
(2009) 08 MAD CK 0068
In the Madras High Court
Case No : HCP. No. 962 of 2009

P. Lakshmi

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 04-08-2009

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) 08 MAD CK 0068

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

Bench : Division Bench

Advocate : D. Balachandran, for the Appellant; N.R. Elango, Additional Public Prosecutor for Respondents 1 and 2 and C. Gurulingam SCGSC, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to an order of the second respondent in M.P. No. 12/PBMMSEC Act/2009(J3) dated

17.4.2009 whereby the husband of the petitioner namely A.Periyasamy 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 "Black Marketeer".

2. The affidavit in support of the petition along with all the materials including the order under challenge are perused. The Court heard the learned

Counsel for the petitioner.

3. Admittedly, pursuant to the recommendations made to the Sponsoring Authority that four adverse cases viz., (1) Salem Civil Supplies Criminal

Investigation Department Supplies, Crime. No. 582/2008 u/s 6(4) of TNSC

(RDCS) Order 1982 and r/w 7(1)(a)(ii) Essential Commodities Act

1955 (2) Salem Civil Supplies Criminal Investigation Department, Crime. No. 30/2009 u/s 6(4) of TNSC (RDCS) Order 1982 and r/w 7(1)(a)(ii)

Essential Commodities Act 1955 (3) Salem Civil Supplies Criminal Investigation Department Supplies, Crime. No. 80/2009 u/s 6(4) of TNSC

(RDCS) Order 1982 and r/w 7(1)(a)(ii) Essential Commodities Act 1955 (4) Salem Civil Supplies Criminal Investigation Department, Crime. No.

89/2009 u/s 6(4) of TNSC (RDCS) Order 1982 and r/w 7(1)(a)(ii) Essential Commodities Act 1955 one ground case in Crime No. 158 of 2009

that on 10.4.2009 registered by the Civil Supplies CID, Salem alleging that the detenu was found in possession of 50 bags of PDS rice each

containing 50 Kgs on 10.4.2009 and on scrutiny of materials, the detaining authority after recording his satisfaction that the detenu was indulged in

activities which are prejudicial to the Public Distribution System and in order to restrain him from indulging in such activities in future, it became

necessary to make an order of detention and accordingly made the order on 17.4.2009, which is challenged in this Habeas Corpus Petition.

4. Learned Counsel in his sincere attempt of attacking the order would submit as follows:

(i) The first ground raised was that the detenu has moved for bail in Crime No. 158 of 2009, but the authority has stated in its order that in similar

cases, bails were granted by concerned Court or Higher Courts after lapse of time and hence there arose necessity to make an order of detention.

The authority has not even stated whether there was possibility either real or imminent to come out on bail. Therefore, the order came to be passed

though not even a bail application was filed. Thus, such an observation was made without any material whatsoever. Thus the order was found to be

defective.

(ii) The second ground raised by the learned Counsel for the petitioner was that though four adverse cases were registered against the petitioner,

insofar as 4th adverse case was concerned, no material was placed before the detaining authority as to the order of judicial remand made, but it is

stated that in all the four cases, he was remanded to judicial custody and thus it can be stated that the statement made by the Sponsoring Authority

was without any application of mind.

(iii) Learned Counsel would further add that the order of detention came to be passed on 17.4.2009 and approved on 29.4.2009 and

subsequently a representation was made by the detenu on 12.5.2009 and the same was rejected on 5.6.2009. Learned Counsel would submit that

while the approval was made by the State and a representation was made subsequently, the detaining authority was not competent to dispose of

the representation. But, in the instant case, the detaining authority has rejected the representation on 5.6.2009 without any competency. This has

vitiating the order of detention.

(iv) In the instant case, it is pointed out that though one of the co-accused was also stated to be detained as Black marketeer, to substantiate the

said statement, there is no material available on record.. Under such circumstances, it could be stated that it was passed without any material

whatsoever.

(v) Learned Counsel would further add that the factum of arrest was not informed either to the petitioner or to any one of the relatives, as could be

seen in Page 69 of the booklet. It is found that the intimation was not given to the wife, but it is found that as if a telegraphic message was given to

the wife of the detenu, but no material is placed before the authority and the wife of the detenu has categorically stated that she was not intimated

about the arrest of her husband, the detenu. Apart from that, it is stated that intimation was given to one Anand, a friend of the detenu. For all the

above reasons, the detention order has got to be set aside.

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

made.

6. It is not in controversy that the detenu A.Periyasamy, who was involved in four adverse cases and one ground case referred to above, was

appeared to be detained by the detaining authority after recording satisfaction that the activities of the detenu is prejudicial to the maintenance of

Public Distribution System.

(i) Admittedly, a case was registered in Crime No. 158 of 2009 for an incident that took place on 10.4.2009. It is not in controversy that the

detenu has not moved any bail application before the Criminal Court of law, but it is found in the order in para 5 as follows:

I am aware that Thiru A.Periyasamy, is in remand in Salem Unit Civil Supplies Criminal Investigation Department Crime No. 30/2009, 80/2009,

89/2009 and 158/2009 and he has not moved any bail application, In similar cases bails are granted by concerned Court or Higher Courts after

lapse of time.

From the very reading of the above paragraph, it is quite clear that at the time of passing of the order, it is well within his knowledge that the detenu

has not moved any bail application and even then, the authority has not even stated that there was likelihood of the detenu coming out on bail. The

observation made by the authority that after lapse of time, bails were granted by the Courts was only an expression of apprehension of the

detaining authority, but it was passed without any material whatsoever and rather it was pre mature. Hence, it has got to be termed as defective.

(ii) As pointed out by the learned Counsel for the petitioner, though he was involved in four adverse cases, no material was placed to the effect that

there was any judicial remand in respect of 4th adverse case, but it is stated in the order that he was remanded in all the four cases. The statement

was made without any material whatsoever.

(iii) Added further, in the instant case, the order under challenge came to be passed on 17.4.2009 and the detenu made a representation on

12.5.2009 and after the approval was made on 29.4.2009, the detaining authority has no power or competency to consider the representation and

he was duty bound to place the same before the State Government. But, the detaining authority has rejected the said representation on 5.6.2009

after the approval was made on 29.4.2009 at all. The detaining authority has neither competency nor empower to do the same. On that ground

also, the order of detention is defective.

(iv) Equally, insofar as the statement made in the course of the order, the order of detention came to be passed against the co-accused, no material

is placed before the detaining authority,

(v) Equally insofar as the intimation of arrest is concerned, no acceptable material was placed and what is found in Page 69 of the booklet cannot

be accepted.

All would go to show that the order of detention is found to be defective and it has got to be set aside and accordingly it is set aside.

7. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second respondent in C.M.P. No.

12/PNMMSEC Act/2009(J3) dated 17.4.2009, The detenu, namely, A. Periyasamy, who is now confined at Central Prison, Salem is directed to

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