

(2003) 03 MAD CK 0101
In the Madras High Court
Case No : H.C.P. No. 2120 of 2002

Saravanamuthu

APPELLANT

Vs

District Magistrate and District Collector and The Secretary to
Government, Prohibition and Excise Department

RESPONDENT

Date of Decision : 19-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 LW(Cri) 20

Hon'ble Judges : V.S. Sirpurkar, J;V. Kanagaraj, J

Bench : Division Bench

Advocate : Mythili Srinivas, for the Appellant; A. Navaneethakrishnan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—In this petition, the challenge is to the order dated 8.9.2002 passed by the District Magistrate, Nagapattinam, branding

one Johnson as a bootlegger and directing his detention u/s 3 of Tamil Nadu Act 14 of 1982.

2. There are few cases shown as adverse cases. There is an incident dated 13.8.2002 which is relied on as the ground case wherein it is stated that

the police parties raided Manthai village in Palaiyur Police Station Limit and during the course of the raid, they found the accused in possession of

about 50 litres of Pondy arrack mixed with poisonous substance in a blue colour plastic can. According to the grounds, it is stated that the

Inspector of Police arrested the accused at 2"O clock in the afternoon, took the samples in two bottles, drew the Observation Mahazar on the

spot, also drew the sketch and also recorded the confession statement of the

accused and destroyed the concerned arrack and ultimately went to the police station at 4''O clock, filed a F.I.R vide Crime No.365/2002.

3. From this, it is obvious that the crime number came to be supplied to the whole affair only after 4''O clock or as the case may be at 4.30 p.m.

Learned counsel for the petitioner however drew our attention to pages 22, 24 and 25 of the booklet. Page 22 is the Destruction Mahazar. She

points out that in that Destruction Mahazar, the crime number is written as Crime No.365/2002. Page 24 is the Observation Mahazar which

observation was supposed to have taken place at 3.30 p.m but there also Crime Number appears in the third line. Page 25 is the sketch drawn on

the spot. In this also, there appears a crime number again. From this, the learned counsel points out that at the time when these documents were

executed, there was no crime number available as the crime number became available only after the police party reached the police station and

registered the F.I.R. Therefore, this was obviously a manufactured case and this was bound to be taken into consideration by the Detaining

Authority while considering all these aspects and his not having considered these vital aspects amounts to non-application of mind.

4. In support of her contention, learned counsel relies on the judgment of this Court reported in 1998 (1) L.W. Cri. 284 (MARIA SUSAI -vs-

THE COMMISSIONER OF POLICE). There also, more or the less, the situation was the same.

5. By way of reply, the learned Additional Public Prosecutor pointed out that it could be that the crime numbers were left blank and filled up later

on when the crime number became available. However, the guess-work does not have any place in the Court. If this was the plea it should have

come by way of counter. There is no counter nor has that plea been taken by the Government. Therefore, it is obvious that these facts which were

clearly discernible to the naked eye were missed by the Detaining Authority and in our opinion, the learned counsel for the petitioner is right in

criticising the order as a product of non-application of mind. The petition therefore succeeds.

6. The Habeas Corpus Petition is allowed. The order of detention dated 8.9.2002 is set aside and the detenu Johnson is directed to be set at

liberty forthwith, unless he is required in connection with any other case.