

(2008) 01 MAD CK 0066
In the Madras High Court
Case No : H.C.P. No. 1650 of 2007

Rani

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

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

Citation : (2008) 01 MAD CK 0066

Hon'ble Judges : R. Regupathi, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : O.S. Thilak Pasumbadiar, for the Appellant; N.R. Elango, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The order of detention dated 11.11.2007, clamped on the detenu by name Siva by the second respondent in C3/D.O.

No. 102/2007, 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, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of

1982), is being challenged in this writ petition by the wife of the detenu.

2. While conducting prohibition raid on 13.10.2007 at 17.00 hours near Pallakunnathoor Village, the Inspector of Police, Banavaram Circle, found

the detenu selling illicit arrack at the back side of his house and on seeing the police party, when the detenu tried to escape, the police party

encircled and arrested him. On interrogation, the detenu admitted the offence that he has been indulging in selling arrack mixed with atropine. The

detenu and the seized articles were brought to Banavaram police station and a case in Crime No. 286 of 2007 was registered under Sections 4(1)

(i), 4(1)(aaa), 4(1-A)ii of the Tamil Nadu Prohibition Act. The detenu was, later, produced before the Court for remanding him to judicial custody

and the sample of arrack, when sent for chemical analysis, was found admixed with 6.4 mgms.% w/v of atropine, which is a poisonous substance.

3. The detaining authority, taking note of the above ground case as well as nine adverse cases of similar nature on the file of same police station,

viz. in Crime Nos. 201/2003, 285/2004, 32/2005, 189/2005, 36/2006, 336/2006, 389/2006, 49/2007 and 162/2007 and having come to the

subjective satisfaction that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are

prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a Bootlegger.

4. The main contention of the learned Counsel for the petitioner is that even though a representation dated 16.11.2007 was sent by the learned

Counsel on behalf of the detenu within the statutory period of twelve days, the detaining authority rejected the same only on 19.12.2007, viz., after

the lapse of the statutory period of twelve days, and such delay in exercising the power conferred on the detaining authority in the manner known

to law vitiates the detention order.

5. We heard the submissions of both sides and perused the materials produced before us.

6. Concededly, the detention order was passed on 11.11.2007 and a representation was made on behalf of the detenu on 16.11.2007 to the

detaining authority within the statutory period of twelve days. The detaining authority, however, passed an order of rejection, rejecting the

representation made on behalf of the detenu, only on 19.12.2007, viz., after the expiry of the statutory period of twelve days, and there is no

convincing explanation for the said delay in considering the representation made on behalf of the detenu. We are, therefore, of the considered

opinion that the delay in exercising the power conferred on the detaining authority in the manner known to law, vitiates the order of detention, for

want of jurisdiction.

For the aforesaid reason, we are inclined to allow this petition. The order of

detention dated 11.11.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.