

(1986) 03 MAD CK 0021
In the Madras High Court
Case No : Writ Petition No. 10602 of 1985

Palaniswamy

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 11-03-1986

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1)

Citation : (1986) 03 MAD CK 0021

Hon'ble Judges : Sengottuvelan, J;S. Mohan, J

Bench : Division Bench

Advocate : P. Venkatasubramaniam, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Mohan, J.—This writ petition is preferred for the issue of a writ of habeas corpus. The petitioner has been detained by the Collector-cum-

District Magistrate, Coimbatore, under Tamil Nadu Act, 14 of 1982, called the Tamil Nadu Prevention of Dangerous Activities of Bootleggers,

Drug-offenders, Goondas and Slum-grabbers Act of 1982, hereinafter referred to as the Act.

2. The detention order under S. 3(1) of the Act was made on the petitioner as per the proceedings dt. 11-6-1985.

3. The grounds on which the detention order was made are as under : On 17-5-1985, at about 15.50 hours, one Sivasami came to the office of

the Prohibition Enforcement Wing, Udumalpet and complained that on 14-5-1985 he consumed 100 ml. of I.D. arrack sold by the petitioner for

Rs. 3 while he was returning home from Kamanaickenpalayam along with one Vallingiri, on a bicycle on Vadamanchari-Oddakalpalayam Road,

P.A.P. Canal bridge on the southern side of Vadamanacheri and after some time,

he experienced giddiness, irritation in the throat, vomiting and blurring of vision and when he reached home, he had purging and for about three days he was not able to move about and he took treatment from a native doctor. Though he was addicted to consume arrack he never had any such symptoms at any time in the past. Since he suspected that the petitioner would have mixed some other substance in the I.D. arrack, he requested action being taken against the petitioner, so that others also would not suffer like him. After ascertaining the facts from him, the Inspector of Police, P.E.W. Udumalpet, conducted a raid with his party. He found the petitioner to be holding one white plastic can containing I.D. arrack and pouring some arrack into a glass tumbler and giving it to a person standing before him, that on seeing the police party, that person dropped the glass tumbler and ran away. The Inspector of Police arrested the petitioner and seized from him about 9 litres of I.D. arrack, the glass tumbler and Rs. 12 being the sale proceeds of arrack under a mahazar. Thereafter, the Inspector of Police, registered a case in P.E.W. Cr. No. 84 of 1985 against the petitioner under S. 4(1)(i), Tamil Nadu Prohibition Act, and sent the sample arrack to the Forensic Science Laboratory, Coimbatore, through Court and the petitioner for remand. According to the Assistant Chemical Examiner, the samples contained ethyl alcohol, acids, casters, higher alcohol and aldehydes and he also detected atropine in both the samples which would be found in datura. On examining the Professor of Medicine, Coimbatore Medical College Hospital, he came to understand that datura poison will effect the human system and pose a grave danger to human life and public health. His further investigation showed that one Natchimuthu Gounder and one Govindasami too had a similar symptom after consuming I.D. arrack sold by the petitioner on 5-5-1985, and his investigation has not yet been completed. On this ground, the Collector held that he was subjectively satisfied that the petitioner is a bootlegger selling I.D. arrack in contravention of the provisions of the Tamil Nadu Prohibition Act, and the rules framed thereunder, that if the petitioner is to remain at large, he will indulge in further activities prejudicial to the maintenance of public health and the normal criminal law would not have the desired effect of effectively preventing him from indulging in activities prejudicial to the maintenance of public health. He was further

satisfied that the activities of the petitioner warranted his detention and two instances were mentioned in the annexure to the order of grounds of

detention and they are as under : (1) On 3-4-1982 at 10.45 hours, the Sub Inspector of Police, Coimbatore Rural P.E.W. with party raided the

northern side of Vadambacheri, about 350 metres on the eastern side of Sukkarappan garden force in the Odai where-at the petitioner was found

distilling arrack illicitly and therefore a case was registered in P.E.W. Cr. No. 439 of 1982 under S. 4(1)(b), Tamil Nadu Prohibition Act, and it is

pending trial before the Special Judicial First Class Magistrate, Tiruppur. (2) On 6-11-1982, at about 8.45 hours, Sub Inspector of Police with his

party raided a place 1 km. north west of Vadambacheri Odai and found the petitioner distilling arrack illicitly and a case in P.E.W. Cr. No. 660 of

1982 was registered against him and it is pending before the Sub Divisional Judicial Magistrate Court, Tiruppur. On the basis of the above

materials, an order of detention was passed on 6-11-1985.

4. In attacking this order, the learned counsel for the petitioner contends that (1) mere listing of two instances would not be enough and there must

be a conviction in order that the petitioner may be termed as a bootlegger within the meaning of the said Act. In support of this contention, the

learned counsel placed reliance on a judgment of this Court in W.P. 3746 of 1985 judgment dt. 9-1-1986, (S. Mani v. State of Tamil Nadu). (2)

The stale instances in the year 1982 cannot be the subject-matter of detention in the year 1985 and (3) The petitioner is admittedly an illiterate and

so he should have been explained the contents of the grounds of detention as well as the documents enclosed therewith in Tamil and the failure to

mention about such an endorsement on the documents that the said documents were translated and explained to the detenu in Tamil will vitiate the

order of detention.

5. In opposing this argument, the learned Public Prosecutor would submit that though in the Division Bench decision in W.P. 3746 of 1985

referred to above, the learned Judges have held that in order to call a person a bootlegger, there must at least be one conviction, that decision was

not rendered on that sole ground and further more, in the case on hand, the detaining authority after going through the report of the Assistant

Chemical Examiner and the report of the Professor of Forensic Medicine and

District Police Surgeon, Coimbatore Medical College Hospital and also after taking into consideration the poison detected in the sample arrack which, according to the medical opinion, would affect the human system very much and pose a grave danger to human life and public health, and also taking into consideration the previous two instances has passed the detention order on the ground that in the event of the petitioner being let to remain at large he will indulge in further activities prejudicial to the maintenance of public health and the normal criminal law would not have the desired effect of effectively preventing him from indulging in further activities prejudicial to the maintenance of public health and that therefore no exception could be taken to the detention order.

6. According to the Public Prosecutor, it is not correct to contend that stale instances were taken into consideration for the purpose of the detention order. On the contrary, it is seen that on the materials placed before the Collector he came to the said conclusion that the petitioner should be detained under the provisions of the said Act and hence the decisions in *In the matter of detenu Gemini, etc., Kannika Vs. State of Tamil Nadu and Others*, would not have any application to the facts of this case.

7. As regards the third ground in the counter-affidavit in para 5 respondent 1 has stated that the petitioner was explained the contents of the grounds of detention order and that therefore this ground is also not maintainable.

8. We will now consider these points one by one. It is true that a Division Bench of this Court in W.P. 3746 of 1985 has taken the view that in order that a person could be called a bootlegger within the meaning of S. 2(b) there must at least be one conviction. However, at the same time, we find that the Division

9. Bench did not base its conclusion in that case solely on that ground. We have also to say that there is no warrant to import the requirement of conviction having regard to the comprehensive nature of the definition. In the case in hand, the Collector has categorically stated in the order of detention that the petitioner, if allowed to remain at large, would indulge in further activities prejudicial to the maintenance of public health, and the normal criminal law would not have the desired effect of effectively preventing him from indulging in activities prejudicial to the maintenance of

public health. This we consider as sufficient ground irrespective of there being a conviction. Therefore, that ruling has no application to the facts of

this case. Accordingly, we reject the first of the arguments advanced on behalf of the petitioner.

10. As regards the stale instances, here again, no doubt the crimes that are referred to in the annexure are of the year 1982. But the matter did not

stop there. The more important thing that is stated in para 3 of the order is that the petitioner had mixed some substance to the I.D. arrack which

contained atropine which is highly injurious to human health and which is detectable in datura, which is a very serious matter and the ratio laid down

in In the matter of detenu, Kannika Vs. State of Tamil Nadu and Others, dealing with cases of goondas, cannot therefore be pressed into service in

the case in hand.

11. Lastly as regards explaining the contents of the grounds of detention, the counter-affidavit filed by respondent 1 himself states para 5(ii) as

under -

5(ii) Regarding the averment in para 5(ii) of the affidavit that since the detenu is illiterate the above contentions are totally false. In fact the

grounds of detention and also the documents enclosed therewith were read over to the detenu and also translated to the detenu by the jail

authorities and the acknowledgment of the detenu was obtained on each page. It is therefore false to say that the detenu did not understand what

the papers contained.

12. This, we think, constitutes a sufficient answer to the argument of the petitioner. Thus we see no ground to interfere with the order of the

detaining authority. No other point was argued before us. Accordingly, we dismiss the writ petition.

13. Petition dismissed.