

(2005) 12 MAD CK 0055
Madras High Court (Madurai Bench)
Case No: H.C.P. (MD) No. 314 of 2005

Gurusamy

APPELLANT

Vs

The Secretary to Government of
Tamil Nadu, Prohibition and
Excise Department and Another

RESPONDENT

Date of Decision: Dec. 21, 2005

Acts Referred:

- Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 - Section 2, 2(1), 3, 3(2)

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

Bench: Division Bench

Advocate: S. Jeya Singh, for the Appellant; K. Chellapandian, Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.K. Misra, J.

The order of preventive detention under Act 14 of 1982, on the allegation that detenu is a drug offender, is being challenged in the present Habeas Corpus Petition by the detenu himself. The order of preventive detention is dated 22.3.2005.

2. In the grounds of detention, the detaining authority has referred to four adverse cases. Out of the four adverse cases, in three cases the detenu was convicted under N.D.P.S. Act for illegal possession of 50 grams, 100 grams and 50 grams of ganja respectively. In the fourth adverse case, charge sheet has been filed against him on the allegation that he was found in illegal possession of 50 grams of ganja. The ground case relates to an incident dated 26.2.2005. It is alleged that the detenu was selling ganja. On the basis of these adverse cases and ground case, the detaining

authority came to the following conclusion:

7. Hence, I am satisfied that Thiru. Gurusamy is habitually stocks and sells intoxicating drugs and thereby committing offences and also acting in a manner prejudicial to the maintenance of public health and as such, he is a "Drug Offender" as contemplated u/s 2(e) of Tamil Nadu Act 14 of 1982. By committing the above described offences, Thiru. Gurusamy caused widespread danger to public health of the people of that area, thereby acted in a manner prejudicial to the maintenance of public health.

3. In the present Habeas Corpus Petition, learned Counsel for the petitioner has raised two contentions. The first contention is to the effect that the order of preventive detention has been passed in a mechanical manner without application of mind. It has been submitted that all the adverse cases relied upon by the detaining authority relate to offences of "possession of ganja" and the ground case is the only case where it was alleged that he was selling ganja. However, the detaining authority without application of mind has concluded that the detenu "... habitually stocks and sells intoxicating drugs (sic.) and thereby committing offences and also acting in a manner prejudicial to the maintenance of public health...". Similarly it has been further concluded that "by committing the above described offences, Thiru. Gurusamy caused widespread danger to public health of the people of that area...". The contention is to the effect that in none of the adverse cases there was any allegation that the present detenu was selling intoxicating drugs. The conviction was on the ground that he was in possession of ganja. Even the quantity indicated in those cases appear to be quite minimal. It is therefore submitted that without application of mind the detaining authority has come to the conclusion that the detenu was habitually stocking and selling intoxicating drugs.

4. Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Slum-grabbers and Video Pirates Act, 1982 (hereinafter referred to as "the Act") empowers the State Government or the authorised officer, as envisaged u/s 3(2) i.e., the District Collector or the Commissioner of Police, to detain a drug offender with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Section 2(1)(a)(ii) defines "acting in any manner prejudicial to the maintenance of public order" means - in the case of a drug-offender, when he is engaged or is making preparations for engaging, in any of his activities as a drug offender, which affect adversely, or are likely to affect adversely, the maintenance of public order. The Explanation to such Section 2(1)(a) clarifies that for the purpose of Section 2(1)(a) public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, if any of the activities of any of the drug offender is causing or calculated to cause widespread danger to life or public health. Section 2(e) defines "drug-offender" to mean a person, who manufactures, stocks, imports, exports, sells or distributes any drug in contravention of any of the

provisions of the Drugs and Cosmetics Act, 1940 and the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Rules, notification, and orders made thereunder.

5. The order of preventive detention can be passed to prevent any person acting in any manner prejudicial to the maintenance of public order. A conjunct reading of Section 2(1)(a)(ii) along with the Explanation makes it clear that such power is to be exercised to prevent a person causing widespread danger to life or public health. If a person is found to be merely in possession of the contraband, it cannot be said that he is causing any widespread danger to life or public health. On the other hand, if a person sells any contraband drug, obviously he is likely to cause grave or widespread danger to life or public health. The expression "stock" has not been defined in the Act. However, the ordinary meaning of the expression "stock" is different from possession. As per the dictionary meaning "stock" means - a supply of goods or materials available for sale or use. If a person is found in possession of a minimal quantity, it cannot be characterised as if he has stocked such item. Even though every case of "stocking" would include obviously possession, mere possession in every case would not amount to "stocking" of some articles.

6. In the present case, as already seen, all the adverse cases relate to mere possession, whereas, in the order of detention, the Collector has come to the conclusion that the detenu is habitually stocking and selling intoxicating drugs. It is of course true that the ground case relates to selling of drugs, but the detaining authority has come to the conclusion that the detenu is habitually stocking and selling intoxicating drugs. The expression "habitually" obviously means more than one occasion. If a person has sold or stocked intoxicating drugs on one occasion, it cannot be said that he is habitually selling and stocking intoxicating drugs. Therefore, it is obvious that without keeping in view these aspects, the detaining authority has mechanically passed the order of detention. There has been non-application of mind and, therefore, the order of detention is liable to be quashed.

7. The second contention raised by the learned Counsel relates to non-supply of legible copy of relevant documents. It has been contended by him that many documents supplied to the detenu in the shape of a booklet were illegible and therefore the detenu was not in a position to make an effective representation.

8. Even though such a contention has been denied by the respondents in their counter affidavit, on perusal of the booklet, we find that several pages in the booklet are not legible. For example, pages 1, 2, 15 and 22 of the booklet appear to be quite illegible. It is thus obvious that assertion of the detenu that he was not in a position to make effective representation because legible copies were not supplied, is worthy of acceptance. The document are supplied to the detenu with a view to make effective representation. If some of the relevant documents supplied are not legible, it is obvious that the detenu would be prejudiced and would not be in a position to

make proper representation. This contention is therefore acceptable.

9. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the detenu Gurusamy, son of Gurusamy is directed to be released forthwith unless his presence is required in connection with any other case.