

(1989) 02 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 8033 of 1988

Cheriyar

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Prohibition Act, 1937 — Section 2, 3(1)

Citation : (1989) 02 MAD CK 0022

Hon'ble Judges : Janarthanam, J; David Annoussamy, J

Bench : Division Bench

Advocate : P. Subadra Devi, for the Appellant; G.R. Edmund, Assistant Public Prosecutor, for the Respondent

Judgement

David Annoussamy, J.—This is a petition by the detenu under Art. 226 of the Constitution of India for the issuance of a writ of Habeas

Corpus quashing the order of detention and setting him at liberty.

2. The order of detention was passed by the Commissioner of Police, Madras City, Madras on 21-4-1988, under S. 3(1) of the Tamil Nadu Act

14 of 1982, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, as a bootlegger. The order of

detention was subsequently approved and confirmed by the Government.

3. The main ground urged by the learned counsel for the petitioner detenu is that the petitioner is not bootlegger within the definition of the Act; that

being a bootlegger was different from being guilty of an offence I under the Tamil Nadu Prohibition Act. We Shall therefore consider that

contention. As per S. 2(a)(i) of the Tamil Nadu Act 14 of 1982, a bootlegger is a person engaged, or making preparations for engaging, in any of

his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order. The term "bootlegger" is

being defined under S. 2(b) of the Act, among other persons to include those who sell or distribute any liquor, intoxicating drug or other intoxicant

in contravention of any of the provisions of the Tamil Nadu Prohibition Act, 1937. In the Explanation to S. 2(a) , as far as bootlegger is concerned,

public order shall be deemed to be affected adversely if any of his acts visualises to cause or calculates to cause a grave or widespread danger to

life or public health. We have therefore to ascertain whether the detaining authority has exercised properly the operation of coming to a subjective

satisfaction whether the activities of the detenu were susceptible of causing a grave or widespread danger to life or public health.

4. It is seen from the records that the alcoholic drink that the detenu was selling contained 0.033 mg. of chloral hydrate. The opinion of the doctor,

who was consulted is only that chloral hydrate is a poisonous substance and consumption of I.D. arrack mixed with chloral hydrate is injurious to

health and human life. The person who consumed the liquor sold by the detenu; himself complained that on 28-2-1988 evening he has consumed

two glass tumblers of I.D. arrack from the petitioner-detenu, that he felt burning sensation in his eyes, giddiness and vomiting and lost his

consciousness, that on the next day his wife told him that he fell sick and that she got him treated with native treatment. Therefore, it is obvious that

the liquor sold by the detenu was not such as to cause grave or widespread danger to life or public health as contemplated in the Act. This act of

the detenu may constitute an offence under the Tamil Nadu prohibition Act, which fact the concerned Court will consider independently

uninfluenced by any of the observations that we have made in the disposal of this writ petition. The conclusion from the above reasoning is that the

petitioner is not a bootlegger within the meaning of the Act and therefore the detention order passed against him is illegal.

5. In the result, this writ petition is allowed, the order of detention is set aside and the petitioner is directed to be released forthwith unless

otherwise he is required to be detained in some other case.

6. Petition allowed.