

(2005) 08 MAD CK 0071
In the Madras High Court
Case No : H.C.P. No. 412 of 2005

K. Saraswathi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1), 4(1A)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2005) 08 MAD CK 0071

Hon'ble Judges : P. Sathasivam, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : R. Shivakumar, for the Appellant; Abudu Kumar Rajarathnam,
Government Advocate (Crl.) for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.,

1. The wife of the detenu, namely, Karuppusamy, challenges the impugned order of detention dated 21.03.2005, detaining him, as ""Bootlegger"" u/s

3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic

Offenders and Slum Grabbers Act, 1982 (in short ""Tamil Nadu Act 14 of 1982"").

2. Heard both sides.

3. The learned counsel appearing for the petitioner by drawing our attention to the complaint made against the detenu and the remand order would

submit that the impugned detention order is liable to be quashed on the ground of non-application of mind on the part of the detaining authority. It

is seen that ground case has been filed in respect of offences u/s 4(1)(aaa) r/w

4(1-A) of T.N.P. Act, 1937 . But in the remand order dated 29.01.

which finds place at page No. 43 of the paper book, the learned Judicial Magistrate No. II, Mayiladuthurai, has recorded as, ""Accused produced.

No complaints against police. No prima facie case for Section 4(1)(A) of TNP Act. Therefore, remanded u/s 4(1)(aaa) TNP Act till 11.02.2005.

A perusal of the above remand order, which is a relied on document show that the accused was remanded only for an offence u/s 4(1)(aaa) of

TNP Act. This material aspect was not considered by the detaining authority while passing the impugned detention order. Therefore, there is non-

application of mind. It is pointed out that the detaining authority should have called for a report in this respect and without calling for a report, the

order of detention has been passed, as if the detenu has committed all the offences as has been registered against him in the First Information

Report. This renders the detention illegal. Hence, the impugned detention order is quashed; accordingly, this petition is allowed and the detenu is

directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.