



HCP(MD)Nos.1031 to 1033 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.01.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

H.C.P.(MD)Nos.1031 to 1033 of 2022

M.Vanapetchi	.. Petitioner/ Wife of the Detenu in H.C.P(MD)No.1031 of 2022
U.Vasanthi	.. Petitioner/Wife of the Detenu in H.C.P(MD)No.1032 of 2022
S.Mariyammal	.. Petitioner/Wife of the Detenu in H.C.P(MD)No.1033 of 2022

Vs.

1.State of Tamil Nadu,
Rep. by the Additional Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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



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3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

.. Respondents
in all cases

PRAYER in H.C.P(MD)No.1031 of 2022: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the records connected with the detention order passed in H.S(M)Confdl.No.111 of 2022 dated 04.06.2022 on the file of the 2nd respondent herein and quash the same and to direct the respondents to produce the detenu or body of the detenu, the petitioner's husband, namely, Manikandan, son of Esakkimuthu, aged about 29 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

PRAYER in H.C.P(MD)No.1032 of 2022: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the records connected with the detention order passed in H.S(M)Confdl.No.110 of 2022 dated 04.06.2022 on the file of the 2nd respondent herein and quash the same and to direct the respondents to produce the detenu or body of the detenu, the petitioner's husband, namely, Uchimakali, son of Shanmugaiah



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Thevar, aged about 45 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

PRAYER in H.C.P(MD)No.1033 of 2022: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the records connected with the detention order passed in H.S(M)Confdl.No.112 of 2022 dated 04.06.2022 on the file of the 2nd respondent herein and quash the same and to direct the respondents to produce the detenu or body of the detenu, the petitioner's husband, namely, Sudalaimani, son of Sivan, aged about 33 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

In all cases:

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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COMMON ORDER

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DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

These three Habeas Corpus Petitions are filed on behalf of the accused persons. They were found selling banned tobacco products and IMFL liquor bottles of various brands to school and college students. Based on the information, the shop run by one Uchimakali with the help of his employees Manikandan and Sudalaimani was searched on 28.05.2022 at about 9.30 a.m and the following banned tobacco products and IMFL liquor was seized.

Sl.No.	Banned item	Quantity	Weigh
1.	Ganesh Tobacco	51 pouch	300gms each
2.	Bullet Rani Panparak	99 pouch	60 pockets each
3.	High Voltage Beer Bottles	34 numbers	--
4.	SNJ 10000 beer bottles	2 numbers	--
5.	Honey Day Brandy beer bottles	11	180 ml each

2. The detenues Manikandan and Sudalaimani have antecedent of previous cases of similar nature whereas Uchimakali, the owner of the shop,



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has come to adverse notice for the first time. The detaining authority, after considering the material placed before him and being satisfied that the accused persons are selling banned tobacco products to the minors to enrich themselves and thereby creating fear among the people, had branded them as 'Drug Offenders' and detained them under Act 14 of 1982.

3. We heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records furnished to the detenu at the time of his detention.

4. The learned counsel for the petitioners submitted that the definition of 'Drug Offender' as found in Section 2(e) of the Tamil Nadu Act 14 of 1982 does not cover offence under the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, (hereinafter referred to as the 'COTPA' Act) and further submitted that in the light of the recent Judgment of the Division Bench of this Court, the prosecution under



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the COTPA Act itself is not sustainable. Further, the learned counsel for the petitioners submitted that inspite of the request to furnish the copy of the Tamil version of the remand order, the detaining authority failed to furnish the Tamil version of the remand order which has caused prejudice to the detenues to make effective representation.

5. Section 2(e) of the Tamil Nadu Act 14 of 1982 defines 'Drug Offender' as under:

“2(e) "drug-offender" means a person, who manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940) or [“the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985)”] and the rules, notification and orders made under either Act, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money in furtherance or support of the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of



any such things.”

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6. The ground case arises out of the registration of FIR in Crime No. 224/2022 for the offence under Section 24(1) the COTPA Act, Section 4(1) (a) of Tamilnadu Prohibition Act and Section 77 of the Juvenile Justice (Care and Protection of Children) Act 2015. It is incorrect to contend that as per the definition of 'Drug Offender', the detenues must have been prosecuted if only for offence under the Drugs and Cosmetics Act or under the NDPS Act.

7. The definition of 'Drug Offender' as found in Section 2(e) of the Tamilnadu Act 14 of 1982, read above includes 'any other Act'. So the contention of the learned counsel for the petitioners fails. We find the ground case has invoked the penal provisions of the COTPA Act, 2003, Tamil Nadu Prohibition Act, 1937 and the Juvenile Justice (Care and Protection of Children) Act, 2015, no doubt, though the detenues were found in violation of the Tamilnadu Prohibition Act, 1937, the subjective satisfaction for detaining them under Act 14 of 1982 is only in respect of



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violation of the COTPA Act and the Juvenile Justice Act and not for violation of the prohibition Act. If it is for Prohibition Act, the detenues would have been also branded as 'Bootleggers' besides 'Drug Offenders'. Failure to brand the detenu as 'Bootleggers' also will not vitiate the detention order.

8. The learned counsel for the petitioners referring the recent judgment of the Division Bench rendered in W.A(MD)No.2093 of 2018 etc. on 20.01.2023 arising upon the appeal filed by *the Designated officer, the Food Safety & Drugs Control Department, Villupuram District vs. Jayavilas Tobacco Traders LLP rep. by its Partner Mr.A.Prabaharan, Chinna Salem* canvass that no prosecution under the COTPA Act for possession of Tobacco is not sustainable.

9. This Court, on going through the judgment cited find that this judgment does not declare prosecution under COTPA Act is illegal. Infact, the said writ petition filed challenging the order passed by the Commissioner of Food Safety imposing ban and sale of gutka, pan masala



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and other chewable food products containing Tobacco or Nicotine ingredients. In the said context, the Division Bench has observed that Tobacco products are regulated under the COTPA Act and therefore, the Commissioner of Food Safety has no jurisdiction to regulate Tobacco products under the garb of food safety exercising power under Food Safety Act.

10. Going by the verdict of the Division Bench, this Court finds that if the regulation contemplated under the COTPA Act is violated, there is no bar for the State to prosecute a person under the COTPA Act. As far as the case in hand is concerned, the specific allegation against the detenues is that they were in possession of prohibited Tobacco products and selling it to minors which is contrary to Section 26 of COTPA Act and punishable under Section 24 of the COTPA Act.

11. For convenient sake, both the provisions are extracted below:

“24. Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years:-?



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(1) Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees.

(2) All offences under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974).

26. Offences by companies:-

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly



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(2) Notwithstanding anything contained in sub- section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

12. Besides COTPA Act, also Section 77 of the Juvenile Justice (Care and Protection of Children) Act been invoked by the prosecution. For the said reason, the contention of the learned counsel for the petitioners is held unsustainable and there is no error in branding the detenues as 'Drug Offenders'. Therefore, we do not find any error with regard to the application of mind by the detaining authority.



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13. As far as the alleged violation of procedure, this Court finds force in the contention raised by the learned counsel for the petitioners. From the counter, this Court finds that the ground raised by the detenues that the Tamil version of the remand order was not furnished to them appears to be correct and failure to furnish the remand order has caused prejudice to the detenues to make effective representation. It is admitted that the detenues sought for Tamil version, but not furnished. Hence, on this ground, the detention orders are liable to be quashed.

14. In the result,

(i) H.C.P(MD)No.1031 of 2022 is allowed and the order of detention in H.S(M)Confdl.No.111 of 2022 dated 04.06.2022, passed by the second respondent is set aside. The detenu, viz., Manikandan, son of Esakkimuthu, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(ii) H.C.P(MD)No.1032 of 2022 is allowed and the order of detention in H.S(M)Confdl.No.110 of 2022 dated 04.06.2022, passed by the second



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respondent is set aside. The detenu, viz., Uchimakali, son of Shanmugaiah Thevar, aged about 45 years is directed to be released forthwith unless his detention is required in connection with any other case.

(iii) H.C.P(MD)No.1033 of 2022 is allowed and the order of detention in H.S(M)Confdl.No.112 of 2022 dated 04.06.2022, passed by the second respondent is set aside. The detenu, viz., Sudalaimani, son of Sivan, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[G.J.,J.] & [S.M.,J.]
30.01.2023

NCC : Yes/No
Index : Yes/No
Internet :Yes

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To

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1. The Additional Principal Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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