

(2009) 08 MAD CK 0322

Madras High Court

Case No: HCP. No. 983 of 2009

Meenachi

APPELLANT

Vs

The State of Tamilnadu and The
Union of India (UOI)

RESPONDENT

Date of Decision: Aug. 5, 2009

Acts Referred:

- Essential Commodities Act, 1955 - Section 7(1)
- Penal Code, 1860 (IPC) - Section 420
- Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982 - Section 6(2)(3)

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

Bench: Division Bench

Advocate: R. Subadra Devi, for the Appellant; N.R. Elango, Assistant Public Prosecutor for R1 and R2 and C. Gurulingam, SCGSC for R3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

Challenge is made to an order of the second respondent dated 17.6.2009 whereby the husband of the petitioner Mr. Kamaraj was ordered to be detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 branding him as a Black Marketeer.

2. The affidavit in support of the petition along with all the materials including the order under challenge are perused. The Court heard the learned Counsel for the petitioner.

3. Admittedly, pursuant to the recommendations made by the Sponsoring Authority that the said detenu Kamaraj was involved in one adverse case registered by Civil

Supplies CID Tiruvannamalai Unit in Crime No. 190 of 2009 u/s 6(2)(3) of TNSC (RDCS) Order, 1982 r/w 7(1)(a)(ii) of E.C. Act 1955 and Section 420 IPC for making wrong entries in the ration cards with wrongful gain and caused loss to the Government and also one ground case which was registered by Civil Supplies C.I.D. Tiruvannamalai Unit in Crime No. 191/2009 stating that when he was working as a salesman in the Fair Price Shop, without supplying the essential commodities like rice, sugar, wheat and kerosene to 48 ration card holders, kept the ration cards with himself and made entries as if he had supplied the commodities to the said card holders with the intention to make wrongful gain and actually made profit by selling them, thereby, he has cheated and made loss to the Government, a total sum of Rs. 43,731.63ps, and on scrutiny of the materials, the detaining authority has recorded its satisfaction that the activities of the detenu were prejudicial to the Public Distribution System and hence, he has got to be termed as Black Marketeer, has made the order under challenge.

4. Assailing the order, Mrs. R. Subradra Devi, learned Counsel appearing for the appellant has made the following submissions.

(a) A perusal of the materials would clearly indicate that one Ramakrishnan was shown as A1 and the present detenu, Kamaraj was shown as A2 in Crime No. 191/2009. As per the available materials, it is found that the said Ramakrishnan has caused a loss of Rs. 89,883.06 to the Government, while the present detenu had made a loss to the tune of Rs. 43,731.63ps. Even as per the allegations made, the said Ramakrishnan who was shown as A1 was on the higher side in causing loss to the Government but no steps were taken to detain him as made against the detenu. Thus, it is discriminatory.

(b) Secondly, the bail application filed by the detenu in Crl.M.P. No. 3759/2009 before the Judicial Magistrate I, Tiruvannamalai was dismissed on 16.6.2009. The order under challenge came to be passed on 17.6.2009 but the authorities have observed in the order that further bail petitions may be filed on behalf of the detenu either in the same Court or in the higher Court and in such cases bail is granted by the Court after the lapse of some time, there is real possibility of the detenu coming out on bail and he will indulge in such activities in future and hence there is necessity to detain him under the said Act. Hence, the authority has passed the order without application of mind.

(b) Further, it was observed by the detaining authority that Kamaraj was placed under suspension and it was observed that though he was placed under suspension he continues to enjoy the status of the servant of the said Fair Price Shop. If he was under suspension, he could not have entered the Fair Price Shop. Hence, the observation was made without proper application of mind.

(c) Further, though the sponsoring authority placed recommendation and the detaining authority has also pointed out that the ration card of 48 card holders were

actually retained by the detenu without issuing to the card holders and the same were misused by the detenu by making wrongful gain out of the same, there was no proof as to the fact that 48 ration cards were actually tendered by the detenu and they were seized by the authority. Hence, the same is without material whatsoever.

(d) The learned Counsel would further add, the representation was made on 26.6.2009 both to the Central Government and to the State Government but the same has not been considered at all. Under such circumstances, all these grounds have to be considered by this Court and the order of detention has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

6. It is not in controversy that the detenu Mr. Kamaraj was involved in an adverse case in Crime No. 190/2009 and also a ground case in Crime No. 191/2009 registered by Tiruvannamalai Civil Supplies CID and that recommendation was placed before the detaining authority which would indicate that Kamaraj was the salesman in the Fair Price Shop and that 48 family ration cards were retained by him and he had made false entries in those cards for wrongful gain and caused loss to a tune of Rs. 43,731.63ps to the Government.

7. Now, the contention put forth by the learned Counsel are to be looked into. Insofar as the first contention that one Ramakrishnan was shown as A1 while the detenu was shown as A2 in Crime No. 191/2009 and the said Ramakrishnan has made wrongfully gain and caused loss to the Government to the tune of Rs. 89.883.06ps and the detenu has caused loss to the Government to the tune of Rs. 43,731.63ps and when the said Ramakrishnan was on the higher side, no steps were taken to detain him but the detenu was detained is concerned, the said contention cannot be countenanced in view of the reply given by the Government side that the said Ramakrishnan has involved in only one case which is in hand but insofar as the detenu is concerned, this is the second case which came to be registered against him.

8. Insofar as the second contention that he has moved for bail and the same was dismissed on 16.6.2009 and in the order which came to be passed on 17.6.2009, the authorities have observed that such bail application are likely to be made in future and he can also come out on bail are concerned, the court is of the considered opinion that there is nothing to find fault with the said observation made. It is evident that on the day when it was taken up for consideration, the bail application was not pending. The authority has referred to the same since if necessity arose to make an order on the circumstances, then observation would become necessary, accordingly, it has been made. Therefore, that observation made, cannot be a ground to reject the order.

9. So far as the contention put forth by the learned Counsel that the detenu was actually under suspension and if he was under suspension, he could not make entry into the ration shop but it was observed in the order that the detenu was enjoying the status of salesman of the fair price shop and it was made without application of mind is concerned, it cannot be accepted for the simple reason that the detaining authority has observed in the detention order as follows: "Further, I am aware that Thiru. D. Kamaraj has been placed under suspension and I have carefully considered the impact of his suspension and the need for exercise of power of detention also. Further, I am aware that though he is placed under suspension, he continues to enjoy the status of a servant of the said Fair Price Shop (as he gets subsistence allowance) and by utilizing his position he is likely to continue to indulge in similar activities which are prejudicial to the maintenance and supply of essential commodities." Thus, it would be quite clear that the authorities have pointed out that he continues to enjoy the status of the servant, thus, he gets subsistence allowance and it does not mean that the order was passed without non application of mind.

10. As regards the contention of the learned Counsel for the petitioner that though it was alleged that he retained 48 family ration cards and they were not recovered is concerned, the Court is unable to accept that contention. From a perusal of the materials and from the submissions made by the learned Counsel, there was inspection made by the Deputy Registrar of the Public Distribution System where he found that wrong entries were made in the register and Mr. Kamaraj has also given a detailed confessional statement which was recorded in the presence of two witnesses. Thus, there are materials to indicate that 48 cards were retained by him and made false entries as if the goods were actually distributed to the public. Under such circumstances, this contention of the learned Counsel has got to be disountenanced.

11. Insofar as the last contention that there was representation made on 26.6.2009 to the detaining authority and the same was actually received and it was not considered is concerned, it cannot be accepted in view of the reply given by the State. The representation was made on 26.6.2009 and it has reached the detaining authority and after approval was made and it was forwarded to the State Government and the State Government has rejected the same on 15.7.2009. Hence, that ground also raised to ground. This Court is of the considered opinion that there is no infirmity in the order of detention and the same has got to be sustained.

12. Therefore, the contentions raised by the learned Counsel for the petitioner do not merit acceptance and the same are liable to be rejected, accordingly rejected. Hence, the habeas corpus petition is dismissed.