
(2017) 06 KL CK 0011
In the High Court Of Kerala
Case No : 392 of 2010 (S)

ABDUL WAHAB

APPELLANT

Vs

STATE OF KERALA

RESPONDENT

Date of Decision : 14-06-2017

Acts Referred:

Constitution of India, Article 21, Article 22 - Amendment of the Schedule - Protection against arrest and detention in certain cases
Code of Criminal Procedure, 1973, <a

Citation : (2017) 06 KL CK 0011

Hon'ble Judges : P.R.Ramachandra Menon, P.Ubaid, A.M.Babu

Bench : DIVISION BENCH

Advocate : P.VIJAYA BHANU, M.M.DEEPA, VIPIN NARAYAN

Judgement

1. We are called upon to decide (by Reference Order dated 01.12.2010 passed by a Division Bench of this Court) whether the dictum laid down in Safiya vs. State of Kerala (2009(1) KLT 7) requires to be reconsidered. The more pointed question raised is whether the detaining authority is to record the subjective satisfaction under Section 3 of the Kerala Anti-Social Activities (Prevention) Act, 2007(KAAPA)(hereinafter called the "Act" in short) solely on the basis of the finding on investigation recorded by the competent authority in Police?. In other words, whether the observations made by the Division Bench in Safiya's case are to be read and understood as to a situation where final report is submitted by the police under Section 173 (2) of the Cr.P.C., is it no more open for the detaining authority to consider anything more while passing an order under Section 3 (1) of the KAAPA; or is it not necessary for the detaining authority to pass an order with proper application of mind as to whether any circumstance is brought out to pass such an order, necessitating to keep the detainee under preventive detention?.

2. Heard Mr. Vipin Narayan, the learned counsel for the petitioner, as well as Shri K.A.Anas, the learned Govt. Pleader appearing for the State/Respondents.

3. A brief discussion on the facts is necessary to appreciate the chain of circumstances and the legal position more effectively. The brother of the petitioner, who is the detainee, was classified by the police as a "known goonda" in terms of Section 2(o) of the Act as various cases came to be registered against him, as envisaged under the Act [here, it was under the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001]. Pursuant to the relevant proceedings and report submitted by the third respondent/S.I. of Police before the 4th respondent/Superintendent of Police, a report in terms of Section 3 of the Act came to be filed before the second respondent. After considering the same, the second respondent passed Ext.P1 order of detention on 16.09.2010; pursuant to which, the detainee was arrested and taken into judicial custody on 24.09.2010. The order of detention was approved by the Govt.of Kerala under Section 3(3) of the Act on 08.10.2010. The said order was sought to be intercepted contending mainly: i) that the sponsoring authority had unnecessarily referred to irrelevant and extraneous matters in Ext.P4 Sponsoring Report, particularly by referring to five earlier cases registered against the detainee (in fact, not referred to by the detaining authority in Ext.P1 order) which had polluted the mind of the second respondent/detaining authority;

ii) that the detainee was not liable to be branded as a "depradator of environment" in terms of Section 2(g) of the Act, as no derival of any pecuniary or commercial benefit while committing the alleged offence was made out, and hence he cannot be treated as a "known goonda" under Section 2(o)of the Act, by virtue of which no detention order could have been passed as well.

iii) that the detainee was not furnished with the copy of the relevant documents/ materials forming the basis of the charge sheet/final report; and

iv) that the proceedings were vitiated in all respects, being violative of Article 22 (5) of the Constitution of India and Section 7(2) of the Act.

4. On a threadbare analysis of the facts and figures, a Division Bench of this Court, as per the Reference Order dated 01.12.2010, held that the detaining authority's decision cannot be said to be vitiated merely because the sponsoring authority's report contains irrelevant or extraneous information, which the detaining authority has rightly chosen not to be relied on. It was observed by the Bench that the sponsoring authority may furnish various pieces of information. But it does not mean that the detaining authority has to consider all such piece of information to entertain either of the "two" satisfactions (firstly, the "objective satisfaction" as to whether the detainee is a "known goonda" or a "known rowdy" and secondly, the "subjective satisfaction" as to whether there is a chance for the detainee to indulge in any anti-social activities, if no order of preventive detention is passed. In so far as the "objectionable part" in the report was not admittedly referred to or relied on by the detaining authority while passing Ext.P1 order, the Bench held that such irrelevant and extraneous matters could not be said to have influenced the mind of the detaining authority; thus

answering the first point against the petitioner. With regard to the contention that the detainee was not a "depredator of environment" in terms of Section 2(g) of the Act, the Bench held, with reference to the available materials, that there was indisputable assertion that "mining of sand" was done illegally and it was stocked for sale. Based on such finding of fact, the challenge raised with regard to the alleged non-satisfaction of the requirements under Section 2(g) of the Act was repelled.

5. Coming to the more important/crucial question/ground as to the requisite "subjective satisfaction" to be entertained by the detaining authority, the materials available with reference to the "three" cases registered against the detainee were subjected to indepth analysis by the Bench. Such a course was pursued after referring to the scope of the relevant provisions, particularly Section 3 (and such other provisions) and as to the necessity for the detaining authority to have passed the order with proper application of mind. The Bench also observed that the detaining authority is never the prisoner of the investigating officer/police and that the duty/task to be discharged by him in terms of provisions of the statute cannot be outsourced to the police/police officer. It was in this context that *Safiya vs. State of Kerala* (cited *supra*) was cited from the part of the State through the Director General of Prosecution, contending that by virtue of the law declared by this Court in *Safiya's* case, once a final report is filed under section 173(2) of the Cr.PC., it is not for the detaining authority to record satisfaction as to the adequacy of evidence as to the commission of offence.

6. During the course of analysis, the Bench took note of the decision rendered in *Uma vs. State of Kerala* [2010 (4)KLT 511]. After referring to the relevant portions of paragraphs 1, 3 and 4 of the judgment in *Safiya's* case, the Bench extracted paragraphs 38 to 42 of the verdict passed in *Uma's* case to deal with the relevant/ comparative aspects involved. The Bench held that though for the purpose of deciding whether a person is a "known rowdy" or a "known goonda", satisfaction of the investigating officer under Section 2(o)(ii) or 2(p)(iii) may be sufficient for the purpose of entertaining the latter-subjective satisfaction, the detaining authority must himself be satisfied by consideration of all the relevant materials to the effect that detention of the detainee is necessary. The conclusion of the investigating officer cannot be permitted to take the place of subjective satisfaction of the detaining authority. The Bench also referred to the specific observations in *Uma's* case that it was unable to agree to the proposition mooted by the petitioner that copies of all the documents accompanying the charge sheet must be furnished to the detainee, as in the case of an accused who is entitled for copies under Section 207 of the Cr.P.C. According to the Bench, what was required was that the crucial documents which could instill "subjective satisfaction" in the mind of the detaining authority were to be placed before such authority. It was further held in *Uma's* case that the learned Judges were unable to understand *Safiya's* case as laying down the proposition that if final report was already filed, no other document than the final report in respect of the crime

in question need be placed before the detaining authority or could be looked into. It was made clear that all necessary documents to induce the "subjective satisfaction" must be placed before the detaining authority. After arriving at such a finding, the Bench proceeded to consider Uma's case whether such documents were actually placed before the detaining authority to have arrived at such "subjective satisfaction". Based on the facts and figures, it was held that though all the documents which accompanied the charge sheet had not been furnished to the detainee (in respect of Sl.No.1 Crime), sufficient materials were placed before the detaining authority to entertain "subjective satisfaction" by the said authority and hence such satisfaction recorded by the detaining authority was perfectly justified by the materials placed before the detaining authority. Satisfaction was recorded in relation to Sl.No.2 crime as well in this regard, holding that sufficient materials were placed before the detaining authority and that the order passed by the detaining authority was well based on such materials. It was accordingly, that the writ petition was dismissed in Uma's case.

7. After referring to the legal and factual aspects involved in Safiya's case and Uma's case and also declaring that an independent analysis had to be made by the detaining authority, (expressing satisfaction over the requirement contemplated under the Statute), and also after observing that the Bench was unable to understand Safiya's case as laying down the proposition that if a final report was already filed, no document other than the final report need be placed before the detaining authority [and hence that], it was held in paragraph 30 of the Reference Order that to have the question authoritatively determined, it was necessary to have the issue referred to a Larger Bench, to avoid any confusion.

8. After making such a Reference, the Bench proceeded further to examine whether sufficient materials were available before the detaining authority to sustain Ext.P1 order. It was also observed by the Bench that since Ext.P1 order was passed on 16.09.2010 and the detainee was taken to custody on 24.09.2010, the preventive detention was to have a maximum validity till 24.03.2011. It was noted that if there occurred any delay in answering the Reference by the Larger Bench and the detainee was made to remain behind the Bars all throughout, it may virtually turn to be a matter of academic importance alone; as the detainee may lose interest. It was accordingly, that the merit of the mitigating circumstance was sought to be analysed. The submission made from the part of the petitioner that, but for the final report, there was no probative material on which the complicity/involvement/responsibility of the detainee in the "three" cases referred to in the tabular column could be assumed, presumed or inferred was adverted to, observing that under such circumstance, it would be a travesty of justice to compel the detainee to undergo detention till 24.03.2011, i.e., the maximum period which could be ordered. It was in the said circumstance that the detainee was ordered to be released, subject to the terms and conditions specified therein, also making it clear that the observations in the order of reference shall in no way weigh with the criminal courts when they take up the "three" cases for hearing and disposal; and that the said cases were to be

disposed of, based on the materials placed from the part of the Prosecution, uninfluenced by any observation in the order.

9. As noted in the Reference Order, the maximum detention period which could have been ordered under Ext.P1 was upto 24.03.2011. By virtue of the Reference Order, it was also ordered to release the detainee subject to the terms and he stands released. However, by virtue of the question referred to, it cannot but be answered by this Court. The question, as already mentioned, is whether Safiya's case lays down any proposition that once the final report is submitted, no document other than the final report in respect of the crime in question need be placed before the detaining authority or could be looked into by such authority for recording the "subjective satisfaction" in terms of Section 3(1) of the Act.

10. The learned counsel for the petitioner, referred to some observations made by the Bench in Safiya's case, which according to the petitioner suggests that once a final report is submitted by the Investigating Officer, the detaining authority cannot and should not analyse the adequacy of evidence to arrive at a different finding, which is virtually to the effect that the detaining authority will have to act simply based on the contents of the final report and nothing else. The learned Government Pleader submits that no such finding has been rendered and the necessity to pass an independent finding with proper application of mind on the part of the detaining authority is evident from Safiya's case itself. After discussing the facts and figures in Safiya's case, the subsequent Bench held in Uma's case that according to the Bench, Safiya's case cannot be understood as laying down any proposition that if a final report has already been filed, no documents other than the final report in respect of the crime in question need be placed before the detaining authority.

11. The learned counsel for the petitioner submits that unless the position is clarified, there is every chance for misconception in the minds of the detaining authority and such other courts to be under the impression that in all cases where final report under Section 173(2) of the Cr.P.C. is filed, the Magistrate/detaining authority should not scrutinise any other records leading to final report under Section 173(2) of the Cr.P.C.

12. The scope of Section 3 of the "Act" has to be scrutinised in the above circumstance and hence it is extracted below: "3. Power to make orders for detaining Known Goondas and Known Rowdies (1) The Government or an officer authorised under subsection (2), may, if satisfied on- information received from a Police Officer not below the rank of a Superintendent of Police with regard to the activities of any Known Goonda or Known Rowdy, that, with a view to prevent- such person from committing any anti-social activity within the State of Kerala in any manner, it is necessary so to do, make an order directing that such person be detained. (2) If having regard to the circumstances prevailing, or likely to prevail in any area, the Government, if satisfied that it is necessary so to do, may, by order in writing, direct that during such period as may be specified in

the said order, the District Magistrate having jurisdiction may exercise the powers under sub-section (1) in respect of such persons residing within his jurisdiction or in respect of such persons not so resident who have been indulging in or about to indulge in or abet any anti-social activities within such jurisdiction.

(3) When any order is made under this section by the authorised officer under sub-section (2), he shall forthwith report the fact to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records which, in his opinion, have a bearing on the matter and no such order shall remain in force for more than 12 days, excluding public holidays, from the date of detention of such Known Goonda or Known Rowdy, unless, in the meantime, it has been approved by the Government or by the Secretary, Home Department if generally so authorised in this regard by the Government."

13. The terms "known goonda" as defined under Section 2 (o) and the term "known rowdy" as defined under Section 2(p) are also relevant to be noted and hence extracted below: (o)- " known goonda "- means a goonda who had been, for acts done within the previous seven years as calculated from the date of the order imposing any restriction or detention under this Act,--

(i) found guilty, by a competent court or authority at least once for an offence within the meaning of the term "goonda" as defined in clause (j) of section 2; or

(ii) found in any investigation or enquiry by a competent police officer, or other authority or competent court on complaints initiated by persons other than police officers, in two separate instances not forming part of the same transaction, to have committed any act within the meaning of the term "goonda" as defined in clause (j) of section 2.

Provided that an offence in respect of which a report was filed by a police officer before a lawful authority consequent to the seizure, in the presence of witnesses, of alcohol, spirit, counterfeit notes, sand, forest produce, articles violating copyright, narcotic drugs, psychotropic substances, or currency involved in hawala racketeering may be included for consideration though the report had resulted from an action initiated by a police officer. Explanation:- An instance of an offence involving a person, which satisfies the conditions specified in the definition of known rowdy referred to in clause (p) of section 2 can also be taken into consideration as an instance, along with other cases, for deciding whether the person is a known goonda or not.

(p)- "known rowdy"- means any person, who had been, by reason of acts done within the previous seven years as calculated from the date of the order imposing any restriction or detention under this Act,-

(i) made guilty, by a competent court at least once for an offence of the nature under item (i) of clause (t) of section 2 or any offence notified as such under the said clause; or

(ii) made guilty, by a competent court at least twice for any offence of the nature mentioned under item (ii) of clause (t) of section 2 or any offence notified as such under the said clause; or

(iii).-found on investigation or enquiry by a competent police officer or other authority, on complaints initiated by persons other than police officers, in three separate instances not forming part of the same transaction to have committed any offence mentioned in clause (t) of section 2:

Provided that any offence committed by a person,-

(i) by virtue of his involvement as a member of the family or a close relative of the family in an incident which took place by reason of a family dispute or quarrel involving family members of close relatives on- either side; or

(ii) by virtue of his involvement as a neighbour or as a close relative of the neighbour in an incident which occurred due to a dispute between immediate neighbours; or

(iii) by virtue of his involvement as an employee of any establishment in an incident which occurred in connection with a dispute between himself and the establishment with regard to the conditions of service; or

(iv) as a member of the student community in a recognised educational institution, by virtue of his involvement, merely by his presence but without any overt act constituting the offence mentioned in clause (t) of section 2 without being involved in any criminal conspiracy facilitating the same, in an incident which occurred due to the general involvement of students of the institution in that particular incident; or -(v) as a member of a recognised political party, by virtue of his involvement merely by his presence, but without any overt act constituting the offence mentioned in clause (t) of section 2 without being involved in any criminal conspiracy facilitating the same, in an incident which occurred due to the general involvement of the workers of that party in an agitation or protest or programme organised by the party- with prior information given to the police officer or magistrate having jurisdiction; or

(vi) by virtue of his involvement in a criminal act committed by him before he had attained the age of eighteen years, shall be omitted from the computation of the number of offences taken into account for deciding whether a person is a known rowdy".

14. As per the mandate under the statute, quite evidently, the subjective satisfaction to be recorded by the detaining authority for ordering preventive detention is to be based on the information received from the police officer not below the rank of a Superintendent of Police. It should be with regard to the activities of any "known goonda" or "known rowdy". Further, it is with a view to prevent such person from committing any antisocial activities within the State of Kerala in any manner. The term "anti-social activity" has been defined under section 2 (a) of the Act in the following terms: (a)- "anti-social activity" means

acting in such manner- as to cause or- is likely to cause, directly or indirectly, any feeling of insecurity, danger or fear among the general public or any section thereof, or any danger to the safety of individuals, safety of public, public health or the ecological system or any loss or damage to public exchequer or to any public or private property or indulges in any activities referred in clauses (c), (e), (g), (h), (i), (l), (m),(n),(q), (qb) and (s) of this section." From the above, it is very evident that a serious task/responsibility is mulcted on the shoulders of the detaining authority to record satisfaction over the relevant ingredients before ordering preventive detention. This is more so by virtue of the mandate of Article 21 of the Constitution of India which stands for protection of the lives and personal liberties of the citizen, saying that no person shall be deprived of his life or personal liberty except according to procedure established by law. When specific provision has been incorporated towards protection against arrest and detention of persons by virtue of Article 22 of the Constitution of India, it has been separately mentioned under Clause (3) of Article 22 that the said provision will not be applicable to a person who, for the time being, is an enemy alien; or a person who is arrested or detained under any law providing for preventive detention. Further safeguards are made under other relevant clauses of Article 22 as well to safeguard the life and interest of persons who are proceeded against by way of preventive detention.

15. Guidelines in relation to preventive detention under Maintenance of Internal Security Act (26 of 1971)(MISA) (Section 3) were framed by the Supreme Court in *Sadhu Roy vs. State of West Bengal* (AIR 1975 SC 919). It was held by the Bench ; i) that the discharge or acquittal by a criminal court is not necessarily a bar to preventive detention on the same facts for security purposes except where such discharge or acquittal proceeds on the footing that the charge was false or baseless, preventive detention (on the same condemned facts) may be vulnerable on the ground that the power under the Maintenance of Internal Security Act has been exercised in a mala fide or colourable manner;

ii) that the executive authority may act on subjective satisfaction and is immunised from judicial dissection of the sufficiency of the materials;

iii) that the satisfaction though attenuated by "subjectivity" must be real and rational not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases;

iv) that the executive conclusion regarding futuristic prejudicial activities of the detenu and its nexus with his past conduct is acceptable but not invulnerable; and that court can lift the verbal veil to discover the true face.

v) that the satisfaction of the authority might be checked, analysing whether articulated "grounds" are too groundless to induce credence in any reasonable man or too frivolous to be brushed aside as fictitious by a responsible instrumentality and that the court must see through mere sleights of mind played by the detaining authority.

vi) It was also possible, if witnesses were frightened off by a desperate criminal, the court may discharge the accused for deficient evidence but on being convinced (on police or other materials coming within his ken) that witnesses had been scared of testifying, the District Magistrate may still invoke his preventive power to protect society.

In the words of the Apex Court, "subjective satisfaction" is actual satisfaction, nevertheless, the objective standards, which Courts apply, may not be applied, the subject being more sensitive. But a sham satisfaction is no satisfaction and will fail in Court when challenged.

16. In another decision rendered by a "Four Member Bench" of the Apex Court in *Khudiram Das vs. the State of West Bengal and others* [[(1975) 2 SCC 81], a case involving provisions of MISA, it has been held that it is not only the right of the Court, but also its duty as well to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. It was also observed that the judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain/relevant basic facts and materials, that though other basic facts and materials were before it and that the detaining authority has not allowed them to influence its satisfaction, the correctness of which could be examined by the Court. It has been observed in crystal-clear words in paragraph "9" of the said verdict that the satisfaction must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under dictation of another body, such exercise of power would be bad and vitiated where the authority had disabled itself from applying its mind to the relevant factors.

17. Coming to the relevant enactment involved herein (KAAPA), as rightly observed by the learned Judges in the Reference Order, satisfaction has to be recorded by the detaining authority at two different levels; firstly, with regard to the "objective satisfaction" as to whether the detainee is a "known goonda" or a "known rowdy" in terms of Section 2(o)/2(p) of the Act and secondly, the "subjective satisfaction" as to whether he is engaged in anti-social activities and if it was necessary to prevent him in pursuing such acts.

18. Section 3 of the Act envisages initiation of action by the detaining authority, based on the information received from a police officer not below the rank of a Superintendent of Police with regard to the activities of any "known goonda" or "known rowdy", with a view to prevent such person from committing any anti-social activities in the State. This by itself is a pointer to the fact that mere filing of charge sheet by the Investigating Officer is not enough and that the vital information has to come from a much higher level officer of the rank not below that of the Superintendent of Police, who normally will be heading a district. Investigation may be conducted and completed by an officer at much lower level, say, Sub Inspector of Police or Circle Inspector of Police, as the case may be. The proceedings leading to the registration of crime or submission of charge sheet, as

the case may be, have to pass through the hands of higher level officer - Superintendent of Police, who has to pass on the information to the detaining authority, which gives the cause of action to proceed with further steps. The particulars so furnished by the higher level officer have to be subjected to scrutiny by the detaining authority, who has to arrive at a finding of his own as to the various requirements contemplated under the statute. This Court does not require any second thought to hold that the detaining authority is not supposed to sign on the dotted lines, based on the final report submitted by the Investigating Officer or the information made available through the officer at higher level/Superintendent of Police. Of course, the final report, if any, could be one of the pieces of information being passed on by the officer at higher level (Superintendent of Police), to be acted upon by the detaining authority. If the charge sheets contains sufficient materials to connect the detainee to the offence levelled against him, it is enough for the detaining authority to act upon the same and record satisfaction with proper and independent application of mind; not merely based on the finding of the police officer in the charge sheet. If it is inadequate in any respect, it is very much open for the detaining authority to probe more. All materials made available to the detaining authority by the officer not below the rank of the SP could be looked into by the detaining authority, without confining such scrutiny to the final report submitted under Section 173(2) Cr.P.C. alone. He can call for further materials, if necessary, or get clarification on the particulars, if at all any obscurity is there. The order to be passed by the detaining authority shall be pursuant to such independent analysis and not a dictated one. The scope of such independent analysis and necessity to pursue ardent efforts/stringent course is further discernible from the necessity to get "Government approval" within 12 days of passing the order, in terms of Section 3(3) of the Act, failing which the order will lapse. Scrutiny at different levels is prescribed, mainly with a view to ensure that freedom of a citizen is not dealt with in a casual manner or according to the whims and fancies of the police. The provision is also categoric to the effect that both in the case of "known goonda" under Section 2(o) and "known rowdy" under Section 2(p), except in the case of finding guilt by the Court, such branding is possible on investigation or enquiry by the authorities concerned, on complaints initiated by persons other than police officers in the specified number of instances, subject to the proviso therein. As such, the acts and deeds of the police are stipulated to be taken with circumspection and with more vigil, care and caution, lest it should be misused. The role of the detaining authority gathers more momentum/importance under this circumstance.

19. Coming to the law declared by this Court in Safiya's case, the crucial question considered, as adverted to in the opening paragraph, is in the following words: "The crucial question is whether in a situation of the investigating officer having filed final report under S.173(2) of the Code of Criminal Procedure should the District Magistrate scrutinize the records leading to the final report under S.173(2) of the Code of Criminal Procedure."

After referring to the relevant provisions of Act, the Bench held in paragraph 3 that the law was well settled that the District Magistrate should be satisfied on perusing the information furnished by the Superintendent of Police or an officer not below the rank of the Superintendent of Police, that and on the materials forwarded along with the report, such person is to be detained, so as to prevent and control his anti-social activities. Such course was stated as permissible, even though investigation was pending against persons who are accused in various crimes, holding that investigation may not be completed for various reasons and that the detaining authority is free to examine the matter with reference to the report and other relevant materials, in order to arrive at subjective satisfaction even in the absence of a final report. Reliance was placed on the verdict passed by a Division Bench of this Court reported in (2008)4 KLT 425 [Elizabeth George vs. State of Kerala], holding that final report under Section 173(2) of the Cr.P.C. was not essential for an action under Section 3 of the KAAPA.

20. In situations where final report has been filed under Section 173(2) of the Cr.P.C, the Bench proceeded further to analyse whether the District Magistrate can or should go beyond the final report and enter subjective satisfaction while exercising the power for detaining a person under preventive detention. It was in the said circumstance that the scope of the final report under Section 173(2) of the Cr.P.C. was dealt with in "paragraph 4" of the judgment; as to the various aspects to be contained in such reports, including as to whether any offence appears to have been committed and if so, by whom. Once such report is forwarded along with information of the police officer not below the rank of a Superintendent of Police to the detaining authority under the Act, it was held that the detaining authority could not look into the sufficiency or otherwise of the materials leading to the finding by the police officer regarding the commission of the offence , which was stated as within the exclusive power of the criminal courts.

21. The observation made therein is obviously with reference to the different levels of appreciation/recording of satisfaction. The endeavor made by the Court was only to distinguish the two different circumstances involving the question of preventive detention to be ordered by the detaining authority where no offence is proved, nor any charge is formulated. Justification of such detention is suspicion or reasonability and there is no criminal conviction-which can only be warranted by legal evidence, as held by the Apex Court in Union of India vs. Paul Manickam (AIR 2003 SC 4622 = 2004 (1)KLT 364 SC). It was in the said circumstance that the Bench held that the detaining authority could not look into the sufficiency or otherwise of the materials leading to the finding by the police officer regarding the commission of the offence. It was in the said context that the Bench held that it was not necessary for the Superintendent of Police to furnish the materials leading to the final report under Section 173(2) of the Cr.P.C. to the detaining authority; holding in the very next sentence that "subjective satisfaction" of the detaining authority is to be made based on the information furnished by the police officer not below the rank of a Superintendent of Police which includes the

finding under Section 173(2)(i)(d) of the Cr.P.C. Scope of the observations becomes more clear by virtue of the "last two sentences" of the very same paragraph, as reproduced below: ".....Of course, such finding by the investigating officer cannot automatically lead to an order for preventive detention. The findings are only one of the materials furnished along with the information by the police officer not below the rank of the Superintendent of Police. On perusal of the report and the findings, the detaining authority has to enter the satisfaction that such a person is to be preventively detained with a view to prevent him from committing any anti-social activity within the State of Kerala" From the above, it is quite clear that what has been stated by the Bench is not to make a proposition that the detaining authority is always bound by the view expressed by the investigating officer in the final report. It may be part of the information to be furnished by the police officer not below the rank of a Superintendent of Police and that all the supporting materials leading to the charge sheet filed under Section 173(2) Cr.P.C. need not be placed before the detaining authority (which proposition has been accepted by the learned Judges while passing the Reference Order).

22. As rightly observed by the Division Bench in Uma's case (authored by the very same learned Judge, who authored the Reference Order) Safiya's case cannot be understood as laying down any proposition that if a final report has already been filed, no documents other than the final report in respect of the crime in question need be placed before the detaining authority; nor could it be looked into. We make it clear that the dictum in S afiya's case does not say so and that it is for the detaining authority to pass appropriate orders in terms of the relevant provisions of the statute, based on the materials made available to him by the police officer not below the rank of a Superintendent of Police and also by looking into other materials, if necessary, to satisfy the three different ingredients under Section 3(1) of KAAPA. We answer the Reference accordingly. Since the interim order passed by the learned Judges has worked out the remedy in relation to the release of the detainee, no further orders are called for. The writ petition (Crl.) is closed accordingly.