

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.1018 of 2016

Ramajayam

... Petitioner

vs.

1.The Secretary to the Government,
Department of Consumer Affairs,
Government of India, "Krishi Bhavan",
New Delhi-110 001

2.The Secretary to the Government,
Co-operation Food and Consumer
Protection Department, Secretariat,
Chennai-600 009

3.District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records in connection with the order of detention passed by the third respondent dated 15.3.2016 in D.No.20 of 2016, against the petitioner Ramajayam, Male aged 40 years, S/o.Mookkaiya Nadar, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.N.Manoharan
for M/s.D/Gopal

For Respondents : Mr.S.Arokiam, C.G.S.C.for R1
Mr.V.M.R.Rajentren, APP for
R2 and R3

ORDER

(Order of the Court was made by A.SELVAM, J.)

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India, praying to call for the records relating to detention order, dated 15.3.2016, passed in D.No.20 of 2016, by the detaining authority, who has been arrayed as the third respondent herein, against the detenu, by name Ramajayam, Son of Mookkaiya Nadar, and quash the same.

2. The Inspector of Police, Civil Supplies CID, Kancheepuram Unit, as sponsoring authority, has submitted an affidavit to the detaining authority, wherein it is averred that the detenu has involved in the following adverse cases:

(1) Civil Supplies CID, Kancheepuram Unit, Crime No.34 of 2015, registered under Section 6(4) of the Tamil Nadu Scheduled Commodities (Regulation and Distribution of Card System) Order 1982, read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955.

(2) Civil Supplies CID, Kancheepuram Unit, Crime No.37 of 2015, registered under Section 6(4) of the Tamil Nadu Scheduled Commodities (Regulation and Distribution of Card System) Order 1982, read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955.

(3) Civil Supplies CID, Kancheepuram Unit, Crime No.68 of 2015, registered under Section 6(4) of the Tamil Nadu Scheduled Commodities (Regulation and Distribution of Card System) Order 1982, read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955.

3. Further, it is averred in the affidavit that on 28.2.2016, at about 16.00 hours, the sponsoring authority/Inspector of Police, Civil Supplies, CID, Kancheepuram Unit and others have inspected a vehicle bearing Registration No.TN.22-AU-0500 and ultimately found 60 bags of PDS rice without any authorisation and subsequently, a case has been registered in Crime No.22 of 2016, for offences punishable under Section 6(4) of Tamil Nadu Scheduled Commodities (Regulation and Distribution of Card System) Order 1982 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955, against the detenu and ultimately requested the detaining authority to brand the detenu as 'Black Marketeer' .

4. The detaining authority, after considering the averments made in the affidavit and other connected documents, has derived subjective satisfaction to the effect that the

detenu is a habitual offender and he is in the habit of committing similar crimes one after another and accordingly derived subjective satisfaction and ultimately branded him 'Black Marketeer' by way of passing the impugned detention order and in order to quash the same, the present petition has been filed.

5. On the side of the respondents a detailed counter has been filed, wherein it has been clinchingly mentioned that prior to 28.2.2016, the detenu has involved in three cases of similar nature. On 28.2.2016 the detenu has been found in possession of 60 bags of PDS rice without any authorisation. Under the said circumstances, a new case has been Registered against him in Crime No.22 of 2016 and the detaining authority, after considering the affidavit filed by the sponsoring authority and other connected documents, has rightly passed the detention order and the same does not suffer from any infirmity and therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has contended to the effect that as per Section 3(4) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, the State Government is bound to send a report within 7 days from the date of detention, to the Central Government and the Central Government has to give proper disposal within the stipulated period and in the instant case, such things have not been done and the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and therefore, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended that the State Government has sent a report to the Central Government on 24.3.2016 and there is no deviation on the part of the State Government and therefore, the contention put forth on the side of the petitioner cannot be accepted.

8. It is an admitted fact that the detention order in question has been passed on 15.3.2016. But, as per the letter addressed to the Secretary, Government of India, it is easily discernible that the same has been sent on 24.3.2016.

9. Considering the date of detention i.e. on 15.3.2016 and also considering the letter addressed to the Central Government on 24.3.2016, this Court is of the clear view that the State Government has belatedly/beyond the period of limitation, has sent a report to the Central Government. Further, the Central Government has not passed any order on the basis of the letter dated 24.3.2016, alleged to have been sent by the State Government.

10. The learned counsel appearing for the petitioner has befittingly drawn the attention of this Court to the decision reported in (2007) 1 MLJ (Cr1.) 1089 - Sahul Hameed vs. Additional Secretary to Government of India, Department of Consumer Affairs, New Delhi and Others, wherein, the Division Bench of this Court has held as follows:

"Failure of the Central Government to consider and pass orders on the report of the State Government regarding the detention of Black Marketeer under Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (7 of 1980), would certainly result in violation of fundamental Right guaranteed under Article 22(5) and in such an event the order of detention would be vitiated."

11. Even a cursory look of the dictum given by the Division Bench of this Court, a primordial duty is cast upon the State Government to report the order of detention within a period of seven clear working days to the Central Government. The Central Government, within the stipulated period, ought to have given proper disposal. In the instant case, such things have not occurred. Considering the fact that belated communication has been sent by the State Government to the Central Government and also considering that no order has been passed by the Central Government, this Court is of the view that the latches on the part of the State as well as Central Governments would certainly affect the rights of the detenu guaranteed under Article 22(5) the Constitution of India and on that ground alone, the detention order in question is liable to be quashed.

In fine this Habeas Corpus Petition is allowed. The detention order dated 15.3.2016, passed in D.No.20 of 2016, by the detaining authority against the detenu, by name Ramajayam, Son of Mookkaiya Nadar, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

s/d-

Assistant Registrar(CS-V)

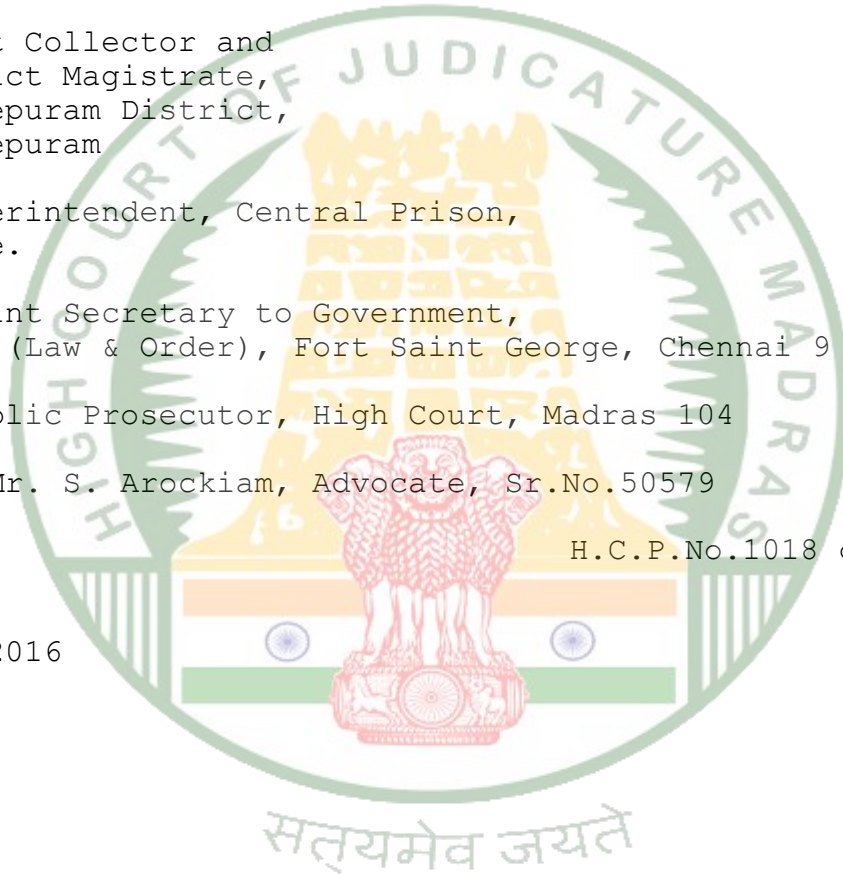
True Copy

Sub-Assistant Registrar

msk

To

- 1.The Secretary to the Government,
Department of Consumer Affairs,
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 - 2.The Secretary to the Government,
Co-operation Food and Consumer
Protection Department, Secretariat,
Chennai-600 009
 - 3.District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram
 - 4.The Superintendent, Central Prison,
Vellore.
 5. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai 9
 6. The Public Prosecutor, High Court, Madras 104
- +1 CC to Mr. S. Arockiam, Advocate, Sr.No.50579
- H.C.P.No.1018 of 2016
- SU (CO)
MD 07/09/2016



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