

(1998) 04 MAD CK 0025
In the Madras High Court
Case No : H.C.P. No. 103 of 1998

V. Kaluvan

APPELLANT

Vs

The District Collector and District Magistrate, Dindigul District
and The Secretary to Government of Tamil Nadu, Prohibition
and Excise Dept., Chennai-9

RESPONDENT

Date of Decision : 23-04-1998

Acts Referred:

Citation : (1998) 2 LW(Cri) 490

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

Bench : Division Bench

Advocate : A.K.S. Thahir, for the Appellant; G.M. Syed Fasiuddin, Assistant
Public Prosecutor, for the Respondent

Judgement

T. Jayarama Chouta, J.—Petitioner is the husband of Tmt. Aagammal who has been detained as a bootlegger under Tamil Nadu Act 14 of

1982 in pursuance of an order of detention dated 26.8.1997, passed by the first respondent, the District Collector and District Magistrate,

Dindigul District with a view to preventing her 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 passing of the impugned order of detention for this Habeas Corpus

Petition will have to be allowed on the short ground of non application of mind. In the grounds of detention, the Detaining Authority has stated that

the detenu was in possession of 10 litres capacity black plastic can which contained illicitly distilled arrack. Each about 500 ml. of illicitly distilled

arrack was taken in two 750 ml. sample bottles from the plastic can and sealed and labelled and the remaining illicitly distilled arrack was

destroyed in the presence of witnesses. One black plastic empty can, one glass tumbler and cash Rs. 10/- were seized under cover of mahazar by

the Inspector of Police in the presence of witnesses at 13:30 hours on 10.8.1997. Afterwards the Inspector of Police brought the detenu with the

properties seized to the Ammayanaickanur Police Station at about 14:30 hours on 10.8.1997 and registered a case in Ammayanaickanur P.S.Crl.

No. 417 of 1997 under S. 4(1)(i) . T.N.P. Act, and 328 I.P.C. In the destruction mahazar copy, supplied to the detenu, we see the crime number

of 417 of 1997. The said destruction mahazar was conducted at 13:30 hours on 10.8.1997 whereas the case was registered only at 14:30 hours

on 10.8.1997. Before the case could be registered, the mahazar which was prepared earlier, the crime number which could not have been found.

This discrepancy ought to have been got clarified from the Sponsoring Authority by the Detaining Authority, which has not been done. This is a

clear case of non application of mind on the part of the Detaining Authority which will be sufficient to hold in favour of the detenu.

3. The impugned order of detention is set aside and the detenu is directed to be set at liberty forthwith, unless her detention is otherwise required.

The Habeas Corpus Petition is allowed.