

(1999) 08 MAD CK 0121

In the Madras High Court

Case No : Habeas Corpus Petition No. 1942 of 1998

Elumalai

APPELLANT

Vs

The District Magistrate and District Collector, Vellore District,
Vellore and The Secretary to Government of Tamil Nadu,
Prohibition and Excise Department, Fort St. George,
Chennai-9, Respondents

RESPONDENT

Date of Decision : 17-08-1999

Acts Referred:

Citation : (2000) 1 LW(Cri) 483

Hon'ble Judges : V. Bakthavatsalu, J;N. Dhinakar, J

Bench : Division Bench

**Advocate : A.K.S. Thahir, for the Appellant; S. Anbalagan, Assistant Public
Prosecutor, for the Respondent**

Judgement

N. Dhinakar, J.—Petitioner is the brother-in-law of the detenu and the detenu stands detained by an order dated 31.8.1998 passed by the first respondent under Tamil Nadu Act 14 of 1982, after the detenu was identified as a forest offender since he had come to the adverse notice of the Detaining Authority in three adverse cases registered under Tamil Nadu Forest Act V of 1882. Tamil Nadu Forest (Amendment) Act 45 of 1979 and 44 of 1992, and Tamil Nadu Sandalwood Possession Rules, 1970, and further on 5.8.1998, the detenu indulged in activities prejudicial to the maintenance of public order by felling trees in a forest area resulting in loss of fertile top soil permanently and the said activities are highly dangerous to the ecological system which thereby affect the public order.

2. In the grounds of detention, it is further stated that the detenu complied and mislead the tribal people by offering money and arrack for helping him and cutting of trees illicitly from the reserved forest, causing wide-spread danger to the ecological system.

3. Learned counsel for the petitioner and the learned Additional Public Prosecutor

have submitted that the order need not contain all the details since the order of detention will have to be set aside on the following short ground.

4. Learned counsel for the petitioner submits that though the detenu was furnished with the grounds of detention as well as the documents relied on by the Detaining Authority for arriving at his subjective satisfaction to pass the order of detention, he was not furnished with the legible copy of Form H as could be seen at page No. 40 in the booklet furnished to him. We perused page No. 40 of the booklet furnished to the detenu and it was shown that the copy furnished to him is totally illegible. The learned Additional Public Prosecutor counters the argument by saying that the detenu is not prejudiced since he has been supplied with the copy of the mahazar prepared for the seizure of the material objects at the time when the detenu was arrested and one line which is legible in the said Form indicates that Form H is in terms of the mahazar. We are unable to accept the said contention of the learned Additional Public Prosecutor since it is for the detenu to look at the contents of Form H as well as the mahazar to find out whether Form H is actually in terms of the mahazar prepared by the officer at the time of seizure. Page No. 40 of the booklet is totally illegible and the detenu could not have been in a position to compare this document with the seizure mahazar to come to the conclusion that Form H is actually in terms of the seizure mahazar. The non-furnishing of a legible copy has definitely affected the detenu's case since he could not make an effective representation.

5. Under the circumstances, we cannot but hold that there was no proper communication to the detenu. The order of detention is therefore liable to be set aside and is accordingly set aside and the H.C.P. is allowed. The detenu is directed to be released forthwith unless detention is required in connection with any other case.