

(2010) 09 MAD CK 0307
In the Madras High Court
Case No : H.C.P. No. 939 of 2010

Elumalai

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Tamil Nadu Prohibition Act, 1937 — Section 4, 4(1), 4(1A)

Citation : (2010) 09 MAD CK 0307

Hon'ble Judges : M. Sathyanarayanan, J;M. Chockalingam, J

Bench : Division Bench

Advocate : O.S. Thilak Pasu, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenge is made to an order of the second Respondent dated 28.4.2010, whereby the nephew of the Petitioner herein by name Ayyappan @ Gnanavel was ordered to be detained under Act 14/82 terming him as a Bootlegger.

2. The Court heard the learned Counsel for the Petitioner and looked into all the materials available and in particular, the order under challenge.

3. It is not in controversy that pursuant to the commendation made by the sponsoring authority that the detenu is involved in six adverse cases namely (1) Kannamangalam PS Cr. No. 454/2009 u/s 4(1)(aa) TNP Act; (2) Cheyyar PS Cr. No. 584/2009 u/s 4(1)(aa) TNP Act; (3) Cheyyar PS Cr. No. 16/2010 u/s 4(1)(aa) TNP Act; (4) Kannamangalam PS Cr. No. 469/2009 u/s 4(1)(aa) read with 4(1-A)(ii) TNP Act @ 4(1)(aaa) TNP Act; (5) Kannamangalam PS Cr. No. 721/2009 u/s 4(1)(aaa) read with 4(1-A)(ii) TNP Act @ 4(1)(aaa) TNP Act; and (6) Kannamangalam PS Cr. No. 867/2009 u/s 4(1)(aaa) read with 4(1-A)(ii) TNP Act @ 4(1)(aaa) TNP Act and also in a ground case in Crime No. 222/2010 of Kannamangalam PS registered under Sections 4(1)(i) read with 4(1-A)(ii) of TNP

Act for an occurrence that had taken place on 6.4.2010, and he was arrested and remanded to judicial custody, the detaining authority on scrutiny of the materials placed, made the order under challenge after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order.

4. Assailing the order under challenge, the learned Counsel for the Petitioner would submit that in the instant case, he was actually taken to custody on 4.4.2010, and was illegally detained; that under the circumstances, certain documents namely food distribution register, search register, etc., were called for by a representation; that copies of those documents were not furnished, and hence he could not make effective representation, and under the circumstances, the order has become vitiated.

5. Added further the learned Counsel that Crime No. 222/2010 was registered on 6.4.2010; that the contraband found therein was actually recovered on 6.4.2010; that as could be seen from page 26 of the booklet, it was received by the Judicial Magistrate only on 7.4.2010; that the requisition to send the contraband to the Forensic Department for the purpose of analysis was given on 6.4.2010; that if really the contraband was received by the Court only on 7.4.2010, no question of sending there requisition for analysis on 6.4.2010, would arise; that under the circumstances, a clarification should have been called for by the detaining authority, but failed to do so and hence the order has got to be set aside.

6. The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

7. After looking into the materials available and hearing the submissions made, this Court is of the considered opinion that no ground is made out to set aside the order. It is not in controversy that the detenu was involved in six adverse cases and one ground case as referred to above. The ground case was registered in Crime No. 222/2010 when he was found in possession of arrack on 6.4.2010, and a case came to be registered u/s 4(1)(i) read with 4(1-A)(ii) of TNP Act. The available material would indicate that the contraband recovered from him on 6.4.2010, was sent to the Court. It is made clear in the detention order itself that after the recovery, they were all sent to the Court, and since the Court working hour was over, they were actually taken back. It is pertinent to note that when it was received by the Court, the date is shown as 7.4.2010, and when it was originally taken to the Court, the recovery mahazar was actually dated 6.4.2010. Apart from that, the requisition for chemical analysis was dated 6.4.2010, which accompanied the same, and it could not have raised any doubt in the mind of the authority. The explanation is also given in the grounds of detention. Hence the said ground cannot be said to have any force.

8. As far as the other ground that he was taken to custody on 4.4.2010, and kept under illegal custody for two days, and he gave a representation on 17.5.2010, calling for certain documents, and those documents were not

supplied to him is concerned, this Court is unable to agree with the learned Counsel. It is true that the case came to be registered on 6.4.2010, as referred to above. It has been clearly replied by the State that he was actually taken to custody on 6.4.2010, and the documents asked for were actually not available with the police, and hence it could not be supplied. It is a proper reply to the request made by the detenu. Under the circumstances, no ground is made out in order to disturb the order of detention.

9. In the result, this habeas corpus petition fails, and the same is dismissed.