
**Shan Vs The Secretary to Government of Tamil Nadu, Home, Prohibition
and Excise Department and District Collector and District Magistrate**

H.C.P. No. 1727 of 2010

Court: Madras High Court

Date of Decision: Dec. 20, 2010

Acts Referred:

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

Citation: (2011) 2 CTC 142

Hon'ble Judges: M. Chockalingam, J; C.S. Karnan, J

Bench: Division Bench

Advocate: N. Sudharsan, for the Appellant; V.R. Balasubramanian, Additional Public
Prosecutor, for the Respondent

Judgement

M. Chockalingam, J.

Challenge is made to an order of the Second Respondent dated 23.8.2010 in BDFGISSV No. 47/2010, whereby,

the order of detention came to be passed against the Petitioner's husband viz., detenu Sapthar Usain, S/o. Shahul Ameen, aged 29 years,

detaining him under Act 14 of 1982 terming him as a "Bootlegger".

2. The Court heard the learned Counsel for the Petitioner and looked into the materials available on record, in particular, the order under

challenge.

3. It is not in controversy that pursuant to the recommendation made that the detenu involved in three adverse cases, namely, (1) PEW,

Chengalpattu Cr. No. 35/2010 under Sections 4(1)(aaa), 4(1-A), TNP Act read with 6 & 11 of RS Rules, 2000 Transporting; (2) PEW,

Kancheepuram Cr. No. 254/2010 under Sections 4(1)(aaa), 4(1-A), TNP Act read with 6 & 11 of RS Rules, 2000 Transporting; (3) PEW,

Chengalpattu Cr. No. 88/2010 under Sections 4(1)(aaa), 4(1-A), TNP Act read with 6 & 11 of RS Rules, 2000 Transporting and also a ground

case registered by PEW, Kancheepuram Cr. No. 258/2010 under Sections 4(1)(i), 4(1)(aaa), 4(1-A) TNP Act r/w. 6 & 11 of RS Rules, 2000,

for an occurrence that took place on 30.07.2010, he was arrested and remanded to judicial custody on the same day, and on scrutiny of the

materials available, the Detaining Authority after recording its subjective satisfaction that the activities of the detenu were prejudicial to the

maintenance of public order has made the order under challenge after terming him as ""Bootlegger"" as defined under the provisions of the

enactment.

4. Advancing arguments on behalf of the Petitioner, the learned Counsel raised two grounds, which according to him are suffice to set aside the

order of detention. Firstly, the learned Counsel submitted that a pre-detention representation was made on 19.8.2010 and it was received by the

authority on 20.8.2010, but, at the time of passing the order of detention on 23.8.2010, the pre-detention representation was not at all considered

by the authority. In order to fortify the said contention, the learned Counsel produced before this Court the acknowledgment card along with the

copy of the representation dated 19.8.2010 and would submit, that on this ground, the detention order is vitiated and it has got to be set aside.

5. Secondly, the learned Counsel took the Court to Page Nos. 29, 33, 75 and 101 of the booklet and pointed out to the discrepancies in the

translation made. In particular, the learned Counsel pointed out to the remand extension order, which is annexed to Page No-101 of the Booklet

and would submit that the name of the accused is not even mentioned therein. Under such circumstances, a clarification should have been called for

by the Detaining Authority, but, he had not done so. On this ground also, the detention order is vitiated and it has got to be set aside.

6. The Court heard the learned Counsel for the State on the above contents.

7. As could be seen above, the order of detention came to be passed on 23.08.2010 terming the detenu as a ""Bootlegger"", on the strength of the

materials placed before him pertaining to three Adverse cases and a Ground case as referred above. The Detaining Authority has also recorded

the subjective satisfaction. Before sustaining the order, the Court, has to necessarily look into whether subjective satisfaction so recorded by the

Detaining Authority was based on necessary materials as required. Insofar as the first ground is concerned, the acknowledgment card and the copy

of the pre-detention representation dated 19.8.2010 were perused by the learned Additional Public Prosecutor and in his reply, the learned

Additional Public Prosecutor would submit that though, the pre-detention representation is dated 19.08.2010 and the same was received on

20.8.2010, but, the same was placed before the authority only on 26.8.2010. But, the said contention cannot be countenanced for the reason that,

the pre-detention representation was made on 19.8.2010 and the same was received on 20.8.2010, which is evident from the acknowledgment

card produced before this Court and thus, it would be indicative of the fact that the pre-detention representation was not considered by the

authority, though, it was available at the time of passing the detention order on 23.8.2010. On this ground, the detention order is vitiated and it has

got to be set aside.

8. Apart from that, as could be seen from Page Nos. 29, 33, 75 and 101 of the Booklet, there are lot of discrepancies found in the translation

made. Particularly, on a perusal of the remand extension order annexed to Page No. 101 of the booklet, it is seen that the name of the Accused is

not even mentioned therein. Under such circumstances, a clarification should have been called for from the Sponsoring Authority by the Detaining

Authority, but, he had not done so. Under such circumstances, on this ground also, the detention order is vitiated and it has got to be set aside.

9. Under such circumstances, both the grounds are available to the detenu and this Court is of the opinion that it would vitiate the order of

detention. Hence, the detention order is to be set aside.

10. Accordingly, this Habeas Corpus Petition is allowed setting aside the order of detention passed by the Second Respondent dated 23.8.2010

in BDFGISSV No. 47/2010 and the detenu Sapthar Usain is directed to be set at liberty forthwith unless his presence is required in connection

with any other case.