

CASE NO.:  
Appeal (crl.) 206 of 2001

PETITIONER:  
THE STATE OF TAMIL NADU & ANR.

Vs.

RESPONDENT:  
BALASUBRAMANIAM

DATE OF JUDGMENT: 20/02/2001

BENCH:  
M.B. Shah & S.N. Variava.

JUDGMENT:

S. N. VARIAVA, J.  
L...I...T.....T.....T.....T.....T.....T.....T..J  
Leave granted.

Heard parties.

This Appeal is against an Order dated 10th March, 2000. By this Order a detention Order dated 7th April, 1999 has been quashed on the ground that in the Affidavit of the Sponsoring Authority it has been mentioned that the Detenu was involved in six cases and that in the detention Order it has been stated that the Detenu was involved in four occurrences in four different cases. It is held that the Detenu had been given copies of documents in respect of one case only even though the Detaining Authority was bound to give copies in all the six cases. It is held that thus the Detenu had been denied an effective opportunity to defend himself. On this ground the detention Order was set aside.

It is correct that the Detaining Authority has to apply its mind before issuing a Detention Order. However, it is equally important that the Court, hearing a Habeas Corpus Petition under Article 226 of the Constitution of India, also applies its mind before it quashes a Detention Order. Undoubtedly, in the Affidavit filed by the Sponsoring Authority reliance has been placed on six cases. However, the Detaining Authority has not placed reliance on six cases. This itself shows that the Detaining Authority had applied its mind and not gone just by what was stated by the Sponsoring Authority.

In Para 2 of the impugned Order it is stated as follows:

"2. In sub-para 2 of paragraph 3 of the grounds of detention it is stated as follows: "He has committed the above mentioned offences in Sobanapuram, Koppampatti, Manamalai, Anaikkal which are rich in sandalwood and other species and wild life."

The detenu is stated to have been involved in four occurrence in four different cases. ."

From the statement extracted above it has been concluded that there were four occurrences in four different places. However, the same Detention Order also sets out as follows: "On 16-3-99 on a reliable information, the Forest Range Officer, Perambalur and incharge of Thuraiyur Range, formed a special party led by him, proceeded at about 5 PM to conduct forest offences raid at Sobanapuram Section, Koppampatti beat, Manmalai Reserve Forest Jee road."

Thus it is clear that Sobanapuram is a Section, Koppampatti is a beat, Manmalai is a reserve forest and Anaikkal is a name of the road. A careful reading shows the Detention Order does not refer to four occurrences in four different places, but is only mentioning that an offence had taken place in Sobanapuram section, Koppampatti beat, Manamalai forest and at Anaikkal road. Had the High Court applied its mind properly, it would have realised that there were no four occurrences in four different places. Admittedly, the Detenu has been given copy of the documents in the adverse case relied upon.

In our view, there has been total non-application of mind on the part of the High Court. The impugned Order of the High Court cannot be sustained and it is hereby set aside.

However, the Detention Order was of 1999. The same had been quashed by the High Court in March 2000. The period of detention is over. In our view, this is not a case where the Detenu should be made to surrender to undergo the remaining period of detention.

The Appeal stands disposed off accordingly. There will be no Order as to costs.

..J.  
(M. B. SHAH)

..J.  
(S. N. VARIAVA)

February 20, 2001.