
(1999) 12 MAD CK 0084

In the Madras High Court

Case No : Habeas Corpus Petition No. 1296 of 1999

Vadivel

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1A)

Citation : (2000) 1 LW(Cri) 443

Hon'ble Judges : S. Jagadeesan, J;A. Raman, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; S. Anbalagan, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A. Raman, J.—The son of the detenu has preferred this petition, challenging the order of detention.

2. The detenu Pachiappan was involved in seven adverse cases, all registered under the provisions of the Tamil Nadu Prohibition Act. In all these seven cases, Pachiappan was convicted and sentenced to pay fine. Whiles, on 10.3.1999, at about 8 a.m. Arumugam appeared before the Inspector of Police, Tiruchengode Prohibition Enforcement Wing, and lodged a complaint. He stated that on 9.3.1999, on enquiry, he came to know that Thiru.Pachiappan was selling arrack. Therefore, he went there at about 8 p.m. on 9.3.1999 and found Pachiappan vending arrack. The complainant Arumugam, thereupon paid Rs.10/- and asked for one tumbler of arrack. When Arumugam consumed the arrack, he found it to be of different taste and odour and also had a burning sensation in his throat. When Arumugam asked Pachiappan about the same, Pachiappan told him that it is specially made to provide more intoxication. The complainant returned home by about 9 pm. He vomited on reaching home. He regained conscious at 6 a.m. on the next day and from his wife, he came to know that he thrice vomited during the night and he received native treatment from her. Therefore,

Arumugam suspected that Pachiappan sold him arrack mixed with poisonous substance and hence, he went and lodged the complaint. The Inspector of Police, Tiruchengode Prohibition Enforcement Wing recorded the statement of Arumugam and registered a case in Crime No. 496/99 u/s 4(1) (i) read with Section 4 (1-A) of the Tamil Nadu Prohibition Act. He sent Arumugam to Tiruchengode Government Hospital for treatment with police memo. The Inspector of Police, Prohibition Enforcement Wing along with his party and two independent witnesses went to the place where Pachiappan was vending arrack. He found him at the spot and arrested him. Pachiappan confessed to the offence and gave a statement which was recorded by the inspector of Police. Then the Inspector seized the arrack found in a white can and drew out samples from the same. He destroyed the remaining quantity at the spot and drew up a mahazar. Then he brought the accused Pachiappan along with the contraband to the police Station. Thereafter making a search of Pachiappan, he produced him for remand before the concerned Magistrate.

3. On the basis of the above materials, the Detaining Authority viz., the District Collector and District Magistrate, Namakkal, was satisfied that Thiru.Pachiappan was a "Bootlegger" and was indulging in activities prejudicial to the maintenance of public order and public health, and therefore, felt it necessary to pass an order of detention against Pachiappan. Thus, the impugned order of detention came to be passed.

4. Learned Counsel for the Petitioner Mr. Sankarasubbu contended that the remand order has not been placed before the Detaining Authority. Nor a copy of it has been furnished to the detenu, though he asked for the same specifically. Therefore, the learned counsel for the petitioner would submit that on this ground, the order of detention would stand vitiated.

5. We are unable to accept this contention, for the following reasons. In the affidavit filed by the Sponsoring Authority viz., the Inspector of Police, Prohibition Enforcement Wing, Tiruchengode, in Para-4, he has stated clearly that Thiru.Pachiappan was produced before the Judicial Magistrate, Tiruchengode on 10.3.1999 and that he was remanded to Judicial Custody at sub-Jail, Tiruchengode and that he is in remand in the Sub-Jail as a remand prisoner. This affidavit has been signed by the Sponsoring Authority on 16.3.1999. The order of detention has been passed on 19.3.1999. From the F.I.R., a copy of which is found in the booklet at page No. 24, the statement of the complainant and the confession statement of the detenu, we find that the detenu was arrested on 10.3.1999 relating to the ground occurrence. He was produced before the Judicial Magistrate, Tiruchengode on 10.3.1999 and the normal period of remand is 15 days. At page No. 44, we find the Form of remand warrant in English with the Tamil Translation at Page No. 45. From this we find that Pachiappan, Son of Arthanari Nadar, Palamedu, Mettupari, Devanankurichi, was produced by the Officer-in-charge of Prohibition Enforcement Wing, Tiruchengode Police Station and the Court authorised and required the Jail Authority to detain the said

accused in custody for 15 days and to cause him to be produced before Court of the Judicial Magistrate, Tiruchengode, on 24.3.1999. At page Nos. 41 and 43, we find the history of the case and the remand report. Both the history of the case and the remand report are to the effect that the detenu Pachiappan was produced before Court on 10.3.1999. At page Nos. 47 and 49, we find the extract of the General Diary which refers to the arrest of the detenu on 10.3.1999 and his production before Court at 1.30 p.m. on 10.3.1999. Therefore, it is clear that there were materials sufficient before the Detaining Authority to show that on the date when he passed the order of detention, the detenu was in remand. The Detaining Authority has to be only satisfied of that fact. He has to arrive at a subjective satisfaction and form an opinion about the detenu being remanded on the basis of the particulars furnished to him. The particulars furnished by the Sponsoring Authority are sufficient and enough from which the Detaining Authority can easily gather necessary information and be aware of the detenu being in remand on the date of passing of the order. It is not necessary that the Detaining Authority should insist upon the remand order. Nor it can be stated that only on the basis of the remand order, necessary information and awareness can be gathered by the Detaining Authority.

6. Learned Counsel for the petitioner would submit that he has not been furnished with the copy of the remand report. Assuming he has made such a demand and there, was a failure to furnish the same, it cannot vitiate the order of detention. Firstly for the reason that the remand order was not produced before the Detaining Authority by the Sponsoring Authority. Therefore, it is not a document that was available before the detaining Authority. Further, it is not a document relied upon by the Detaining Authority. Hence, in such circumstances, it is not necessary at all to furnish a copy of the remand order.

7. In this connection the learned counsel for the petitioner relied upon a decision of the Supreme Court reported in 1999 (7) Supr 407 (Sophia Gulam Mohd. Bham v. State of Maharashtra and others). But it was a case where during search, diaries establishing the link of the detenu and other persons, who were financiers and kingpin of smuggling of diamonds were seized and the diaries and other documents so seized were considered by the Detaining Authority to come to the conclusion that the detenu was a carrier. In such circumstances, when copies of the diaries were not supplied to the detenu, the Apex Court has held that non-supply of such material documents would amount to violation of Article 22(5) of the Constitution and therefore, on that ground, the detention order has to be quashed.

8. Therefore, from the very facts of the case, it will be obvious that the factual situation with which we are concerned in this case is thoroughly different from what was before the Supreme Court, in the above decision. Here, the document was not at all available before the authority concerned. The authority relying upon the affidavit of the sponsoring authority, the remand report, the warrant of remand and entries in the General Diary, has formed an opinion as to the detenu

being in custody. He did not even refer the order of remand which was neither produced before him nor relied upon by him. The factum of remand alone had been mentioned. Hence, the above decision cannot at all help the learned counsel for the petitioner.

9. Learned counsel for the petitioner also relied upon a decision of the Supreme Court reported in 1999 SCC (CrL.) 231 (Powanammal v. State of Tamil Nadu). The said decision does not help the counsel for the petitioner at all. There, it has been held by the Supreme Court as follows:-

However, there is a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But, it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

Here, as we pointed out already, a perusal of the grounds of detention does not show that the order of remand was relied upon by the Detaining Authority to arrive at a subjective satisfaction. On the other hand, he has referred to the fact of remand which he could gather from the materials placed before him and therefore, the above Ruling relied upon by the learned counsel for the petitioner will not at all apply to the facts and circumstances of this Case.

10. Learned counsel for the petitioner further relied upon a decision of the Apex Court reported in 1997 SCC (Cri) 92 (D.K. Basu v. State of West Bengal) and contended that the remand of the detenu was improper and that there is no valid remand since the guide-lines in dictated in the said decision have not been complied with by the concerned Magistrate. The question whether the remand properly effected and in accordance with law is a matter to be agitated in a different proceeding and before a different Forum. If, really there was any failure to comply with the provisions of law with regard to remand of an accused, it is always open to the accused to question the same by initiating suitable proceedings.

11. In the case on hand, we are only concerned with the validity of a detention order and whether the constitutional safeguards have been complied with in this matter. The Detaining Authority has to be satisfied only about the detenu being in remand. He has to, on the materials placed before him, arrive at a subjective

satisfaction, about the conduct of the detenu as to whether his activities are such as to affect the public order and health and if it is so, whether it is necessary to detain him, invoking the provisions of Act 14 of 1982. It is not for the Detaining Authority to find out whether the remand of the detenu by the concerned court was a proper exercise of jurisdiction or not. Moreover, a reading of this Judgment would show that the Supreme Court laid down the guide lines to be followed by the Police Officers, whenever they effect arrest. In para-5, the Apex Court has stated that it is therefore, appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf, as preventive measures. Their Lordships of the Apex Court has set out about 11 guide-lines which all relate to only police Officers and nothing is mentioned in these 11 guide-lines about the duties or the procedure to be followed by the Magistrate in such cases. Therefore, the decision relied upon by the learned counsel for the petitioner, to put it mildly, has no application to the facts of this case.

12. Learned counsel for the petitioner would submit that the detenu knows to read and write. Whiles, in all the adverse cases, receipts are produced to show that he has affixed his thumb impression and therefore, it is an important circumstance which would show that the cases are foisted and if those cases are thus reckoned out of consideration, it would follow that there won't be any requirement to invoke the Tamil Nadu Act 14/82 to detain the petitioner:-

13. We are afraid that this contention is also unacceptable. One cannot expect either the Detaining Authority or this Court to consider whether the thumb impressions found in the receipts are that of the detenu or not. It is not the province of the Detaining Authority or this Court to consider that aspect. In the booklet supplied to the Detaining Authority by the Sponsoring Authority, materials are produced to show that the detenu was concerned in 7 adverse cases and in all the 7 adverse cases, he appeared before Court, admitted the offence, pleaded guilty and was sentence to pay fine and that he paid the fine amount. The calender extract relating to these cases and the receipts are all produced. The receipts as well as the calendar extract contain the name and description of the detenu. It is too much for the detenu to contend that the Police Officer paid the money out of his pocket by way of fine in the name of the detenu and it is done just with a view to create a record against him. It is perhaps that the detenu was advised to affix his thumb impression when he pleaded guilty and paid fine in those cases. May be, he became a literate later on and learnt to put his signature. These are all matters in which, a probe cannot be made either by the Detaining Authority or by this Court. The Detaining Authority had to be satisfied about the involvement of the detenu and that the detenu has been indulging in activities prejudicial to the maintenance of public order and health. The records of the Court produced by the Detaining Authority show that the detenu was involved in several cases under the Tamil Nadu Prohibition Act, where he was convicted and sentenced to pay fine. There is the ground occurrence on which another case has been registered. The contraband seized from the detenu

was sent for chemical examination and it was found to contain atropine at 5.8.%. The Chemical Analysis Report and the other materials placed before the Detaining Authority would show that atropine is a poisonous substance. Hence, in such circumstances, this contention of the learned counsel for the petitioner cannot be accepted.

14. Further, since a ruckus has been raised by the detenu about the thumb impression being not his, steps were taken by the Police Department to have the thumb impressions examined by the Experts. The Expert to whom the thumb impressions were sent, has clearly stated that of the thumb impressions sent, they could identify only and that matches with that of the detenu and as the other thumb impressions were smudged, and overinked, they could not be compared to find out the identity. As regards the one impression that has been found by the Expert to match with that of the detenu, the detenu has stated in his representation sent earlier that he was compelled to affix his thumb impression. Therefore, he admits that one of the thumb impressions is that of his.

15. Further, the learned counsel for the petitioner would submit that the remand was on 10.3.1999, while the letter at page No. 50 of the booklet would show that the thumb impression was taken on 11.3.1999 and therefore, it is clear that the thumb impression must have been obtained when the detenu was in remand, and it is against the provisions of the Criminal Procedure Code.

16. In this connection, he would rely upon the decision of the Apex Court reported in 1976 SCC (Cri) 72 (Mahmood v. State of U.P.).

17. The Detaining Authority was not concerned with the question of propriety of obtaining the thumb impression of the detenu while he was in remand. If the culpability of the detenu is sought to be fixed on the basis of the thumb impression so obtained, in any trial, it will be open to the detenu to urge this point as a defence. The case relied upon by the learned counsel for the petitioner relates to different sets of facts. It was a case where recovery of weapon was made, and the finger print in the weapon was sought to be identified as that of the accused and the finger print was taken while the detenu was in remand and that it was not taken before any Court. Therefore, in that context, as the matter rested solely upon the identification of the finger print, the Supreme Court had to observe so. Here, in this case on hand, such a situation has not arisen. Whether the procedure was followed in obtaining the thumb impression of the accused or whether it was not followed, is not a matter to be agitated in a proceeding initiated by the detenu to quash the order of detention. Therefore, this submission is also without any merit.

18. Learned Counsel, for the petitioner next urged that in his representation, he has set out in detail that the thumb impressions were not that of the detenu and that he had nothing to do with those cases and this aspect has not been specifically dealt with or considered by the Government while rejecting the representation and thus, the representation has not been properly dealt with and

hence, on this ground, the order of detention is liable to be set aside.

19. In his representation, he has stated that the adverse cases are false cases and that the thumb impressions found are not that of his. As regards the ground case, he has stated it is improbable. He has further stated that he belongs to a political faction and that he has been rendering help to the public in that area and he pointed out certain irregularities in the utilization of funds allotted by the Government under "Anna Marumalarchi Thittam" and therefore, at the instigation of the members belonging to the Ruling Party, the order of detention has been passed.

20. In the order of rejection dated 13.5.1999, it has been specifically pointed out that the contents of the representation are opposed to truth, that the detenu was involved in 7 cases, all under the Prohibition Act, that he admitted guilt before the Court and has paid fine and has affixed his thumb impression, that he has been acting against the interest of public order and health, that it is not true to say that false cases have been foisted against him and that he has mixed "datura seeds" in the arrack sold by him. and therefore, in such circumstances, the representation cannot be accepted and has to be rejected.

21. Thus, we find that the Government has considered the representation and has met out all the points raised by the detenu in his representation. Even otherwise, the Apex Court has held in the decision reported in 1991 SCC (Cri) 613 (K.M. Abdulla Kunhi v. Union of India) that it is not necessary that the Government should pass an elaborate order or speaking order, while rejecting the representation. Therefore, this contention also fails.

22. Lastly, it is submitted by the learned counsel for the petitioner that the family members of the detenu have not been intimated. This contention is also without any merit. The Additional Public Prosecutor pointed out from the file that the wife of the detenu by name Papa was served with the intimation of the Order of detention, on 21.3.1999 in the presence of two independent witnesses, who have attested the same. Therefore, it is clear that this argument is also without any substance. Thus, we are of the view that this Habeas Corpus Petition is devoid of merits, and the same is liable to be dismissed.

23. In the result, this Habeas Corpus Petition is dismissed, confirming the Order of detention.