

(2005) 06 MAD CK 0076
In the Madras High Court
Case No : HCP. No. 314 of 2005

Vasantha

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 28-06-2005

Acts Referred:

Citation : (2005) 06 MAD CK 0076

Hon'ble Judges : P. Sathasivam, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : V. Parthiban, for the Appellant; Abudukumar Rajarathinam,
Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The petitioner is the wife of the detenu. The detenu by name Sekar was detained as bootlegger by the impugned proceedings dated 28.02.2005 under the Tamil Nadu Act 14 of 1982.

2. After taking us through the grounds of detention and all other connected materials, the learned counsel appearing for the petitioner at the foremost submitted that in view of discrepancy in the quantity of the i.d.arrack referred in various places in the booklet supplied to the detenu, the detention order is liable to be quashed on the ground of non application of mind. In support of his claim, learned counsel took us through copies of F.I.R and Mahazar, wherein it is specifically stated that the i.d.arrack was sent in a bottle containing 500ml for Chemical Analysis Report, whereas in the Chemical Analysis Report, which finds place at page 66 of the booklet, the quantity has been referred as 580ml. This discrepancy has not been explained by the respondents though the second respondent has filed a counter affidavit .

3. In this regard, learned counsel appearing for the petitioner, relying on the decision of a Division Bench of this Court in Senthil Kumar v. The District

Magistrate and Collector, reported in 2000 2 L.W. (CrI.) 639 submitted that the detention order is liable to be quashed on the ground of non application of mind. In similar circumstances, the Division Bench after satisfying that there is discrepancy in the volume of the contraband said to have been recovered and the volume of contraband said to have been sent to the Laboratory for test and based on the long line of judgments, concluded that the discrepancy in the volume of contraband recovered and tested goes to the root of the matter and there appears to be clear non application of mind, which vitiates the order of detention. We agree with the said conclusion and we also feel that the said decision is directly applicable to the facts of the case on hand.

4. Accordingly, the Habeas Corpus Petition is allowed and the order of detention is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.