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SLP(Crl.)No. 2131 OF 2004
ITEM No.1

Court No. 2

SECTION IIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 2131/2004

(From the judgement and order dated 06/04/2004 in HCP 95/04
of The HIGH COURT OF MADRAS)

RAJA

Petitioner (s)

VERSUS

STATE, TAMIL NADU & ORS.

Respondent (s)

(With Appln(s). for stay and bail and exemption from filing O.T.)
(With Office Report)

Date : 02/09/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner (s)Mr. Jayant Muthraj,Adv.
Mr. C.K. Sasi,Adv.

For Respondent (s)Mr. Abhay Kumar,Adv.
Mr. Subramonium Prasad.,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted. Appeal is allowed in terms of the signed order.

(Ganga Thakur) (Asha Joshi)
PS to Registrar Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2004
(Arising out of SLP(C) 2131/04

Raja
..Appellant(s)

Versus

State, Tamil Nadu & Ors.
..Respondent(s)

O R D E R

Heard learned counsel for the parties.

Leave granted.

The appellant herein is a friend of the detenu by name Kaliamoorthy who is detained under the provisions of Section 3(1) the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982).

One of the grounds which satisfied the detaining authority

to detain the appellant was that when he was arrested by the police, certain quantity of illicit arrack in a mud pot was being brewed on the river side and the samples of which were taken by the police officer concerned at the time of the arrest of the appellant. While doing so the rest of the arrack in the mud pot was destroyed and separate mahazars were drawn to evidence the factum taking samples as well as the destruction of the remaining arrack, the detaining authority in the order of detention specifically referred to this factum of destruction by observing "the remaining arrack along with the mud pot was destroyed on the spot". It is the case of the State Government itself that this copy of the mahzar evidencing the destruction of the arrack was placed for consideration before the detaining authority and as noted above has relied on this fact. It is an admitted fact that the appellant had sought for this copy of this mahzar from the detaining authority and admittedly the said copy was not provided to the appellant.

The said detention of the detenu was challenged by the appellant herein before the High Court of Judicature of Madras wherein a specific ground was taken that the detenu having not been supplied with the material documents, one of them being the destruction mahazar he had no opportunity to represent to the detaining authority in his defence. The court, however, rejected his contention by observing that non supply of the mahazar of destruction was not a material document therefore, it rejected his contention.

In this appeal the very same argument is addressed by the learned counsel appearing for the appellant. Taking into the facts of this case, inasmuch as it is the case of the police which arrested the detenu that when he was arrested from the river bank he was brewing illicit arrack hence he was indulging in the activity of manufacture and sale of illicit liquor. The factum of the brewing of liquor business a relevant fact which is sought to be established by the sponsoring authority by the production of destruction mahzar, a copy of which was placed before the detaining authority who in turn has relied upon the same, but copy of which is not given to detenu in spite of demand, this denial on the facts of this case we think has caused prejudice to the detenu inasmuch as he could not effectively represent against this fact. Therefore, we think that on the facts of this case, since reliance is placed on this mahzar of destruction by the detaining authority and a copy of the same having not been given to the detenu, this appeal is liable to succeed.

For the forgoing reasons this appeal is allowed. The order of detention is quashed.

.....J.

(N. SANTOSH HEGDE)

.....J.

(S.B. SINHA)

.....J. (TARUN CHATTERJEE)

New Delhi,
September 2, 2004.