
(2007) 11 MAD CK 0024
In the Madras High Court
Case No : H.C.P. No. 881 of 2007

D. Easwari

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1), 4(1), 4(1A)

Citation : (2007) 11 MAD CK 0024

Hon'ble Judges : R. Regupathi, J; P.D. Dinakaran, J

Bench : Division Bench

Advocate : S. Kamadevan, for the Appellant; N.R. Elango, Addl. Public, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The second respondent herein clamped an order of detention as against the detenu - Devendran, husband of the

petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained u/s 3(1) of the

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand

Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas

corpus to call for the records leading to the detention of the detenu, now detained in Central Prison, Trichy under Tamil Nadu Act 14 of 1982 vide

detention order dated 8.4.2007 on the file of the second respondent herein made

in C.O.C. No. 10 of 2007, to set aside the same, to consequently direct the respondents herein to produce the detenu before this Court and to set him at liberty.

3.1. The order of detention dated 8.4.2007 was passed on the basis of ground case in Crime No. 400 of 2007 for alleged commission of offences

under Sections 4(1)(aaa), 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 17.3.2007

when the Inspector of Police, Enforcement Wing, Nagapattinam along with his police party went on a prohibition raid to Kovilkadambanur Village

of Keevalur Police Station, at the backside of Kankuthu Ayyanarkoil, they found the detenu selling illicit arrack from a 120 Litres capacity lorry

tube to an unknown person, who ran away seeing the police party. On verification, it was found that the lorry tube contained 105 Litres of

Pondicherry arrack and the same emanated poisonous odour resulting in irritation to eyes. The detenu was arrested. The samples of arrack seized

were sent for chemical analysis on 21.3.2007 through the learned Judicial Magistrate I, Nagapattinam and the report of the Assistant Director,

Regional Forensic Science Laboratory, Thanjavur reveals that the samples contain 1.5 mg% w/v of Atropine per 100 ml. The Assistant Medical

Officer opined that consumption of arrack mixed with 1.5 mg% w/v of Atropine in 100 ml. would affect the lungs and heart and is likely to

endanger life, even if intensive treatment is given to patient.

3.2. Apart from the above, the detaining authority also took note of the six adverse cases pending against the detenu, viz.,

i. Crime No. 499 of 2006 registered on the file of Kilvelur Police Station for the occurrence said to have taken place on 17.8.2006 for the

offences punishable under Sections 4 read with Section 4(1-A) of the Tamil Nadu Prohibition Act;

ii. Crime No. 524 of 2006 registered on the file of Kilvelur Police Station for the occurrence said to have taken place on 28.9.2006 for the

offences punishable under Sections 4(1)(a) read with Section 4(1-A) of the Tamil Nadu Prohibition Act;

iii. Crime No. 1489 of 2006 registered on the file of Nagapattinam Prohibition Enforcement Wing for the occurrence said to have taken place on

8.12.2006 for the offences punishable under Sections 4(1)(aaa) read with

Section 4 of the Tamil Nadu Prohibition Act;

iv. Crime No. 174 of 2007 registered on the file of Nagapattinam Prohibition Enforcement Wing for the occurrence said to have taken place on

1.2.2007 for the offences punishable under Sections 4(1)(aa) of the Tamil Nadu Prohibition Act;

v. Crime No. 108 of 2007 registered on the file of Kilvelur Police Station for the occurrence said to have taken place on 27.2.2007 for the

offences punishable under Sections 4(1)(aa) of the Tamil Nadu Prohibition Act; and

vi. Crime No. 142 of 2007 registered on the file of Kilvelur Police Station for the occurrence said to have taken place on 14.3.2007 for the

offences punishable under Sections 4(1)(aa) of the Tamil Nadu Prohibition Act.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public

health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The main ground of attack in this case is that in the grounds of detention, at Page (4), the detaining authority has stated that ""The samples of

arrack and seized articles in the above said case, were produced before the Court on 17.3.2007 and sample arrack bottles were sent for chemical

analysis on 21.3.2007 through the Judicial Magistrate No. I, Nagapattinam on the requisition of the Inspector of Police, Prohibition Enforcement

Wing, Nagapattinam..."" , but there is no iota of evidence to substantiate as to how such inference was drawn.

6. We have perused the materials produced before us and as contended by the learned Counsel for the petitioner, there is no material available on

record to substantiate the inference drawn by the detaining authority that the sample of arrack was sent for chemical analysis on 21.3.2007 through

the Judicial Magistrate No. I, Nagapattinam on the requisition of the Inspector of Police, Prohibition Enforcement Wing, Nagapattinam. We are,

therefore, of the considered opinion that the detaining authority has not applied its mind properly to the above aspect of the case.

For the abovesaid reason, the order of detention is vitiated. This petition must succeed and the same is ordered as prayed for. The detention order

dated 8.4.2007 is set aside. The detenu is directed to be set at liberty forthwith

unless his custody is required in connection with any other case.