
(2002) 01 MAD CK 0058
In the Madras High Court
Case No : H.C.P.No. 1190 of 2001

S. Sivakumar

APPELLANT

Vs

The District Collector and District Magistrate, Tiruchirapalli
and The Secretary to Government Prohibition And Excise
Dept., Chennai

RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 01 MAD CK 0058

Hon'ble Judges : K. Gnanaprakasam, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—The detainee is detained under Tamil Nadu Act 14 of 1982 and the Detention Order is dated 29th July, 2001.

2. Learned counsel appearing for the petitioner contended that while the mahazar prepared at the time of seizure (at page 28 of the paper book) mentions as against column No.6 that two samples of 500 ml. Quantity (illicit arrack) were taken, the history prepared by the Inspector of Police (at page No.39 of the Paper Book) mentions 500 ml. Quantity was taken in one bottle and hence, in the absence of the Detaining Authority getting any clarificatory affidavit from the Sponsoring Authority, the Detention Order has to be set aside.

3. The mahazar (at page No.28 of the Paper Book) was prepared on 22.07.2001 and it mentions as if samples of 500 ml. Quantity in two bottles were taken. The History of the case prepared by the Inspector of Police on the same day however would mention about taking sample of 500 ml. Only in one bottle.

4. Courts have repeatedly held that whenever any discrepancy is shown on record, the Detaining Authority should call for a clarification from the Sponsoring Authority and failure to do so would vitiate the order of detention as there is no

assurance as to what was recovered alone was sent to the Laboratory for test. In this case, the Detaining Authority has not sought for any clarification. In this view of the matter, we hold that the above discrepancy goes to the root of the matter and there appears to be non-application of mind, which would vitiate the order of detention.

5. Accordingly, the Habeas Corpus Petition is allowed. The impugned order of detention is quashed. The detenue is directed to be set at liberty forthwith unless her detention is required in connection with any other case.

22/01/02.

Sd/- Asst. Registrar. True Copy

Sub Assistant Registrar.

To

1. The Secretary to Government, Prohibition and Excise Department, Fort Saint George, Madras-9.
2. The District Collector and District Magistrate, Tiruchirapalli District, Tiruchirapalli.
3. The Superintendent, Special Prison for Women, Trichi. (In duplicate for communication to Detenue)
4. The Joint Secretary to Government, Public (Law & Order), Fort saint George, Chennai-9.
5. The Public Prosecutor, High Court, Madras-104.

DATED : 22/01/02

ORDER H.C.P.No. 1190 of 2001

Allowing the petition for the issue of writ of Habeas Corpus and quashing the order of detention and directing the release of the detenu forthwith unless his detention is required in connection with any other case as stated within.