

(1998) 02 MAD CK 0010
In the Madras High Court
Case No : H.C.P. No. 1110 of 1997

Siva

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Citation : (1998) 1 LW(Cri) 263

Hon'ble Judges : V. Bakthavatsalu, J; T. Jayarama Chouta, J

Bench : Division Bench

Advocate : T.S. Gopalan, for the Appellant; Syed Fasiuddin, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

T. Jayarama Chouta, J.—The Petitioner has been detained as a "Boot-legger" under Tamil Nadu Act 14 of 1982 in Pursuance of an order

of detention dated 27.9.97 passed by the second Respondent/District Magistrate & Collector Vellore District, Sathuvachari, Vellore with a view

to preventing him from acting in any manner. prejudicial to the maintenance of public order and Public health.

2. We do not deem it necessary to narrate the facts in detail which led to the passing of the impugned order of detention, for this Habeas Corpus

Petition will have to be allowed on a short ground of non application of mind on the part of the Detaining Authority.

3. The learned Advocate for the Petitioner submitted that the sample of arrack which was sold by the detenu was taken in bottles and sealed and

numbered as bottle Nos. 5 and 6. However, the chemical report deals only with bottle Nos. 1, 3 and 4 and hence, there is no proof or material to

show that the detenu was indulging in sale of liquor with atropine. Further, the requisition for chemical analysis mentioned that sample Nos. 1, 3

and 5 were to be sent for analysis, where as there is no mention in the analyst report about the sample No. 5 having been received and the analysis

only pertains to sample Nos. 1, 3 and 4. In the First Information Report it is mentioned that the sample of fermented wash was taken and

numbered as bottle Nos. 1 and 2 and a sample of arrack which was being distilled was cooled and taken as sample Nos. 5 and 6. There is no

mention in the First Information Report about what pertains to sample Nos. 3 and 4.

4. In the Counter filed by the District Magistrate and Collector of Vellore District, he has stated as follows:

Though a requisition was submitted to send few sample bottles for analysis, the Court can send another batch of sample bottle for analysis.

According to him, the contradiction in the bottle number cannot be a ground to state the sample does not contain any poisonous substance.

Probably, it may be a point that can be raised in the Court during the trial of the case.

Further he has mentioned that at the time of trial the Petitioner can also make a request to send another batch of sample bottles for chemical

analysis. On this ground, he has submitted that the ground raised by the Petitioner cannot survive.

5. We have perused the rival contentions. Unless, the Detaining Authority is satisfied that the alcohol sold by the detenu was poisonous and contain

atropine, he cannot be detained. In the present case, there is no clear proof regarding that fact. The Detaining Authority could have got clarified

from the sponsoring authority regarding this discrepancy, which has not been done. Even the counter affidavit filed on behalf of the Respondents

does not show that the Sponsoring Authority was aware of the fact that the detenu was selling liquor with atropine. According to us, the Detaining

Authority has not applied his mind, while passing the impugned order of detention. This ground alone is sufficient to quash the detention order.

6. Accordingly, the impugned order of detention is set aside. The detenu is directed to be released forthwith, unless his detention is otherwise

required This Habeas Corpus Petition is allowed.