
(2008) 01 MAD CK 0152
In the Madras High Court
Case No : H.C.P. No. 1594 of 2007

S. Kannappan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1)
Penal Code, 1860 (IPC) — Section 328

Citation : (2008) 01 MAD CK 0152

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

Bench : Division Bench

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

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The petitioner, cousin brother of the detenu by name Annamalai, who was incarcerated at Central Prison, Vellore, by

order dated 31.10.2007 of the second respondent under the provisions 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) branding him as a Bootlegger, seeks a writ of Habeas Corpus to call for the records in connection with the said order of

detention made in proceedings C3/D.O. No. 99/2007, to quash the same and to direct the respondents to produce the detenu before this Court

and set him at liberty.

2.1. On the basis of the complaint lodged by one Kuppan that on the morning of 10.10.2007, while returning home after attending his work, he

bought arrack from the detenu and after consuming the same, he felt giddiness and unable to walk, he fell down and he suspected that the detenu

would have mixed some poisonous substances in order to boost the intoxication in the liquor, the Inspector of Police attached to Veppankuppam

Police Station proceeded to the spot and noticing the detenu selling illicit arrack arrested him and brought to the police station along with seized

articles including samples of arrack. A case was registered against the detenu in Veppankuppam P.S. Crime No. 276/2007 for offences under

Sections 4(1)i(aaa) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act r/w Section 328 IPC and later, the detenu was sent to Court for judicial

remand. The sample of arrack was found admixed with 6.4 mg.% of atropine, as per the chemical analysis report.

2.2. The Detaining Authority taking note of the above ground case as well as four adverse cases of similar nature on the file of the same police

station, viz. in Crime Nos. 150/2006, 450/2006, 471/2006 and 261/2007 and having satisfied that there is compelling necessity to detain the

detenu in order to prevent him from indulging in such activities which are prejudicial to the maintenance of public health and order, clamped the

impugned detention order on him.

3. The main contention of the learned Counsel for the petitioner is that when there is no whisper either in the list of articles seized from the spot

about the seizure of fermented wash or the receipt of the same by the chemical analyst, it is not known how the detaining authority has observed

that the Assistant Director and Assistant Chemical Examiner analysed the sample arrack and fermented wash and gave his report that the liquid

contains ethyl alcohol, atropine, etc., which is an incorrect statement of fact and without any supporting material and hence, the impugned order of

detention vitiates on the ground of non-application of mind by the detaining authority.

4. We have perused the entire materials placed before us. In the grounds of detention, the detaining authority has observed that a requisition was

given to Court to forward any one of seized sample bottles of arrack for Chemical Analysis to the Regional Forensic Science Laboratory and

further observed that the Asst. Director and Asst. Chemical Examiner to Government, Regional Forensic Science Laboratory, Vellore, who

analysed the sample arrack and fermented wash, has stated in his report that the liquid contains ethyl alcohol, acids, esters, higher alcohols, aldehydes and atropine. But, neither in the requisition made by the police to the Court, which is found at page 34 of the paper book, nor in the chemical analysis report dated 15.10.2007, found at page 39 of the paper book, we find that fermented wash was seized from the spot and sent for chemical analysis and that on receipt of the arrack and the fermented wash, the chemical analyst analysed the same and gave his report opining that the liquid contained ethyl alcohol, acids, esters, higher alcohols, aldehydes and atropine. There is an incorrect statement of fact, apparent on the face of record, which reflects the non-application of mind by the detaining authority and thus, vitiates the impugned order of detention.

5. In the result, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.