

(1991) 11 MAD CK 0029
In the Madras High Court
Case No : Writ Petition No. 7980 of 1991

P. Rajendran

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 01-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 2(3),
3(1), 3(4)

Citation : (1992) LW(Cri) 147

Hon'ble Judges : Somasundaram, J; K.M. Natarajan, J

Bench : Division Bench

Advocate : R. Subadra Devi, for the Appellant; G.M. Syed Fazjuddin, Additional
Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.M. Natarajan, J.—This Writ Petition is filed under Article 226 of the Constitution of India for issue of a writ of habeas corpus for quashing the order of detention dated 7-5-1991 and for setting the detenu at liberty.

2. The petitioner/detenu came to the adverse notice as bootlegger in view of the cases referred to in the preamble and he was detained on the basis of the ground case.

3. The impugned order was passed by the Commissioner of Police, the second respondent herein in exercise of the powers conferred under S. 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offender's and Slum Grabbers Act (Tamil Nadu Act 14 of 1982), hereinafter called "the Act" with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

4. Though the learned counsel for the petitioner Mrs. Subadra Devi, challenges

the impugned order on various grounds, confined her arguments only to ground (g) wherein it is sub-mitted that the percentage of atropine found in the sample seized from the detenu is negligible. Further, even the complainant who became ill due to taking I.D. arrack, sold by him recovered from illness within the same day without any treatment. Therefore it clearly proves that the liquor sold by the petitioner was not of such nature which would cause widespread danger to life and public health. Therefore, he cannot be considered to be a bootlegger under the Act. Therefore the order of detention is liable to be quashed.

5. In the counter the second respondent in para 10 has averred that it has been clearly indicated in the grounds of detention that the samples of I.D. arrack seized from the petitioner contained atropine sulphate which is a poisonous substance and that if a minimum of 1.35 mg. of atropine sulphate mixed in I.D. arrack is consumed it would produce fatal complication. Further the I.D. arrack sold by the petitioner is not manufactured in a modern computerised laboratory or factory. The atropine content may vary from day to day manufacture and the I.D. arrack sold by the petitioner may prove fatal in some cases. It is further stated that the Assistant Director, Forensic Science Laboratory, Madurai has stated that if such arrack is consumed in large quantity, it may pose danger to the life of the consumer. Hence the impugned order is not liable to be quashed.

6. The learned counsel for the petitioner drew the attention of this court to the report of the Chemical Examiner, which shows that the percentage of atropine found in the contraband seized from the detenu is only 1.35.mg. w/v of atropine sulphate in items (1) and (2) and 1.015 mg. per cent w/v of atropine sulphate in item (3). In the opinion elicited from the Tutor, Forensic Medicine by way of question, in the answer it is only stated that if anybody consumed this kind of arrack it would produce the symptoms stated by the complainant. In the instant case admittedly the complainant, who consumed arrack mixed with atropine was not examined by any Medical Officer and that he recovered without taking any treatment. Further, it has been brought to our notice that this Court has uniformly taken the view that unless there is a positive opinion from the Medical Officer, about the quantum of atropine required for causing widespread danger to the life and that that quantum of percentage was present in it cannot be said that the person from whom atropine was seized can be described as bootlegger and he can be detained under the Act. The learned counsel for the petitioner produced before us the decision rendered by this Court in *Ayammal v. State* 1991 M.W.N.(CrL.) 158 to which one of us is a party (viz. K.M. Natarajan, J.,) wherein in similar circumstances after relying on the earlier decisions of this court as well as of the Supreme Court, it was held that the materials available on record are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of S. 3(4) read with S. 2(3) of the Act, and as such the order is liable to be quashed. The said ratio in all fours applies to the facts of the present case and the percentage of atropine is negligible and even according to the counter-affidavit it is not sufficient to cause

widespread danger to life or health, for what all is stated is that if only large quantity is consumed that would cause danger and that it is being manufactured in any factory (sic). Hence we are of the view that from the averments it cannot be said that the petitioner is a bootlegger and his activities as bootlegger are likely to affect adversely to the maintenance of public order so as to attract the detention under the Act.

7. In the result, the writ petition is allowed. The order, of detention dated 7-5-1991 is quashed and the detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.