

(1991) 08 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No. 4173 of 1991

S. Chelladurai Nadar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-08-1991

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 3(1)

Citation : (1991) LW(Cri) 502

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

Bench : Division Bench

Advocate : P.M. Subramaniam, for the Appellant;

Judgement

K.M. Natarajan, J.—This writ petition is filed by the detenu himself under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus quashing the Order of the second Respondent dated 8.3.1991 passed against him and setting him at liberty. The impugned order was passed by the Collector and District Magistrate, Thanjavur second Respondent in exercise of the powers conferred u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The detenu came to the adverse notice of the second Respondent as boot-legger in view of the cases referred to in the preamble of the rounds of detention and he was detained on the basis of the ground case. Though the learned Counsel for the Petitioner challenged the impugned order on various grounds, he confined his argument only on one ground, namely, Ground No. 2(e) to the effect that it is alleged in various documents starting from the F.I.R. of Crime No. 183 of 1991, the statement of the mahazar witnesses, the Inspector's requisition to the Judicial Magistrate-I, Mayiladuthurai, the Inspector's case in brief featuring in the detention order and the Inspector's request to the Judicial

Magistrate-I, that the Inspector seized 9 litres of arrack, poured 500 ml. of arrack in two bottles and destroyed the remaining 8 litres. It has been very clearly established throughout the discussion of the ground case that the Inspector had made only two sample bottles, both containing 500 ml. of arrack. But, on 22.2.1991 when the Inspector sought for the opinion of the Chief Medical Officer, he is very clear that he had seized four bottles of 500 ml. of arrack which was sealed and labelled by him and sent to the Regional Forensic Science Laboratory, through the Judicial Magistrate, Mayiladuthurai. The learned Counsel submitted that in the face of the contradiction with regard to the quantity seized from the detenu and labelled whether two bottles or for bottles no reliance would be placed on the reports of the Chemical Examiner, Forensic Science Laboratory and the Chief Medical Officer. He further submitted that the ground case becomes irrelevant to the object of maintaining public order and hence the impugned order is vitiated. It is seen from the counter-affidavit filed by the detaining authority that while all the records consistently show that the sample was poured in two bottles and not four bottles and that only a typographical error has occurred in the requisition sent to the Regional Forensic Laboratory. The learned Public Prosecutor contend that it is only a typographical error and that it cannot be said that the impugned order is vitiated. But, we do not find any justification in the contention of the learned Public Prosecutor, as where a person is ordered to be detained without any trial, we are expected to be more careful and pass orders according to the rules and regulations strictly and that it is not open to the detaining authority to contend that it is only a typographic error and that no prejudice is caused to the detenu on this score. The question whether I.D. arrack was seized in two bottles or four bottles assumes much importance in a case of this nature. There is absolutely nothing to show that the detaining authority considered this vital discrepancy. In our opinion, there is clear non-application of mind. In this connection, the learned Counsel draw the attention of this Court of the decision in *Kandasami v. State and Anr.* 1990 L W (CrL.) 103 in which one of us (K.M. Natarajan, was a party. In that case it was held that if there is discrepancy with regard to the quantity of arrack seized as per the mahazar and which is said to have been sent to the Chemical Examiner and the quantity mentioned in the grounds of detention the entire order of detention is liable to be quashed. The ratio laid down in the said decision is applicable to the present case. Apart from that, the learned Counsel for the Petitioner drew our attention to another point. According to him, the opinion of the Chemical Examiner is that the sample seized from the detenu was found to contain 0.75% mg of atropine. But the Chemical Examiner does not state what is the ratio of atropine which constitutes a grave danger to public Health. As such, the learned Counsel argued that the Petitioner is not a bootlegger within the meaning of the section and the impugned order is liable to be quashed. This point is taken as ground (e) in the affidavit. In this connection the learned Counsel drew our attention to the statement recorded by the Inspector of Police from the Medical Officer who has stated that if a person consumed arrack containing atropine there would be symptoms of vomiting, giddiness, turning sensation in the eyes as well as

stomach. Beyond that, he has not stated that it would cause danger to human life. It is nowhere stated how much percentage of atropine in arrack would cause danger to human life. The learned Counsel submitted that an uniform view has been taken by this Court and the same view may be taken in this case also. We are of the view that it is suffice to rely on one decision reported in W.P. No. 1968 of 1991 dated 18.4.1991 Arumugam v. The State of Tamil Nadu, rep. by its Special Commissioner and Secretary to Government, Madras, and another, to which one of us was party. Therein, this Court relied on the earlier decisions in W.P. No. 6737 of 1988 dated 15.2.1989 Dharman v. The State of Tamil Nadu represented by its Special Commissioner and Secretary to Government, Fort St. George, Madras-9 and another, W.P. Nos. 1773 and 11774 of 1990 dated 10-12-1990 Pambukaran alias Kamalesan v. State of Tamil Nadu represented by its Secretary to Government, Home Department, Fort St. George, Madras-9 and another and W.P. No. 16599 of 1990 dated 27.2.1991 Gopal v. The State of Tamil Nadu, rep. by its Special Commissioner and Secretary to Government, Prohibition and Excise Department, Fort St. George, Madras-9 and another. In W.P. No. 6737 of 1988, the percentage of the substance has not been mentioned by the Chemical Analyst even though the opinion of the doctor was that 60 to 120 mg. consumed at a time would effect the health. However, he has not stated that would be the quantity necessary to prove fatal or to impair the health of the concerned person in an irrecoverable manner. Hence, it was held that there was no material for the detaining authority to come to the subjective satisfaction that the liquid sold by the detenu would pose grave and widespread danger to public health. Consequently, the order of detention in that case was set aside, Applying the ratio in that case to the facts of this case, we are of the view that the atropine found in the arrack seized from the detenu is negligible. It is also seen from the statement of the Medical Officer that if a person consumed arrack containing atropine, there would be symptoms of vomiting etc. and beyond that, he has not stated that it would cause danger to human life. So the materials on hand are not sufficient to attract Section 3(1) of the Act for detaining the Petitioner under Act 14 of 1982.

2. In the result, the writ petition is allowed on the above two grounds and the impugned order passed by the second Respondent is hereby quashed and the detenu is directed to be set at liberty unless he is required in connection with any other cause.