There seems to be conflict between the decisions cited by Mr. K.K. Mani, learned counsel, and the decisions cited by

A Mr. Altaf Ahmed, learned senior counsel. Hence, in our opinion, the matter should be considered by a larger bench for resolving this difference of opinion.

B Let the papers of these Appeals be placed before Hon'ble the Chief Justice of India for constituting a larger bench. Since the period of detention is expiring on 17.04.2011, we would request Hon'ble the Chief Justice of India to constitute a larger bench at the earliest otherwise these Appeals would become infructuous.

C Any prayer for temporary relief may be made before the larger bench.

N.J.

Matter referred to larger Bench.