B. Devarajan Vs. State and anr.

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Court : Chennai

Decided On : Aug-16-1999

Reported in : 2000CriLJ116

Judge : V.S. Sirpurkar and ;V. Kanagaraj, JJ.

Acts : TamilNadu Prohibition Act, 1937 - Sections 4(1) and 4(1A)

Appeal No. : H.C.P. No. 1684 of 1999

Appellant : B. Devarajan

Respondent : State and anr.

Advocate for Def. : Syed Fasiuddin, Addl. Public Prosecutor

Advocate for Pet/Ap. : D. Veerasekaran, Adv.

Disposition : Petition allowed

Judgement :

V.S. Sirpurkar, J.

1. The order in challenge is passed on 14-9-1998 against one Murugan dubbing him to be a 'bootlegger'. The order is passed by the District Magistrate and District Collector, Karur. The authority has reported three adverse cases under Section 4(1)(i) of the TamilNadu Prohibition Act, 1937 and in the ground case an incident

dated 31-8-1998 is relied on.

2. It is generally stated in the ground case the detenu was an arrack seller and when the arrack sold by him was consumed by one Vallalan, he felt giddy and there was irritation in his chest and his eyes got blurred. Thereby, it is suggested in the ground case that the arrack sold was poisonous arrack and by selling the poisonous- arrack, the detenu had committed an offence under Section 4(1-A) of the Tamil Nadu Prohibition Act, 1937 in addition to the offence under Section 4(l)(i) of the Act. It is specifically stated therein that the sample of arrack collected from the detenu on 31-8-1998 was chemically tested and it was found that there was 0.64 mg% atropine in the said arrack. At the end of paragraph 3 the following sentences appear.

He is habitually selling illicit distilled arrack and paid the fine amount imposed by the Court. Every time he was committing offence such (sic) TNP Act, 1937 immediately he will involve in selling of illicit distilled arrack. Recently, liquid tragedy death cases were reported at the adjacent villages. If he allows to continue he may indulge in such prejudicial activities in future.

It is in this order which is challenged by the petitioner.

3. Learned Counsel for the petitioner at the outset contended that a representation was made by the detenu on 29-10-1998. He points out, in that representation the detenu had specifically sought for an explanation and the papers regarding the liquid tragedy death case which were reported from the adjacent villages. The detenu had also sought information about the place. It is pointed out by the learned Counsel that the representation has been casually disposed of even without calling for the remarks. Learned Counsel points out that the point raised in the representation by seeking source of information of the statement made in the grounds could not have been lightly rejected by the State Government casually without calling for the remarks from the sponsoring authority. Learned Counsel points out that the State Government did not bother to call for the remarks and has casually and mechanically rejected the representation on 9-11-1998. In addition to this, learned Counsel secondly contends that this was a relied on circumstance in respect of which the documents have been sought for were bound to be supplied.

Since these documents were not supplied, the petitioner's right to make effective representation came under serious jeopardy.

4. Learned Additional Public Prosecutor however, countered this by saying that in each and every case, it was not imperative on the part of the State Government to call for the remarks of the sponsoring authority or the detaining authority, as the case may be and if there were enough materials on record in the grounds and in the papers available with the State Government, then, the representation could have been disposed of by the State Government even without calling for the remarks from the detaining authority or the sponsoring authority. According to the learned Additional Public Prosecutor such material was available and therefore, it could not be said that the representation was casually dealt with. Learned Additional Public Prosecutor submits that the source of information of the detaining authority could not be asked for and the evidence gathered also could not be insisted upon by the detenu. In support of his contention, learned Additional Public Prosecutor relied on a reported decision in State of Punjab v. Jagdev Singh Talwandi : 1984 CriLJ177 , more particularly on paragraph 19.

5. In the first place, it will have to be considered as to whether the representation was casually treated by the State Government. It is admitted position and the learned Additional Public Prosecutor very fairly pointed out that the remarks of the detaining authority were not called for in this case. According to the learned Additional Public Prosecutor the documents available with the State Government and the records available are enough to effectively consider the representation. Learned Additional Public Prosecutor very fairly placed before us the communication by which the representation has been rejected. We have gone through the same. It suggests that the State Government had considered the three pending cases against the detenu and it could not be said that all the three cases were falsely foisted against him. It then proceeds to state that all the documents which were supposed to be supplied to the detenu had already been supplied to the detenu and therefore, there was nothing to be considered on that account. This is practically all the consideration shown in the communication dated 9-11-1998. On this backdrop, we looked into the representation. Therein, the detenu has very specifically raised a point in respect of the aforementioned inference

drawn by the detaining authority to the 'effect that there were recent reports regarding liquid deaths (probably deaths because of arrack). The detenu has very specifically asked for the so-called reports which have been mentioned in the grounds which were recent and which suggested the deaths on account of the illicit arrack. It was sought from the learned Additional Public Prosecutor as to whether there was any material in the document supplied to the detenu which could suggest or even distantly throw light on the said deaths.

6. It was also specifically asked to the learned Additional Public Prosecutor as to whether the documents suggest that there were in such deaths and if so, where the deaths occurred and when. If the documents on which reliance was placed on are all silent about this specific point raised by the detenu, then we are afraid that the State Government could not have thrown the representation without calling for the reports or comments of the detaining authority or as the case may be the sponsoring authority. The detenu had specifically sought for the basis of this inference and comments. The straight law is that once any document is relied on by the authority, it Has to be supplied to the detenu. In our considered opinion, the reports or recent deaths have only been referred in the grounds have definitely been relied on. Therefore, it is bound to be supplied. Not only this, unless the State Government had invited the comments of the sponsoring authority or the detaining authority, the representation could not have been decided upon. As it is, the reply does not show that this particular question has been considered by the State Government in any manner. In that view, we are of the clear opinion that the State Government has not given due consideration to the representation and the representation has been casually disposed of. On this ground alone, the petition should succeed.

7. However, as if this is not sufficient, the State Government has also not bothered to supply the report to the detenu. There can be no dispute that the reports have specifically been referred in the grounds. Here was a case where the detaining authority was considering the menace of the sale of poisonous arrack and was also stating the devastated ill facts of such sale. That was certainly one of the reasons which had prevailed when the detaining authority to take extreme step of preventive detention. We are therefore of the clear opinion that the documents

sought for in the sense of reports could have been supplied. This is not a case where the detenu was seeking the source of information. The existence of some reports was already mentioned in the ground. All that the detenu was seeking for is the report itself. He is not seeking the source of information. In that view, the Supreme Court decision in Jagdev Singh Talwandi case : 1984 CriLJ177 is not applicable to the facts of the present case. On this ground also the petition must succeed.

8. In the result, this habeas corpus petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his detention is required in connection with any other case.