
(2009) 07 MAD CK 0323
In the Madras High Court
Case No : HCP No. 312 of 2009

Maheswari

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)
Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order,
1982 — Section 6(4)

Citation : (2009) 07 MAD CK 0323

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

Advocate : V. Parthiban, for the Appellant; N.R. Elango, Additional Public
Prosecutor for RR1 and 2 and M. Devendran, SPCCG for R3, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to an order of detention made by the second respondent herein in Cr.M.P.No. 1/PBM MSEC ? Act/2009 whereby the husband of the petitioner one Selvaraj was detained under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, branding him as a Black Marketeer.

2. The Court heard the learned Counsel for the petitioner and looked into the materials available including the order under challenge.

3. It is not in controversy that pursuant to the recommendations made by the sponsoring authority that an adverse case in Coimbatore Civil Supplies CID Crime No. 799/2008 was registered against the detenu for an occurrence that took place on 11.9.2008 at about 0600 hours when he was found in possession of 80 bags of PDS rice each weighing 50 kg. and 53 packets of palm oil each weighing 1 kg, and the said case came to be registered u/s 6(4) of TNSC (RDSCS) Order 1982 read with 7(1) a(ii) of Essential Commodities Act, 1955, and there was another ground case that on 31.1.2009 at about 0600 hours, he was also

found in possession of 140 bags of PDS rice, and he was actually arrested, and a case came to be registered in Crime No. 45 of 2009 by Coimbatore Civil Supplies Criminal Investigation Department u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)a(ii) of Essential Commodities Act, 1955, on perusal and scrutiny of the materials available, the detaining authority also recorded its subjective satisfaction that it was a fit case where he has got to be branded as a black marketeer since his activities are prejudicial to the public distribution system, and in order to prevent him from doing so, the order has got to be passed, and accordingly made the order which is the subject matter of challenge in this petition.

4. The learned Counsel while advancing arguments on behalf of the petitioner, raised two points. At first, he took the Court to the paragraph 7 of the order wherein it is stated that as far as the ground case was concerned, he was remanded to judicial custody on 31.1.2009, and a bail application was filed in the ground case on 2.2.2009 before the Judicial Magistrate, Udhagamandalam, in C.M.P.No. 506/2009, and the same was dismissed on 6.2.2009. He also further pointed out that the authority has observed that there was real possibility of his coming out on bail by filing another bail application before the same Court or higher Court in future in the above case.

5. The learned Counsel would further add that once the bail application filed by him in the ground case was dismissed on 6.2.2009, the order under challenge came to be made on 8.2.2009, shortly thereafter. The learned Counsel pointing to the same would submit that on the day when the order came to be passed, bail application filed earlier was dismissed; that it is also an admitted position that no bail application was pending that time, and under such circumstances, the observation made by the authority that there was a real possibility of the detenu coming out on bail was actually without any basis at all, and it would suffice to call the order as infirm.

6. The learned Counsel also took the Court to page Nos. 46 and 47 of the booklet, wherein it is stated that the rice under question was actually recovered on 31.1.2009 at about 1130 hours as could be seen from the seizure mahazar, but Column No. 6 would indicate that the same was sent to the Court at about 1030 hours. The learned Counsel would further add that had it been true that it was actually recovered at about 1130 hours, there was no question of sending it by 1030 hours to the Court; that had the authority really scrutinized the material proper, they would have called for clarification, but failed to do, and hence the order has got to be set aside.

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

8. After scrutiny of the materials available, this Court has to necessarily agree with the learned Counsel on both the grounds. As far as the first ground is concerned, admittedly, there was no bail application pending on the day when

the order came to be passed on 8.2.2009. It could also be seen that the bail application originally filed was dismissed on 6.2.2009, and thus the observation made by the authority that there was real possibility of the detenu coming out on bail was without any basis or reason or material at all.

9. As far as the second ground is concerned, as rightly pointed out by the learned Counsel, page Nos. 46 and 47 of the booklet contained the seizure mahazar. As could be seen from the document, the time of the seizure of PDS Rice from the detenu is shown as at about 1130 hours on 31.1.2009. But Column No. 6 would indicate that it was sent to the Court at about 1030 hours itself. Therefore it is a matter of surprise to note that had it been true that the recovery was made as per the mahazar at about 1130 hours, then there is no question of sending it to the Court at 1030 hours. In such circumstances a duty is cast upon the detaining authority to call for clarification, but failed to do. Hence the order has become infirm and it is liable to be set aside.

10. Accordingly, this habeas corpus petition is allowed setting aside the order of the second respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.