
(2010) 09 MAD CK 0120
In the Madras High Court
Case No : H.C.P. No. 853 of 2010

Mathiyalagan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 29-09-2010

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 : (2010) 09 MAD CK 0120

Hon'ble Judges : M. Sathyanarayanan, J;M. Chockalingam, J

Bench : Division Bench

Advocate : R. Subadra Devi, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor for RR1 and 2 and M. Nirmaladevi, ACGSC for R3, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to an order of the second respondent dated 16.4.2010, whereby the friend of the petitioner by

name Bike Mani @ Mani was ordered to be detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of

Essential Commodities Act, 1980 branding him as a black marketer.

2. All the materials are looked into and in particular, the order under challenge along with the grounds of detention.

3. The Court heard the learned Counsel for the petitioner.

4. As could be seen from the available materials, pursuant to the recommendations made by the sponsoring authority that the detenu was involved

in one adverse case namely Salem Civil Supply CID Crime No. 215/2010 u/s 6(4) of TNSC (RDCS) Order of 1982 r/w 7(1)(a)(ii) of E.C. Act

1955 and also in a ground case registered by Krishnagiri Civil Supplies CID in Crime No. 207/2010 u/s 6(4) of TNSC (RDCS) Order 1982 r/w

7(1)(a)(ii) of E.C. Act 1955 for an occurrence that has taken place on 10.4.2010, when he was found in possession of 140 bags each containing

50 kgs. of PDS rice and on scrutiny of the materials available, the detaining authority after recording its subjective satisfaction that the activities of

the detenu were prejudicial to the maintenance of supplies of commodities essential to the community, was of the opinion that in order to prevent

him from doing so, an order of detention was to be made branding him as a black marketer. and thus made the order which is the subject matter of

challenge before this Court.

5. Two contentions are raised by the learned Counsel for the petitioner. Firstly, in both the cases, no bail application was filed, and thus he was in

custody. But, the authority has stated that there was a real possibility of his coming out on bail. Secondly, according to the accusation made in

Crime No. 207/2010, he was found in possession of 140 bags of PDS rice on 10.4.2010, and all these bags of rice were actually sent for analysis.

But, according to the statement made by the Godown Keeper as found in page Nos. 62 and 63, samples were taken from out of all the bags and

sent to the analyst. On the contrary the analyst's report as found in page 61, speaks that all the bags were received for the purpose of analysis, and

thus what was actually sent for analysis is highly doubtful. Hence a clarification should have been called for, but not done. Under the circumstances,

the order has got to be set aside.

6. The Court heard the learned Additional Public Prosecutor for the State and also the learned Additional Central Government Standing Counsel

on the above contentions and paid its anxious consideration on the submissions made.

7. On scrutiny of the materials, this Court has to necessarily agree with the learned Counsel on both the grounds stated above. As could be seen

from the materials, the detenu was involved in two cases mentioned above, out of which, the second case is shown as the ground case which was

registered for an occurrence that took place on 10.4.2010 when he was found in possession of 140 bags of PDS rice each containing 50 kgs.

From the materials it could be seen that he was shown arrest in both the cases

on 10.4.2010, and produced before the Judicial Magistrate

concerned. It is true that he has not moved any bail application in both the cases, and no bail application was pending before any Court of criminal

law on the date when the impugned order came to be made. Under the circumstances, the observation made by the authority that there was a real

possibility of the detenu coming out on bail was without any basis or material, much less cogent material, which the law would require.

8. Apart from the above, a perusal of the statement made by the Godown Keeper, and also the order under challenge would indicate that samples

were taken from all the 140 bags and were sent for analysis. But, as per the report of the analyst, all 140 bags were received for the purpose of

analysis. Thus as rightly pointed out by the learned Counsel, what was actually sent to the analyst is highly doubtful. In such circumstances, a

clarification should have been called for by the detaining authority, but not done so, and hence subjective satisfaction could not have been recorded

by him on the materials placed before him. Therefore, on both these grounds, this Court is of the view that the order is liable to be set aside.

9. In the result, this habeas corpus petition is allowed setting aside the order of detention passed by the second respondent. The detenu is directed

to be set at liberty forthwith unless his custody is required in connection with any other case.