
(2004) 06 MAD CK 0033

In the Madras High Court

Case No : Habeas Corpus Petition No. 230 of 2004

Mrs. Kumari

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-06-2004

Acts Referred:

Citation : (2004) 06 MAD CK 0033

Hon'ble Judges : P.D. Dinakaran, J;N. Kannadasan, J

Bench : Division Bench

Advocate : S. Doraisamy, for S. Kumara Devan, for the Appellant; Adbudukumar Rajaratnam, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The petitioner is the wife of the detenu Perumal, who had been incarcerated by the order of detention dated

24.11.2003 passed by the second respondent herein, branding him as a 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 (for short "the Tamil

Nadu Act 14 of 1982").

2. The order of detention came to be passed by the second respondent on the basis of the ground case said to have taken place on 11.10.2003

within the jurisdiction of the Inspector of Police, Tiruvannamalai Taluk Circle at Mangalam Police Station that the detenu was found to be indulged

in selling 15 litres of illicit distilled arrack contained in a white plastic can. On chemical analysis of the same, it was disclosed that the said illicit

distilled arrack contained 6.7 mg of atropine, which, in the opinion of the medical

officer, would cause death if the person consumed is not given treatment immediately. The detenue was thereafter remanded. The order of detention is also supported with ten adverse cases of the detenu bearing Crime Nos. 190/2002, 239/2002, 347/2002, 381/2002, 43/2003, 60/2003, 298/2003, 400/2003, 416/2003 and 1661/2003 on the file of Mangalam Police Station.

3. Mr. S. Doraisamy, learned counsel appearing for the petitioner, while referring to the medical report dated 15.10.2003 issued by the Doctor viz., Dr. Tilakavathy, Government Hospital, Tiruvannamalai, who had given treatment to the complainant, would submit that the Doctor has stated that atropine is an intoxicating poisonous substance and the consumption of the same is likely to cause danger to human life. The learned counsel would further submit that the Doctor has opined that death would be caused depending upon the quantity of arrack consumed with reference to the individual's physical capacity of consumption. Learned counsel would bring to the notice of this court that the detaining authority has only relied upon a portion of the medical report of the Doctor that consumption of arrack mixed with poisonous atropine will definitely cause widespread danger to human life and public health; but there is no mention in the detention order about the opinion of the Doctor that death would be caused depending upon the quantity of arrack consumed with reference to the individual's physical capacity of consumption. In this context, the learned counsel for the petitioner would submit that the above variation would lead to non-application of mind on the part of the detaining authority while passing the impugned order of detention and the impugned order of detention is liable to be set aside.

4. Learned Additional Public Prosecutor appearing for the respondents would submit that the detaining authority based on the materials available on record, came to the conclusion that the detenu was indulged in selling ID arrack mixed with poisonous substance in contravention of the provisions of the Tamil Nadu Prohibition Act and thereby acted in a manner prejudicial to the maintenance of public order and public health and passed the impugned order of detention and the same is sustainable.

5. After hearing the learned counsel for both sides, we are of the view that the detaining authority without properly going through the medical

certificate issued by the Doctor and relying upon a portion of the same, has come to the conclusion that the detenu was indulged in selling the ID

arrack mixed with poisonous substance viz. atropine and it would cause death to the person who consumed the same; but ignoring the medical

opinion that the death would be caused depending upon the quantity of arrack consumed with reference to the individual's physical capacity of

consumption. The non application of mind on the part of the detaining authority to the opinion of the Doctor that the death would be caused

depending upon the quantity of arrack consumed with reference to the individual's physical capacity vitiates the impugned order of detention.

Hence, the same is liable to be set aside and accordingly set aside. The Habeas Corpus petition is allowed and the detenu Perumal is directed to

be set at liberty forthwith, unless he is required in connection with any other case.