
(2001) 09 MAD CK 0129
In the Madras High Court
Case No : H.C.P. No. 850 of 2001

Kali	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Citation : (2002) 1 LW(Cri) 401

Hon'ble Judges : V.S. Sirpurkar, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Thiru. S. Swamidoss Manoharam, for the Appellant; Thiru. A. Navaneetha Krishnan, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The Petitioner challenges herein the order passed by the District Collector and District Magistrate, Kancheepuram dated 19.4.2001, whereby one Devaki, Wife of Thiru Kali Kuppiaya Nellore village, has been directed to be detained u/s 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbe"rs Act 1982 (Tamil Nadu Act, 14 of 1982). On the ground that she was a bootlegger and that her activities were found prejudicial and to the maintenance of public health and public order.

2. The only point raised by the learned Counsel Mr Swamidoss Manoharan is that even prior to the detention, a representation dated 7.4.2001 was sent by the Petitioner, which reached the detaining authority on 9.4.2001. He points out further that it is an admitted position that the said representation was considered by the detaining authority but there is no reference to the said consideration and the said document either in the detention order, grounds of detention and the copy thereof is also not supplied to the detainee. Learned Counsel produced before us the copy of the said representation along with the acknowledgment as it was sent by Registered Post with Acknowledgment Due. Learned Counsel also invited our attention to the counter affidavit filed and more particularly at para 7

wherein a clear out statement has been made that the representation dated 7.4.2001 was received by the Respondent detaining authority on 9.4.2001 and was properly considered before passing the order of detention.

3. Now it is therefore clear and becomes an admitted position that the representation made which pertain to the subject of detention was taken into consideration by the detaining authority before the order of detention was passed yet we find not even a distant reference to that document in the grounds of detention. So also it is clear and is an admitted position that the copy of this document is not even served on the detenu. If the detaining authority has taken a particular document into consideration while passing the order of detention, we would expect some reference thereof in the grounds of detention. We do not find any reference. So also there is no specific denial on the part of the detaining authority that he has not relied upon that document at all. When we see the representation, it is a complaint made to the concerned authority that the police were trying to build up a case under the Act 14 of 1982 for detention of the detenu. The said representation seems to have been made by the Petitioner himself on behalf of his wife and more particularly concerning the subject of detention of his wife. Therefore it has to be viewed as a relevant document which has been taken into consideration. Therefore, it is obvious that the detention order of the authority suffers from the vice of non application of mind and on that count the Writ petition will have to be allowed.

4. In the result the writ Petitioner succeeds and the order of detention, which is impugned in the petition, is set aside. The detenu is directed to be set at liberty forthwith unless wanted in any other matter.