

(1992) 08 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 3806 of 1992

Valluvan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-08-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) LW(Cri) 195

Hon'ble Judges : K.M. Natarajan, J;Arumugham, J

Bench : Division Bench

Advocate : P. Venkatasubramanian, for the Appellant; S. Shanmughavelayudham Additional Public Prosecutor, for the Respondent

Judgement

K.M. Natarajan, J.—This writ petition is filed by the detenu himself under Article 226 of the Constitution of India seeking for the issuance of a writ of Habeas Corpus quashing the order of detention dated 20.11.1991 and set him at liberty. The detenu came to the adverse notice as bootlegger in view of the five cases mentioned in the preamble of the grounds of detention and was detained on the basis of the ground case by the Commissioner of Police, Madras City, the second Respondent herein in exercise of the powers conferred u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

2. Though the impugned order of detention was challenged on many grounds, the learned Counsel for the Petitioner Mr. P. Venkatasubramaniam confined his arguments on ground(f) wherein it is stated that in the grounds of detention in para 4 at pages 4 and 5 it is stated that the sample of arrack was found to contain 149% weight by volume of chloral hydrate and that the doctor has opined that it is injurious to health. But the document furnished at page 32 does not specifically say the figure 149 mg will cause injury to health. So on that

basis, the detention order was formulated is not known. This clearly shows that the detention order has been prepared in a mutine mechanized manner without application of mind and on this ground the impugned order is liable to be set aside.

3. It is to be noted that the writ petition was admitted on 30.3.1992 and the Respondents entered appearance on 15.6.1992. The first Respondent has filed a counter-affidavit. The detaining authority is the second Respondent. The first Respondent has only approved the order of detention passed by the second Respondent. The second Respondent has not filed any counter till this day in spite of many adjournments. Hence it can be taken that the averments stated in the affidavit stand unrebutted. The learned Counsel for the Petitioner produced before us the copies of certificate issued by the Medical Officer as well as the statement made by Dr. Vallinayagam, Assistant Professor of Forensic Science, Madras Medical College, Madras-3, and submitted that he has nowhere stated that if a person consumed arrack mixed with 149% weight by volume of chloral hydrate is injurious to health. When we asked the learned Additional Public Prosecutor to peruse the records and find out whether there is any such statement made by the said Medical Officer which has been referred to in the grounds of detention, he has fairly conceded that the doctor has not issued any such certificate and that the doctor has not made any such statement. It is only on the basis of the certificate issued by the Medical Officer, the detaining authority is said to have come to the subjective satisfaction and passed the impugned order under-Section 3(1) of the Act. We find every force in the contention of the learned Counsel for the Petitioner that the impugned order has been passed mechanically and casually without perusing the material documents properly and this is a clear case of non-application of mind to the vital fact on the part of the detaining authority and this ground alone would vitiate the impugned order. We find that there is no reference at all about the percentage of chloral hydrate in the arrack seized from the detenu, either in the certificate or in the statement given by Dr. Vallinayagam, Assistant Professor of Forensic Science, Madras Medical College. On the other hand, he has generally stated that the consumption of arrack mixed with chloral hydrate is injurious to health. Hence, we have no hesitation in coming to the conclusion that there was non-application of mind on the part of the detaining authority while drawing the subjective satisfaction in passing the order of detention.

In the result, the writ petition is allowed, the impugned order of detention is quashed and the detenu is directed to be set at liberty forthwith unless he is required in connection with any other cause.