SUPREME COURT OF INDIA

State of T.N.

Vs.

Glory

Crl.A.No.269 of 2001

(M.B. Shah and S.N. Variava JJ.)

02.03.2001

JUDGMENT

S. N. Variava, J.

1. Leave granted.

2. Heard parties.

3. This Appeal is against an Order dated 22nd March, 2000. By this Order a detention Order dated 15th May, 1999 has been quashed on the following reasoning:

> "2. The ground case which forms the immediate basis for passing the order of detention is said to have taken place on 4.5.99 at 9.15 p.m. The detenu was found committing the offence punishable under Section 4(1-A) of the Tamil Nadu Prohibition Act and the offence is registered in Crime no. 834/99 on the file of the Prohibition and Enforcement Wing, Thuckkalay. There are totally 11 adverse cases, the last of which is stated to have taken place at 05.00 a.m. on 4.5.1999, for which offences under the Tamil Nadu Prohibition Act came to be registered in Crime No. 383/99 on the file of the Thiruvattar Police Station. The first information report regarding to that case in the last adverse case referred to above is found at page 115 of the booklet and it shows that the accused/detenu was arrested. Page 121 of the booklet contains the general diary for the last adverse case and it shows that the arrested accused was sent for remand. It is contended by the learned counsel for the petitioner that if he was in remand pursuant to this arrest at 5.00 a.m. on 4.5.199, in the last adverse case, then there must be material in the form of Court orders to show that the arrested accused was released on bail on the being produced before the Court for remand. But there is no material at all to show that the arrested accused in the adverse case was released on Bail. Though it may be a bailable offence, yet there must be record to show that the arrested accused in the last adverse case was let on bail, which facilitated him to commit the offence in the ground case on the same day. The detaining authority, in the absence of materials showing that the arrested accused in

the last adverse case was released on bail, ought to have applied his mind to that aspect and asked for a clarification from the sponsoring authority as to the circumstance under which the accused in the ground case was found involving himself in the later part of the same day. Since he had not done it, there is a clear non application of mind on the part of the detaining authority, which vitiates the order of detention.

4. It could not be denied that there were 11 adverse cases against the detenu. As has been noted the last adverse case was on 4th May, 1999 at 5 a.m. We have also been shown page 115 of the booklet wherein the First Information Report has been recorded. The last adverse notice, referred to by the Judge reads as follows :

> “Sl.No . Name of the Range Section of Law Disposal/Present Stage 11.
>
> Thiruvattar P.S. Cr.No. 383/99 Dated 4.5.99
>
> 4(1)(a) TNP Act 1937”

5. Thiru Rasalam. S/o Ponnaiyan was found in possession of 5 litre illicit distilled arrack in a 5 litre black coloured plastic can. He was arrested on 4.5.99 with the contrabands. The case was charged on 4.5.99 and pending trial.

6. From the above it is clear that this does not show that the detenu had been remanded to judicial or police custody in this case.

7. We have also seen page 121 of the booklet containing the general diary for the last adverse case. We do not find any statement in this booklet which shows that the accused has been sent for remand. The only statement is as follows:

> "I have taken up the investigation and inquired the witnesses and recorded their statements. I have enclosed their copies. I have inquired the accused. The Accused without any coercion or fear accepted their guilt of having in possession of illicit arrack and confirmation of the guilt from the statements of the witnesses and confession statement made by the accused accepting their guilt, I have closed my investigation and filed the charge sheet for the commission of offences under mentioned Section and sent the same to the Judicial Magistrate Court Padmanabhapuram. General Diary of the Court continues."

8. A plain reading of this statement shows that what has been sent to the Judicial Magistrate is the charge sheet for the commission of the offence. The High Court seems to have misread the same and concluded that the detenu had been remanded to judicial custody.

9. The learned Judges have themselves noted that the offence is a bailable offence. The facts show that the Detenu was again caught in the evening committing the same offence. Thus apart from the fact that there is nothing on record to show that the Detenu had been

remanded to judicial custody, the factual position was that the accused had been apprehended on the same evening committing the same offence. It is, therefore, apparent that without taking into consideration these facts, the High Court has quashed the detention order. The impugned Order of the High Court cannot be sustained and it is hereby set aside. However, the Detention Order was of 1999. The same had been quashed by the High Court in March 2000. The period of detention is over. In our view, this is not a case where the Detenu should be made to surrender to undergo the remaining period of detention.

10. The Appeal stands disposed off accordingly. There will be no Order as to costs.