

L. PRAKASH V. STATE OF TAMIL NADU

2002 Cri LJ 2596

WRIT PETITION No. 7313 of 2002

-Paikar Mustafa

Court- Madras High Court

Bench- P. Sathasivam, J.

Decided on- 15 March, 2002

Relevant Acts- The Tamil Nadu Preventive Detention of Bootleggers, Drug-Offenders, (Forest-Offenders), Goondas, Immoral Traffic Offenders and Slum-Grabbers for Preventing their Dangerous Activities Prejudicial to the Maintenance of Public Order Act, 1982, Information Technology Act, 2000, Indecent Representation of Women (Prohibition) Act, 1986, Arms Act, 1959.

FACTS OF THE CASE:

The writ petition under Article 226 of the Constitution was filed in the Madras High Court by a detenu Dr. L. Prakash under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), Chennai. The second respondent submitted the above-mentioned petition to issue a *Writ of Mandamus* directing the Superintendent, Central Prison, to give him all the facilities as a 'special class prisoner' even if he is subjected to detention under Tamil Nadu Act. He was arrested for various offenses by the Police Inspector, R8 Vadapalani Police Station, Chennai, in particular Section 67 of the Information Technology Act, 2000, Section 4 read with Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986 and Section 120-B of the Indian Penal Code. By profession, he is a Doctor of Medicine. He earned a degree in M.S. after receiving M.B.B.S., Degree in Orthopedics. He also did other postgraduate degrees and did significant work in patients with Polio in the lower limb and deformities. He has written over 120 academic papers that were all published in respected scientific journals. After the remand to judicial custody on 24-12-2001,

he filed an application before the Metropolitan Magistrate, Saidapet, Chennai for grant of special class treatment in Central Prison. The application was moved under Rule 815 of the Tamil Nadu Prison Manual. He assessed income tax for the last several years and has paid more than rupees 3 lakhs by way of tax in the past 3 years. He is also a post-graduate in Medicines and under the said rule such persons are entitled to be classified as special prisoners. According to rule 815 of the Manual, special prisoners are those who by their special status, education, and habit of life have been accustomed to a superior mode of living. By order dated 28-12-2001, the Metropolitan Magistrate recommended special class treatment in Central Prison for the petitioner. The petitioner was being given special treatment as per the order. Meanwhile, the Commissioner of Police, Greater Chennai has made an order of detention dated 18-02-2002, directing the detention of prisoners under the Tamil Nadu Act. As the second respondent's conduct is unconstitutional and violates Article 21 of the Indian Constitution, he had no alternative remedy; he filed the above-written petition stipulated in article 226 of the Indian constitution.

ISSUE RAISED:

The only point of consideration formulated in the writ petition is whether the petitioner is to be given special class prisoner facilities even as a detenu under Tamil Nadu Act 14 of 1982.

RULE APPLIED:

The Case before the Hon'ble court pertains to the rules, interpretation, and provisions as entailed by the Constitution of India, the Tamil Nadu Preventive Detention of Bootleggers, Drug-Offenders, (Forest-Offenders), Goondas, Immoral Traffic Offenders and Slum-Grabbers for Preventing their Dangerous Activities Prejudicial to the Maintenance of Public Order Act, 1982, Information Technology Act, 2000, Indecent Representation of Women (Prohibition) Act, 1986, Arms Act, 1959. The relevant provisions upon which case was based and which were applied by the court to determine the above-mentioned questions of law are as follows:

Article 226:- It empowers the High Courts to issue any person or authority, including the government in some cases, directions, orders or writs, including writs like *habeas corpus*, *mandamus*, *prohibition*, *quo warranto*, *certiorari* or any of them.

Section 3(1) of Tamil Nadu Act (Act 14 of 1982)-: The State Government may if satisfied concerning any bootlegger or cyberlaw offender or drug-offender or forest offender or goonda or orders detain immoral traffic offender or sand offender or sexual-offender or slum-grabber or video pirate that to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

Section 67 of the Information Technology Act provides for punishment for publishing and transmitting obscene material in electronic form. In the present case appellant no. 1 was convicted under the same Section and was sentenced to undergo 5 years of rigorous imprisonment and pay fine of Rs. 1,00,000, with a default sentence of 6 months of rigorous imprisonment.

Section 4- This provision of the Indecent Representation of Women (Prohibition) Act, 1986 prohibits the production, sale, hire, distribution, circulation, sending by post any book, pamphlet, slide, film, writing, drawing, painting, etc. which contains indecent representation of women in any form. The provision shall not apply to the following:

- 1) Any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure-
 - i. the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or
 - ii. Which is kept or used bona fide for religious purposes;
- 2) Any representation sculptured, engraved, painted or otherwise represented on or in-
 - i. Any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958); or
 - ii. Any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose;
- 3) Any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986, provides any person who contravenes the provisions of Sec. 3 or Sec. 4 shall be punishable on first conviction with imprisonment of either description for the term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent

conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine, not less than ten thousand rupees but which may extend to one lakh rupees.

ANALYSIS:

The Honorable High court taking cognizance of facts and issue raised, observed that it is not disputed that the petitioner is an accused under Section 67 of the Information Technology Act, 2000 read with Section 41 read with Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986 read with Section 27 of the Arms Act, 1959 and 120-B (ii) of the Indian Penal Code. He made a representation before the Metropolitan magistrate for special treatment which he obtained under the order of the magistrate taking in cognizance the tax assessment of the petitioner, educational skills, and qualifications. Thereafter, the Commissioner of Police, Greater Chennai after satisfying that the petitioner is an immoral traffic offender as contemplated under Section 2 (g) of the Tamil Nadu Act 14/1982 and to prevent him from acting in any manner prejudicial to the maintenance of public order, under the power conferred on him by subsection (1) of Section 3 of Tamil Nadu Act 14 of 1982, passed an order detaining him in custody at the Central Prison, Chennai. Accordingly, as on date, particularly on the date of filing of the petition, the petitioner is a detenu under Tamil Nadu Act.

The court further observed that in the exercise of the power granted under section 5 of Tamil Nadu Act, 1982, the Governor of Tamil Nadu framed an order called "The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers (Conditions of Detention) Order, 1986 (in short "Conditions of Detention Order, 1986"). The Order contains provisions about accommodation, diet, clothing, bedding, toilet articles, private property, interview and communications, the supply of newspapers and magazines, withdrawal of privileges, representation by detenu, offenses and punishments while under detention, prohibited articles, powers of Superintendent, security, the imposition of cellular or separate confinement, handcuffing, removal of detenus to hospitals, exercise, and games, visits, etc. The court held that since the petitioner being an immoral traffic offender and his activities are prejudicial to the maintenance of public order, the petitioner is sufficiently provided all the facilities as mentioned in the Conditions of Detention Order, 1986 and the absence of any statutory provision or Government Order, the petitioner being a detenu under Tamil Nadu Act 14 of 1982, cannot be granted facilities as a special class prisoner.

The Court further held that the reliance placed by the petitioner on **Francis Coralie v. Union Territory of Delhi**, AIR 1981 746, after viewing the present condition of the case is misplaced. Further the reliance on **F. Thomim v. The Superintendent, Central Prison**, Madras is not helpful wherein the Division bench rejected several claims made by the petitioner and allowed certain facilities by the rules applicable. The court observed that the grievance of the petitioner is not that the facilities provided under the Condition of Detention Order, 1986 is not given but that the special treatment should continue to be given even though he is detenu under Tamil Nadu Act 14 of 1982 which by the reason of his detention under Immoral traffic Act, he cannot be given. All the representations made by the petitioner to the higher authorities have to be disposed of then and there under the rules applicable to him.

CONCLUSION:

The Honorable High Court dismissed the writ petition having found no merit in the petition. The court by the speaking order maintained the *status quo* upon the treatment which was withdrawn by the order of the commissioner of police. The court was cautious in not carving out the special case based on the education, qualification, and skills of the petitioner when he is convicted as an immoral traffic offender. The court by its order upheld the intention of the legislature behind the denial of special treatment to such offenders.

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