

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2007

Coram

THE HONOURABLE MR. JUSTICE P.K.MISRA  
AND  
THE HONOURABLE MR. JUSTICE K.MOHAN RAM

HABEAS CORPUS PETITION No.1121 of 2006

Anandan .... Petitioner

-Vs.-

1. The Secretary to Government  
Food, Co-Operation and Consumer  
Protection Department,  
Chennai - 600 009.

2. The District Magistrate and  
District Collector,  
Dharmapuri District, Dharmapuri

3. The Secretary to the Government,  
Food and Consumer Protection Department,  
Government of India, New Delhi .... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 15.11.2006 in S.C.No.(CS) 8 of 2006 against the petitioner's friend Murugan, son of Chinna Kannan, aged about 35 years, who is confined at Central Prison, Salem and set-aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr. C.Prakasam.

For Respondents : Mr. M.Babu Muthu Meeran, A.P.P.

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## O R D E R

(Order of the Court was made by K.Mohan Ram, J.)

Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

2. The order of preventive detention detaining the detenu as a Black Marketer as contemplated under Sections 3(2)(a) read with Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 is challenged in the above Habeas Corpus Petition.

3. Even though several contentions have been raised, we are taking up for consideration the contention relating to a glaring discrepancy regarding which there is no explanation.

4. The learned counsel for the petitioner contended that the observation mahazar, which was prepared at 8.00 am on 02.11.2006 contains details of the provisions under which the case has been registered against the detenu namely, under Section 6(4) of TNSC (RDCS) order 1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955 and Section 414 of the Indian Penal Code and the crime number viz., Krishnagiri Civil Supplies C.I.D. Crime No.625 of 2006.

According to the learned counsel, furnishing of the crime number in the observation mahazar is not possible, as by then the information regarding the commission of the offence had not reached the Police Station and no crime had been registered at the Police Station. In fact, from the First Information Report which is available, it is clear that the crime was registered at 11.00 am on 02.11.2006 only and obviously the crime number could have been given only at that stage and not earlier. Even though this is a serious discrepancy, this was not apparently brought to the notice of the Detaining Authority. Further, there is nothing on record to show that the Detaining Authority has called for any explanation regarding such discrepancy. This according to the learned counsel would amount to non-application of mind to the relevant facts.

5. The said contention has been raised in paragraph 7 of the affidavit filed in support of the above Habeas Corpus Petition, which reads as follows:-

"7. The detenu was arrested at 6.00 am and after taken him into the police station a case was registered in Crime No.625 of 2006 at about 11.00 am, but the crime no existed in the police station at about 11.00 am was appeared in the observation mahazar prepared at about 8.00 am which was quiet impossible.

The detaining authority has passed the order of detention without applying his mind".

6. While referring to the said contention, in the counter affidavit filed by the first respondent in paragraph 11, it is stated as follows:-

"11. Regarding the averments in para 7 of the grounds of the affidavit, it is not correct to state that the detenu was arrested 6.15 AM and after taken him into Police Station a case was registered in Cr.No.625/2006 at about 11.00 AM.

It is not correct to state that the Cr.No. Existed in the Police Station at about 11 PM., it is 11.00 AM, the observation mahazar prepared 8 AM, after effecting the arrest about 6.15 AM, and immediately confession statement of the detenu was recorded.

Seizure effected at 7.00 AM and observation mahazar prepared at 8.00 AM hence it is quite possible for the sponsoring authority while discharging his duty.

It is not correct to state that the detaining authority has passed the order of detention without applying his mind".

7. A perusal of the aforesaid averments in the counter affidavit clearly indicates that there is absolutely no explanation as to how the crime number could be given in the observation mahazar which was supposed to have been prepared earlier to the registration of the crime itself. In this context, it has to be pointed out that the above said glaring discrepancy has not only been considered by the Detaining Authority at the time of forming his subjective satisfaction but the Detaining Authority has not applied his mind to the contentions put forth by the petitioner in paragraph 7 of the affidavit. It is unfortunate that the averments contained in paragraph 11 of the counter affidavit does not convey any meaning at all. The Detaining Authority has not applied his mind to the contentions put forth in paragraph 7 of the affidavit and has also not applied his mind while dealing with the same at the time of filing the counter affidavit. Thus there has been non-application of mind on the part of the Detaining Authority while forming the subjective satisfaction and passing the order of detention as well as at the time of rebutting the above said contentions put forth by the petitioner in the affidavit. This shows that while passing orders of detention affecting the liberty of the citizen a very casual attitude has been adopted by the Detaining Authority.

8. While considering a similar contention a Division

Bench of this Court in its order dated 12.10.2001 passed in

H.C.P.No.759 of 2001 has observed as follows:-

"At the time when the mahazar was prepared at the spot, no crime was registered and therefore, it could not have been possible to mention any crime number in the seizure mahazar as well as in the destruction mahazar. This glaring inconsistency has not been adverted to by the detaining authority nor any clarification had been obtained from the sponsoring authority with reference to this discrepancy.

In such circumstances, we are of the opinion that there is a non-application of mind on the part of the detaining authority and the subjective satisfaction arrived at by him is improper. Therefore, on this ground, we are of the view that the order of detention has to be set aside and accordingly, the same is set aside".

9. The learned Additional Public Prosecutor appearing for the State however contented that the observation mahazar was not a relied upon document and as such no prejudice has been caused by the discrepancy found therein but in the light of the decision of the Division Bench referred to

supra, we are unable to accept the contention of the learned Additional Public Prosecutor. The failure on the part of the Detaining Authority to advert to the glaring discrepancy at the time of rebutting the contention raised in the affidavit filed in the above Habeas Corpus Petition will definitely amount to non-application of mind which in our considered view vitiates the order of detention. The order of detention is, therefore, set-aside and the petition is allowed. The detenu is directed to be set at liberty forthwith from the custody, unless his detention is required in connection with any other case.

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To

1. The Secretary to Government  
Food, Co-Operation and Consumer Protection Department,  
Chennai - 9.
2. The District Magistrate and District Collector,  
Dharmapuri District, Dharmapuri.
3. The Secretary to the Government, Food and Consumer  
Protection Department,  
Government of India, New Delhi.