

**(2010) 12 MAD CK 0187**

**Madras High Court**

**Case No:** H.C.P. No. 1448 of 2010

S. Chella Kutty

APPELLANT

Vs

The Secretary to Government  
Cooperative, Food and  
Consumer Protection  
Department, District Magistrate  
and District Collector and The  
Additional Secretary to  
Government of India Ministry of  
Consumer Affairs Food and  
Public Distribution (Depart of  
Consumer Affairs)

RESPONDENT

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**Date of Decision:** Dec. 2, 2010

**Acts Referred:**

- Essential Commodities Act, 1955 - Section 7(1)
- Penal Code, 1860 (IPC) - Section 307
- Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982 - Section 6(4)

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

**Bench:** Division Bench

**Advocate:** V. Parthiban, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor for R1 and 2 and D.S. Ravikumar, CGC for R3, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

This petition challenges an order of detention made by the second Respondent against one Saravanan @ Saravanakumar the friend of the Petitioner herein, dated 12.7.2010, branding him as a black marketeer under the provisions of the

Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980, after recording the subjective satisfaction that the activities of the detenu were prejudicial to the public distribution system.

2. The Court heard the learned Counsel for the Petitioner and the materials available are looked into.

3. It is not in controversy that pursuant to the recommendations made by the sponsoring authority that the detenu was involved in three adverse cases namely (1) Erode Civil Supplies Criminal Investigation Department Crime No. 10/2007 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955; (2) Erode Civil Supplies Criminal Investigation Department Crime No. 931/2008 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955 and (3) Nambiyur Police Station Crime No. 262/2009 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955, and also in a ground case registered by Erode Civil Supplies Criminal Investigation Department in Crime No. 477/2010 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955 for an occurrence that took place on 6.7.2010, when he was found in possession of 30 bags of PDS Rice each weighing 50 kgs. along with four others, and he was arrested and produced before the Judicial Magistrate, Erode, and remanded to judicial custody, the detaining authority on scrutiny of the entire materials, has made the order under challenge after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of supplies of commodities essential to the community.

4. Advancing arguments on behalf of the Petitioner, the learned Counsel would submit that in the instant case, it is an admitted position that Crime No. 477/2010 was registered on 6.7.2010, not only against the detenu Saravanan, but also against four others; that all were arrested and remanded to judicial custody on the very day; that he has not moved for bail; that while the matter stood thus, when an order came to be passed within a short span of five days that was on 12.7.2010, the authority though stated that he would indulge in such activities in future, has not even stated whether there was a real possibility or imminent possibility or likelihood of the detenu coming out on bail; that it would be indicative of the non-application of mind on the part of the authority; that if the detenu did not come out on bail, there is no question of indulging in such activities in future that would arise; and that under the circumstances, the order is vitiated.

5. The learned Counsel took the Court to page Nos. 77 and 79 of the booklet which contained the arrest card and remand report respectively; that both the documents would include not only the provisions of the E.C. Act, but also Section 307 IPC; but the FIR would clearly indicate that no case u/s 307 IPC was registered against the detenu; that under the circumstances, it would be quite clear that the authority has not applied its mind, and hence the order of the detaining authority has got to be set aside.

6. The Court heard the learned Additional Public Prosecutor for the State and also the learned Counsel for the Central Government on the above contentions and paid its anxious consideration on the submissions made.

7. As could be seen above, the detaining authority after recording the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of supplies of commodities essential to the community, has made the order which is under challenge. It is not in controversy that the ground case in Crime No. 477/2010 was registered against the detenu and four others on 6.7.2010. All of them were arrested and remanded on the same day. Admittedly, the detenu has not moved any bail application before any Court of criminal law. But, the authority while observing that the detenu would indulge in such activities in future, has not stated whether there was a real possibility or imminent possibility or likelihood of the detenu coming out on bail. This would be indicative of the non-application of mind on the part of the authority. In such circumstances, no question of indulging in such activities in future would arise. Hence the order has become defective.

8. Apart from the above, the arrest card and the remand report as found in page Nos. 77 and 79 of the booklet respectively, would include not only the provisions of the Essential Commodities Act, but also Section 307 of IPC. But the FIR in the ground case would indicate that there was no case registered u/s 307 of IPC. It would also go to show that the authority has not applied its mind. Hence on both the grounds, this Court is of the view that the order has got to be set aside.

9. In the result, this habeas corpus petition is allowed setting aside the order of detention passed by the second Respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.