
(2008) 12 MAD CK 0085
In the Madras High Court
Case No : H.C.P. (MD) No. 596 of 2008

M. Kumar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

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

Citation : (2008) 12 MAD CK 0085

Hon'ble Judges : R. Subbiah, J;R. Regupathi, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; D. Isaac Mohanlal, APP, for the Respondent

Final Decision : Allowed

Judgement

R. Regupathi, J.—The petitioner, who is the husband of the detenue by name Saraswathi, challenges the order of detention dated

06.05.2008 detaining his wife as ""Bootlegger"" as contemplated u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers,

Drug-Offenders, Forest-offenders, Goonda, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates (Amendment) Act,

2008 (Tamil Nadu Act 16 of 2008).

2. The learned Counsel for the petitioner by pointing out that the detaining authority for substantiating the order of detention, relied on three

adverse cases apart from the ground case; that the ground case occurrence took place on 06.03.2008 at 6.30 hours; and that the Inspector of

Police along with Police party while patrolling found the detenue in possession of illicit arrack and after observing formalities brought her as well as

the material objects to the Prohibition Enforcement Wing at 7.30 hours and

registered a case against the detainee in Crime No. 54 of 2008 u/s 4

(1) (i) r/w 4(1-A) of TNP Act; would submit that as per the arrest card available at page No. 25 of the booklet, the detainee was arrested

immediately at the spot at 6.30 hours and further, the crime number has been mentioned in the said card. According to the learned Counsel, while

it is the positive case of the prosecution that FIR has been registered only at the Police station at 7.30 hours, the presence of the crime number in

the arrest card which was prepared one hour prior to the registration of the case has not been explained. It only shows non application of mind on

the part of the detaining authority and therefore, the order of detention has to be quashed.

3. Learned Additional Public Prosecutor fairly admits that the crime number has been mentioned in the arrest card which was prepared at 6.30

hours on 03.04.2008, whereas, the FIR was registered only at 7.30 hours.

4. We have perused the materials available on record and carefully considered the contention raised.

5. It is a well known procedure that only at the time of registration of a case or preparing FIR, crime number will be assigned to that case and at

the time of apprehending a person during prohibition raid, crime number may not be known to the police officer. However, in the case on hand,

crime number is reflected in the arrest card which shows the timing as 6.30 hours. The FIR having been registered only at 7.30 hours, there is no

explanation forthcoming for the crime number surfacing in the arrest card. Therefore, it is clear that the detaining authority did not apply his mind

and has failed to seek for clarification in that regard from the Sponsoring Authority. We are of the considered view that non application of mind on

the part of the detaining authority is apparent and the impugned order of detention is liable to be interfered with.

6. Accordingly, the Habeas Corpus petition is allowed and the order of detention passed by the second respondent made in Cr. M. P. No. 10 of

2008 dated 06.05.2008 is set aside. The detainee is directed to be set at liberty forthwith, unless her detention is required in connection with any

other case or cause.