

(2008) 12 MAD CK 0087

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 529 of 2008

Muthulakshmi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1A)
Penal Code, 1860 (IPC) — Section 468, 471
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3

Citation : (2008) 12 MAD CK 0087

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

Bench : Division Bench

Advocate : K. Kumaravel, for the Appellant; D. Isaac Mohanlal, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R. Regupathi, J.—The petitioner is the wife of the detenu by name Karuppusami. She challenges the order of preventive detention, dated

23.04.2008, clamped on her husband by the 2nd respondent branding him as a ""Bootlegger"" and detaining him u/s 3 of the Tamil Nadu Prevention

of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers

and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. learned Counsel for the petitioner, by pointing out that the detaining authority, for substantiating the order of detention, had relied upon one

adverse case, apart from the ground case; that, according to the prosecution, the occurrence in the ground case was at 12.00 hours on

03.04.2008 and the Inspector of Police, along with Police party, while patrolling,

found the detenu selling illicit arrack and, after observing formalities, the police party brought the detenu as well as the material objects to the Police Station and registered a case against the detenu in Crime No. 59/2008 u/s 4(1-A) of the Tamil Nadu Prohibition Act, 1937 and Sections 468 and 471 IPC; and that, as per the arrest card, the detenu was arrested on the spot at 12.00 hours on 03.04.2008 and a copy of the same has been furnished to the detenu, which finds place at page No. 29 of the booklet, wherein the crime number has been mentioned as 59/2008; would submit that, while it is the positive case of the prosecution that FIR has been registered only at the Police station at 16.00 hours, there is no explanation forthcoming from the authority concerned for the presence of the crime number in the arrest card, which was prepared four hours prior to the registration of the case, and this shows non-application of mind on the part of the detaining authority, thereby, the order of detention is vitiated.

3. Learned Additional Public Prosecutor fairly admits that the crime number has been mentioned in the arrest card, which was prepared at 12.00

hours on 03.04.2008, whereas the registration of case was only at 16.00 hours.

4. We have heard the counsels on either side and perused the materials available on record.

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, the crime number may not be known to the police officer. However, in the case on hand,

the ground case crime number, namely 59/2008, surfaced in the arrest card itself, which was admittedly prepared at 12.00 hours on 03.04.2008,

whereas, FIR has been registered only at 16.00 hours. The detaining authority did not apply his mind to the above aspect and has failed to seek for

clarification in this regard from the sponsoring authority. Therefore, there is non-application of mind on the part of the detaining authority as to the

reflection of crime number in the arrest card, which was prepared four hours prior to the registration of FIR, which, in our considered opinion,

would vitiate the order of detention.

6. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in Cr. M. P. No. 8/2008, dated 23.04.2008, passed by

the 2nd respondent is quashed. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.