
(1965) 08 BOM CK 0015
In the Bombay High Court

Anant Janardhan Karandikar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-08-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 491

Citation : (1967) CriLJ 28

Hon'ble Judges : Palekar, J;Naik, J

Bench : Division Bench

Judgement

Naik, J.—This is an application u/s 491 of the Cr. P. C. and Article 226 of the Constitution of India, for a writ of Habeas corpus. The District Magistrate, Poona, passed an order on 31-3-1965 detaining the petitioner under Rule 30(1)(b) of the Defence of India Rules, 1962. The District Magistrate stated in his order that he felt it necessary to pass the order of detention with a view to prevent the petitioner from acting in a manner prejudicial to the public safety and the maintenance of public order. The petitioner has given his antecedents, past history and the profession he has been following in some detail in his petition. The petitioner is an old man of 64 years of age and is a bachelor. He has alleged that he does not belong to any political party, nor has he any affiliations with any political party. He has gone a step further and stated that he is not even a member of any social or cultural institution or organisation. He has not taken any part in any public activity. He has averred that he is only a professional writer. He started writing articles for newspapers in the year 1921. He has made regular contributions in "Kesari" from 1922 to 1962. The petitioner has then referred to his association with "Agrani", a Marathi daily founded by Nathuram Godse and Apte. He says that he used to write articles in that paper. He also wrote articles in "Hindu Rashtra", which was started by Godse and Apte, after suspension of the publication of their original daily "Agrani". The petitioner made regular contributions to these two papers from March 1944 to August 1947. He has then referred to the editorial article published under his signature under the caption

"Warning to these who are devoted to the cause of Hinduism". According to the petitioner, this article led to a difference of opinion between himself and the management of the paper. Nathuram Godse was of the view that violence should be preached through the paper, and the petitioner was not agreeable to that view. He had, therefore, to sever his connections altogether with the paper and the editorial staff thereof. He has then stated that he contributed articles to another paper known as "Bharat" from 1950 to 1952, and he wrote a series of articles on the subject "Historical Pages of Partition". The petitioner has stated that from 1956 to 1957 he served on the staff of "Tarun Bharat", a Marathi Weekly. He was a columnist of that paper and used to contribute different features on several topics including share bazar and speculative market. He has also written stray articles in a monthly magazine known as "Maharashtra". The petitioner has written articles in a magazine known as "Painjan" published from Poona from January 1963 to April 1965. He used to write monthly reviews and political articles during the said period. He has then stated that he has written and published as many as seven books. He has mentioned the names of the books and the years of publication. His averments in paragraph 11 are very important and, therefore, we are quoting them verbatim:

That in the issue of January 1965 of Marathi magazine "Painjan" the petitioner wrote one article under the caption "Reparation of the Exciting History". It is a brief historical survey of pre-partition days. The petitioner also wrote one article each in the months of February and March 1965 in the same magazine. The subject of February article was "Gandhism and Nationalism" and the topic of March article was Nathuram's conspiracy whether Maharashtrian or Inter-State.

In paragraphs 12, 13 and 14, he has referred to the questions put in the Legislative Assembly about the objectionable writings in a Marathi weekly "Margdeep". The said paper was conducted by a Muslim gentleman. Shri Atre and others demanded on the floor of the Assembly that stern action should be taken against the said paper. Mr. D.S. Desai, the Honourable Home Minister, promised to look into the matter and assured the House that appropriate steps would be taken. According to the petitioner, no question was asked regarding the articles written by the petitioner in "Painjan". The editor of "Margdeep" was arrested on the same day as the petitioner, i.e. 31-3-1965 and the petitioner has suggested that he has been arrested with a view to show that the Government holds the balance even between Hindus and Muslims and that they are completely impartial and non-partisan. At paragraph 15, the petitioner has explained the occasion of the writing of the three articles in "Painjan". He has said that Godse and Karkare were released on 13-10-1964, that some friends of Godse and Karkare arranged a Satyanarayan Mahapuja to express pleasure & satisfaction at the release, and that soon after the release they were again kept detained. He has explained that this was a topical subject, and he wrote the aforesaid articles in his capacity as a professional writer. The petitioner has alleged that he has been a critic of the policies of the Congress Government, and that he had also condemned Mahatma Gandhi's policies in the past.

According to him, this is the reason why Government have thought it fit to detain the petitioner. The petitioner has asserted that whatever was written in these articles was based on the books written by Pyarelal, the Secretary of Mahatma Gandhi and his biographer, the autobiography of Shri N.V. Gadgil, the Ex-Governor of Punjab, "Sources of History of Freedom Movement", a Government publication and the book written by Maulana Abdul Kalam Azad under the caption "India Wins Freedom". In other words, it is the petitioner's case that the articles were well-documented and based on the information and views expressed by the authors referred to above. The petitioner has pointed out that notwithstanding his association with Nathuram Godse, he was not arrested in the course of the aftermath of Gandhi assassination and the subsequent investigation. He has then suggested two reasons as to why he must have been arrested. According to him, his detention was the result of the pressure brought to bear upon the Government of Maharashtra by certain persons within and without the State of Maharashtra. It is also the result of a centrally determined policy of the Government. The averments contained in paragraph 24 deserve to be cited in full:

The petitioner states that he has not engaged himself in any activity other than his normal activities which he is doing since last so many years and the petitioner has done nothing prejudicial to the public safety and the maintenance of public order, and that he had contemplated no such action.

In para 28 he has alleged that he is a peaceful and loyal citizen of the country and that his activities are peaceful and democratic and in no way prejudicial to the maintenance of the law and order. The petitioner has then referred to the state of his health and pointed out that he has not been keeping good health for many years past, that he has become very weak and that he is under medical treatment and advice for many years, and also on strict diet for very many years. In his additional affidavit, the petitioner has stated that since 1960 he has been suffering from an enlarged prostate gland and heart disease. He is suffering from hernia for the last 20 years. He is also suffering from liver trouble. Mr. M.D. Pathak for the petitioner mentioned an additional factor to indicate that the petitioner is a man of learning and is interested in the dissemination of knowledge. Mr. Pathak says that the petitioner knows as many as sixteen languages, which include most of the leading languages of India, and as many as 7 or 8 foreign languages. In short, the petitioner's case is that he has been detained by the District Magistrate, Poona, on account of the three articles written by him and published in "Painjan" for January, February and March 1965. His case is that the subjects discussed in these articles are of historical importance and for every statement made by him he has relied on some weighty authority. According to him, there is nothing in these articles which is capable of producing a belief in the mind of any reasonable man that his activities, namely, the writing of the articles, would be prejudicial to the public safety and public peace. He has also alleged mala fides, and for that purpose has made three specific points. The first is that the author of "Margdeep" had to be detained

because questions were asked in the Legislative Assembly about the objectionable writings appearing in that paper, and the Government wanted to put up an appearance that they are impartial and hold the scales even between the two major communities, Hindus and Muslims. He has also averred that considerable pressure was brought to bear upon the Government of Maharashtra which resulted in the petitioner's detention. According to him, it is also the result of a centrally determined policy of the Government and the petitioner is a victim of the State policy. The three articles have been placed on record along with their translations in English.

2. The District Magistrate, Poona, has put in his affidavit. He has denied knowledge about the truth or otherwise of the petitioner's averments that he is an old man of 64 years, that he is a bachelor, and that he is the son of Shri T.S. Karandikar who was the editor of "Kesari" from 1931 to 1947. In regard to the,, allegation that the petitioner does not belong to any political party, the District Magistrate says "I deny that he is not a member of any political party". In regard to the details given by the petitioner in paragraphs 3 to 10, about his articles in newspapers and books, the District Magistrate says that he has no knowledge in regard to them. The District Magistrate has not referred to the allegations continued in paragraph 11 wherein the petitioner has referred to the three articles written by him in "Painjan" in the issue of January, February and March 1965. The District Magistrate has denied that the detention of the editor of "Margdeep" has anything to do with the detention of the petitioner. According to the District Magistrate, the editor of "Margdeep"" had been detained for reasons unconnected with the petitioner. At paragraph 7, the District Magistrate refers to the allegations made by the petitioner at paragraph 15, wherein the petitioner as explained the occasion for writing the three-articles, and stated that the articles are not as innocent as the petitioner has tried to make out. He adds: "The petitioner belongs to a group of individuals who consider that Nathuram Godse had rendered a valuable service to the country by putting an end to the life of Mahatma Gandhi "the Father of the Nation". This group of individuals had organised and held in Poona two-public functions one on 12-11-1964 and the other on 15-11-1964 at which speeches were made eulogising Nathuram Godse as a martyr and even though the petitioner was not personally present at these two functions the articles which he wrote in the magazine "Painjan" clearly indicated that he fully shared the view that Nathuram Godse had committed a laudable act in assassinating Mahatma Gandhi. At para 8, the District Magistrate says that the record before him showed that the petitioner was engaged in and was likely to be engaged in activities prejudicial to the public safety and the maintenance of public order.

I had before me the report of a responsible Police Officer regarding the activities of the petitioner. After applying my own mind to this report and to the other material placed before me I was satisfied that with a view to preventing the petitioner from engaging in activities prejudicial to the public safety and the maintenance of public order, it was necessary to detain the petitioner and after

being so satisfied 1 issued the detention order dated 31-3-1965". At para 9, he has denied that the articles are based only on authorities. According to the District Magistrate, the articles "clearly expressed his own views appreciating the act of Nathuram Godse in killing Mahatma Gandhi as a laudable act. From the material placed before me, I was satisfied that the activities of the petitioner if not prevented by his detention were likely to be prejudicial to the public safety and the maintenance of public order". At para 14, he had given a reply to paragraph 24 of the petition and said "I deny that the petitioner had done nothing prejudicial to the public safety and the maintenance of public order and that he had contemplated no such action.

3. Mr. Pathak, the learned Advocate for the petitioner, contended that on a proper construction of the averments contained in the petition and the petitioner's affidavit, and these contained in the affidavit of the District Magistrate, it is clear that the District Magistrate took the action of detention against the petitioner only on the basis of the three articles contributed by the petitioner to Painjan" in the months of January, February and March. He further contended that if that is the position, it is open to the Court to scrutinise these articles and find out whether on the basis of the views expressed therein or the opinions propagated therein any reasonable man could be satisfied that it was necessary to detain the petitioner. He argued that on a fair reading of the articles, it is impossible to hold that there is any incitement to commit acts of violence by one community as against the other. There is no attempt made to promote or foment ill-feeling between one community or the other. There is also nothing in the article which is intended or calculated to spread hatred or contempt or dissatisfaction against the Government. According to Mr. Pathak, the District Magistrate had not applied his mind and has not considered the effect which the articles are likely to produce on the mind of the readers thereof. Consequently, he argued that the detention is bad and must be set aside.

4. On the other hand, the learned Government Pleader contended that it would not be correct to say that the District Magistrate acted only on the basis of the three articles. In his affidavit, the District Magistrate has stated that he had material before him regarding the activities which the petitioner was carrying on, and in order to prevent the petitioner from carrying on these activities which, according to him, were prejudicial to the public safety and public peace, the District Magistrate deemed it necessary to pass the order of detention. He strenuously contended that it is not the function of the Court to scrutinise the articles and try to see whether the District Magistrate could be satisfied on the basis of the views expressed in these articles about the need of passing an order of detention. Finally, he argued that on a fair reading of the articles, it is clear that the object of the writer was to applaud the act of Nathuram Godse in assassinating Mahatma Gandhi and also hold Nathuram Godse in admiration and high esteem. He also suggested that the articles were calculated to foment ill-feeling between one community and the other.

5. The first question which we have to consider is whether the District Magistrate has taken the action of detention against the petitioner merely on the basis of the three articles contributed by the petitioner in the issues of "Painjan" for January, February and March. In order to arrive at a correct finding on the above question, it is necessary to scrutinise the averments contained in the petition and the denials and assertions contained in the District Magistrate's affidavit carefully and closely. The petitioner has asserted that he neither belongs to, nor is a member of any political party, He has gone a step further and stated that he is not even a member of any social or cultural institution or organisation. The District Magistrate in his affidavit in paragraph 4 has contented himself by Saying "I deny that he is not a member of any political party". In our view, this denial" is vague and indefinite. What was necessary for the District Magistrate to say in clear terms Was that the petitioner belongs to a particular political party. It is significant to note that the petitioner's assertions that he is not even a member of any social or cultural institution or organisation and that he does not take part in any public activity have not been denied by the District Magistrate. The petitioner's case is that he is a professional journalist, and that not only he does not dabble in political activities but that he does not participate even in cultural and" social activities in the town. That being the case, it was necessary for the District Magistrate to say to which political party the petitioner belonged. We attach, therefore, no importance to the vague denial of the District Magistrate saying "I deny that he is not a member of any political parly". At paragraph 4, the petitioner made a clear assertion saying that he is only a professional writer, and that he has been contributing articles to magazines and newspapers since 1922. The petitioner is frank enough in referring to his association with Nathuram Godse. He was on the editorial staff of "Agrani" and "Hindu Rashtra" which were founded by Nathuram Godse. He has also referred to the fact that he broke away from Nathuram Godse because of his difference of opinion on certain questions of policy and in that context has referred to the articles written by him "Warning" to these, who are devoted to the cause of Hinduism". According to the petitioner, the point on which difference of opinion arose was as to whether violence as a political weapon should be preached through the newspaper, the petitioner holding the view that it should not be done, and Godse holding contrary. It is some-what surprising that in respect of the general allegation made by the petitioner that he is only a professional writer ana in respect of the specific allegation made by the petitioner in regard to his association and subsequent dissociation from Godse, the District Magistrate has merely said that he had no knowledge in regard to the above. When the District Magistrate stated that it was not true that the petitioner did not belong to any political party, it was his duty to counter the allegation made by the petitioner, namely, that he is only a professional writer. It was equally the duty of the District Magistrate to say something about the petitioner's allegation, namely, that he broke away from Nathuram Godse on a vital question of policy of the paper, namely, whether violence should be preached through the paper. In this state of pleadings, we will be justified in accepting the truth of the allegations on both points, namely, that

the petitioner is only a professional writer, and that he broke away from Nathuram Godse and severed his connection with his paper because he was not agreeable to Nathuram's suggestion that violence should be preached through his paper "Agrani" and thereafter "Hindu Rashtra". This would throw light upon the general attitude which the petitioner is expected to adopt in regard to the assassination of Mahatma Gandhi. The main contention urged before us by the learned Government Pleader was that one silver thread runs through all the three articles written by the petitioner viz. the admiration of the act of assassination committed by Nathuram and condemnation of Mahatma Gandhi. If the petitioner had taken the stand as far back as 1947, namely, that it was not proper to preach violence through the newspaper, it is most unlikely that in 1965, he should come forward to justify a violent act, and not only an ordinary violent act, "but the act of committing assassination of Mahatma Gandhi, the Father of the Nation. Significantly enough, the petitioner referred to the fact that he was not arrested after assassination of Mahatma Gandhi notwithstanding that he had been associated with Nathuram Godse in connection with the daily paper conducted by him. The District Magistrate has accepted the truth of this assertion and has gone on to accept not only the factual part, namely, the petitioner was not arrested, but that he has also accepted the claim of the petitioner, namely, that he was not arrested though he was associated with Nathuram Godse in connection with his daily paper. By way of answer to the petitioner's contention that the release of Godse and Karkare and their subsequent detention provided an occasion for him to write the three articles in "Painjan", the District Magistrate has come out with the positive allegation, namely, that the petitioner belongs to a group of individuals who consider that Nathuram Godse had rendered a valuable service to the country by putting an end to the life of Mahatma Gandhi. He has gone on to explain that it was this group which had organised two functions; one on 12-11-1964 and the other on 15-11-1964 at which speeches were made eulogising Nathuram Godse as a martyr. The District Magistrate has admitted that the petitioner was not present on either of these occasions, but has stated that although he was not physically present, the articles written by him in "Painjan" clearly indicated that he fully shared the view that Nathuram Godse committed a laudable act in assassinating Mahatma Gandhi. Here we have some glimpse of the working of the mind of the District Magistrate, namely, that he concluded that the articles contained objectionable material and that the object of these writings was to glorify Nathuram Godse and applaud him as a hero. Although the District Magistrate does not say so in clear terms, it appears from what is stated in paragraph 7 of his affidavit that the material on which he based his action of detention was supplied from the three articles written by the petitioner. The most important averment from the point of the petitioner is contained in paragraph 24 of the petition, wherein the petitioner stated that he did not engage himself in any activity other than his normal activity which he has been doing since the last so many years. This averment must be read in conjunction with what is stated earlier, namely, that the petitioner did not belong to any political party, nor does he take part in any public activity, and that he is

only a professional writer. It is, therefore, clear from the averment of paragraph 24 read in conjunction with paragraphs 3 and 4 that the petitioner did not, and does not, carry on any activity except the activity of contributing articles in newspapers and magazines. The District Magistrate has not denied the first part of the allegation contained in paragraph 24 though he has referred to paragraph 24 in his affidavit at paragraph 14. He is content with denying the second part of the averment in paragraph 24 of the petition, namely, that the petitioner has done nothing to prejudice public safety and the maintenance of public order, and that he had contemplated no such action. By reading paragraphs 7, 9 and 14 of the District Magistrate's affidavit together, the conclusion that follows is that the District Magistrate has not controverted the petitioner's allegation that the only activity which he is pursuing is the activity of writing articles, and that he does not take part in any public affairs. In paragraph 7, clear reference has been made to the three articles which, according to the District Magistrate, show that he fully shared the views of these who held the two functions, one on 12-11-1964 and the other on 15-11-1964. The learned Government Pleader strongly relied on the averment contained in paragraph 8 of the affidavit of the District Magistrate in support of his proposition that it is not merely the material supplied by the three articles on which the District Magistrate acted, but that there was other material, namely, the report of the District Superintendent of Police which shows that the petitioner was engaged in activities prejudicial to the public safety and the maintenance of public order. It would be worthwhile to quote the relevant part of paragraph 8 of the affidavit of the District Magistrate:

The record before me showed that the petitioner was engaged in and was likely to be engaged in activities prejudicial to the public safety and the maintenance of public order. I had before me the report of a responsible Police Officer regarding the activities of the petitioner. After applying my own mind to this report and to the other material placed before me I was satisfied that with a view to preventing the petitioner from engaging in activities prejudicial, to the public safety and the maintenance of public order, it was necessary to detain the petitioner". In our view, the mere reference to the report, of the D.S. P. and the use of the word "activities" of the" petitioner does not and cannot lead to the conclusion that the petitioner was carrying on any activities other than the activity of writing articles in newspapers and periodicals and writing books. We have already pointed out that the petitioner has made clear-cut and categorical assertions that he does not engage himself in any public activity and that he is only engaged in writing articles and books. The District Magistrate has not denied this part of the petitioner's case. Not having joined issue with the petitioner on this part of his case, we do not think that it is now open to the District Magistrate to say that he used the word "activities" in paragraph 8 of his affidavit not only to mean the petitioner's activities as a writer but his other activities also. The word "activities" therefore referred to in paragraph 8 does not mean activities other than petitioner's activities as a writer. The activities referred to in paragraph 8 must, therefore, also be confined to the petitioner's activities as a

contributor of articles and author of books. Reading the petition and the affidavits in juxtaposition of each other and in the proper context, we are driven to the conclusion that according to the District Magistrate, the activities of the petitioner consisting of writing of the three articles in "Painjan", to which reference has been made in paragraph 7, were prejudicial to the public safety and the maintenance of public order. In other words, the view taken by the District Magistrate was that the three articles contained objectionable matter, and that the articles will lead to breach of peace and they will endanger the public safety and tranquillity. We are unable to accept the argument of the learned Government Pleader that the District Magistrate had any activities other than the three articles appearing in "Painjan", in his mind when he referred to the report of a responsible Police Officer containing an account of the activities of the petitioner prejudicial to the public safety and the maintenance of the public order.

6. Questions of far-reaching importance arise from the finding reached by us, namely, that the District Magistrate based his order of detention on the three articles appearing in "Painjan". Ordinarily, the detaining authority is not expected to disclose the material on which he has acted. Under the Preventive Detention Act, it is necessary for the detaining authority to supply the grounds to the petitioner so as to enable him to make a representation. There is no such obligation on the detaining authority under the Defence of India Rules. The District Magistrate is not bound to disclose the grounds, nor the material on which he has reached the conclusion that it became necessary" for him to pass the order of detention. In the present case, however, we have before ourselves the material on which the District Magistrate acted. The first question, therefore, that falls for our consideration is whether it is open to the Court to scrutinise the material, that is to say, to read the articles and see whether they contain any objectionable matter from which it would be possible for any reasonable person to draw the conclusion that it was, necessary to detain the person concerned. Further, it is necessary to note that the material does not comprise physical tangible acts, such as acts of assault, intimidation, arson etc. The material consists in the articles written by the petitioner. That means that we are in the realm of ideas, because the articles give expression to certain opinions or certain ideas. The District Magistrate, in the first instance, must try to understand the contents of the articles and in the process of understanding the contents of the articles, inevitably he has to interpret them. He has first to consider the effect that they would produce upon his own mind by the views expressed therein. But could he base his satisfaction about the need for passing an order for detention on his own satisfaction. The answer to that question must obviously be in the negative. The District Magistrate has also to consider what effect these articles could produce on the minds of the readers. This in its turn postulates that he has to take into account the reputation and importance of the paper or magazine in which the articles appeared, the circle of readers and so on. Again, the District Magistrate has to consider the articles after applying accepted criteria, such as the articles must be read as a whole, and that it is not open to form any opinion

about the nature of the contents and its possible effect upon the readers by stray sentences and isolated passages. The District Magistrate must also take into account as to in what way the writing is objectionable, whether it contains any matter which will promote ill-feeling between communities or whether it contains any matter which has a tendency to incite feelings of hatred, contempt or dissatisfaction against the authority. Furthermore, he has also to consider whether the consequences, which he apprehends, would have a reasonable proximate nexus with the views expressed in the articles, or whether these consequences are problematical and far-fetched. We thus notice that the considerations to which the District Magistrate has to apply his mind are complex and complicated. The learned Government Pleader contended that as soon as the District Magistrate says in his affidavit that there was material before him, and that he applied his mind to that material and felt himself satisfied about the need of passing the order of detention, there is no scope for any inquiry by the Court. This line of reasoning is not either sound or logical. The process of interpreting the writing is inevitable. In order to understand the articles and assess the real effect thereof, it becomes necessary for the District Magistrate to understand and construe the words used therein. It is significant that in paragraph 9 of his affidavit, the District Magistrate has put his own interpretation upon the language of the articles. He says: "The articles in question clearly expressed his own views appreciating the act of Nathuram Godse in killing Mahatma Gandhi as a laudable act". The learned Government Pleader was constrained to concede that there are no words used in any of these articles expressing appreciation of the act of Nathuram Godse in killing Mahatma Gandhi. Not a word of admiration has appeared in any of these articles. The learned Government Pleader advanced before us an elaborate argument with a view to show us that although there are no words used in any of these articles expressing appreciation of the act of Nathuram Godse in killing Mahatma Gandhi, still the entire trend, according to him, of the articles was to express such appreciation and to applaud the act of Nathuram Godse in killing Mahatma Gandhi as a laudable one. We have to take into account certain circumstances in considering the effect that the articles are likely to produce upon the mind of the reading public. We may add that it would be necessary for the detaining authority to take into account the occasion for the writings, the times prevailing when the writing was made and other surrounding circumstances. That means that the District Magistrate is required to apply certain criteria for coming to the conclusion that the articles in question are prejudicial to the public safety or public peace. The District Magistrate has not said a word as to whether he applied his mind to the question of the effect the articles are likely to produce upon the minds of the readers and other allied matters to which reference has been made. In our view, it is not sufficient for the District Magistrate to say that he had material before him and that he felt satisfied on the basis of that material that it was necessary to curb the activities of the petitioner. The word of the District Magistrate cannot be treated as an ipse dixit when the material, namely, the articles are before us and we are in a position to see whether it was possible for a reasonable man to reach the

conclusion or the satisfaction. The statement of the District Magistrate, namely, that he acted on the report of the D. S. P. in a matter like this cannot be treated as sacrosanct. It is significant that the District Magistrate has not referred in clear terms either to the articles or to the contents thereof. In regard to these articles, all that he has stated is that they sufficiently indicated that the petitioner shared the views of these who consider that Nathuram Godse did a great service in killing Mahatma Gandhi. In other places, he uses general word "material". Of course, we have held that by "material" the District Magistrate really meant the articles. If that is so, it is all the more necessary for the District Magistrate to say that he considered that material and came to the conclusion that the writings were prejudicial to the public safety or public peace. The reference to the report of the D. S. P. or a senior Police Officer, in our view, is irrelevant, because it is for the District Magistrate to read the articles himself and reach his conclusions on a fair reading and construction of these articles. If the District Magistrate says that he read the report of the D. S. P. and formed his conclusions on the basis of that report, it means that he did not apply his mind to the proper material, and he has surrendered his judgment to the D. S. P. Satisfaction of the mind pre-supposes application of the mind and forming conclusions after an assessment of the entire matter. It is not a mechanical act like that of a rubber stamp.] Let us take an extreme example with a view to test the correctness of the argument advanced by the learned Government pleader. Let us assume that the articles in question or the writings in question relate to a scientific matter, such, as nuclear physics or the theory of relativity or quantum mechanics. If the detaining authority says in his affidavit that he formed the satisfaction about the need of passing a detention order on the basis of these writings, can it be seriously contended that the satisfaction is not genuine, nor real, but is illusory? In other words, satisfaction must be such as can be reached by a rational, mind. The satisfaction must be of a reasonable man. Further the detaining authority must apply his mind to see whether the consequences which he apprehends have a reasonable nexus to the nature of the activities, that is to say, the writings in the present case. If the apprehended consequences are too problematical or too remote, then again the satisfaction would not be real. It is well settled that the detaining authority cannot act on material which does not exist, nor on material which is irrelevant. We must, therefore, hold that, on the materials placed before the Court, the court gets the jurisdiction of scrutinising the material for the purpose of seeing whether a rational mind can honestly form the conclusion on the basis of that material that the writings would create prejudicial effects so far as public safety and public peace are concerned.

7. The case we are considering is of a unique character and neither of the Advocates was able to point to any case in which the only material on which action was taken comprised articles and that the material was before the Court and thus the court was in a position to assess of the possibility of a reasonable man forming his satisfaction about the need for passing an order of detention. Although there is no direct decision on the point, certain judicial pronouncements

will, we think, support the conclusions we have set out above. In this connection we may first refer to the observations of Lord Wright in the leading case *Liversidge v. Anderson* 1941 (3) All ER 338. Lord Wright was one of the four Law-Lords who were parties to the majority opinion. Lord Atkin gave expression to the minority view. The question for consideration before the House of Lords in the above case was what was the meaning and scope of the expression "the Secretary of State had reasonable cause to believe that by reason of his continuous hostile association etc., it was necessary to exercise control over a person. It is not necessary to state the facts of that case, nor the opinions expressed by the various Law Lords, because the expression in the Defence of India Rules is not the same as the expression used in the Defence Regulations in England. It would be sufficient to refer to a few observations which will throw light upon the question we have under consideration, namely, about the meaning of the word "satisfaction". At page 380, Lord Wright observes:

The actual language is the acid test, and I see no ground for attaching so much weight to so slight a difference in words. "Satisfied" must mean "reasonably satisfied". It cannot import an arbitrary or irrational state of being satisfied. I find the distinction between "reasonably satisfied" and "has reasonable cause to believe" too tenuous.

In other words, "satisfaction" could not be arbitrary, nor irrational. The learned Government Pleader referred to the decision of Privy Council in *Ross Clunis v. Papadopoulos* 1958 (2) All ER 23. u/s 6(1) of the Emergency Powers Order in Council, 1939, the Governor of Cyprus had power to make such regulations as "appear to him to be necessary or expedient for securing the public safety, the defence of the territory, the maintenance of public order and the suppression of mutiny, rebellion and riot". Under this power the Cyprus Emergency Powers (Collective Punishment) Regulations, 1955, as amended, were made by the Governor, and Regulation 3(g)(i) of these gave a commissioner power to impose collective fines on the assessable inhabitants of an area by reason of the commission of a series of offences in that area for which the commissioner had reason to believe that the inhabitants had been generally responsible. By Regulation 5(1) of these regulations, no order for a collective fine could be made unless an inquiry had been held by the commissioner, and, By Regulation 5(2), in holding such an inquiry the commissioner must "satisfy himself that the inhabitants of the area were given adequate opportunity of understanding the subject-matter of the inquiry and making representations thereon. As a result of murders, offences, and bomb outrages in the municipality of Limassol the appellant, who was the commissioner of Limassol, held an inquiry on June 11, 1956, preparatory to deciding whether a collective fine should be imposed. At the inquiry, Greek Municipal Councillors and others qualified to represent the Greek community appeared and the local press was represented. On July 4, 1956, the appellant made an order imposing a fine of pounds 35,000 on the assessable Greek-Cypriot inhabitants of the area. Certiorari to quash the order was granted by the Supreme Court of Cyprus in December 1956,"and was maintained on

appeal. On appeal to the Judicial Committee the original evidence of what passed at the inquiry was amplified by affidavits filed in December, 1957. The evidence as amplified showed that the appellant had explained at the inquiry that there had been many offences of violence which appeared to be due to terrorist activity and in the majority of cases to have occurred before eyewitnesses of the Greek community who had concealed their knowledge and obstructed process of the law; that representations why a collective fine should not be imposed had been invited; that the matter had received publicity in the Greek press and that representations, which the appellant had considered, had been received. It was held that the order of July 4, 1956 imposing the collective fine was valid for the following reasons: i)...(ii) the appellant had discharged the duty imposed on him by Reg. 5(1) and (2) of satisfying himself that the inhabitants were given adequate opportunity of understanding the subject-matter of the inquiry and making representations thereon, since the further evidence filed in December 1957, showed that the explanation given at the inquiry would convey the reason why the inhabitants as a whole, rather than the actual perpetrators of the outrages, were blameworthy. Per Curiam, it was submitted that the test whether the appellant had discharged the duty imposed by Reg. 5(1) and (2) to "satisfy himself" was a subjective test, but, if it could be shown that there were no grounds on which the appellant could be so satisfied, a court might infer either that he did not honestly form that view or that, in forming it, he could not have applied his mind to the relevant facts". We are unable to understand how this decision supports the submission made by the learned Government Pleader. In that case the authority had to satisfy itself that the inquiry was held and an opportunity was given to the inhabitants to make representations. The satisfaction was no doubt subjective, but it was based on definite material. That being the case, the Privy Council held that the satisfaction is not vitiated unless it is shown that there were no grounds on which the authority based his satisfaction. In such a case it is open to the Court to infer that either the authority did not honestly form the view or that in forming it, he could not have applied his mind to the relevant facts. In the editorial note a reference has been made to 1941 (3) All ER 338 and the editor observes: In 1941 3 All ER 338...the House of Lords construed the words "if A. B. has reasonable cause to believe" as imposing the subjective test. Lord Atkin dissented from that construction and in his opinion instanced, by way of contrast, words which to him would seem to impose a subjective test. These words were "A. B...may, if he is satisfied...that there is reasonable cause to believe". Such words are comparable to the phrase "satisfy himself" and the present decision, therefore, may be considered with 1941 (3) All ER 338 as showing that some qualification may be placed on the subjective test imposed by a requirement that a public officer should be satisfied of something before exercising a statutory power". A somewhat similar question arose in *Director of Public Prosecutions v. Head* 1958 (1) All ER 679. Lord Denning, while considering the words used in Section 9 of the Mental Deficiency Act, 1913, "Where the Secretary of State is satisfied from the certificate of two duly qualified medical practitioners that any person who is...in (am approved

school)...is a defective, the Secretary of State may order that he be transferred therefrom and sent to an institution for defectives....", observed:

If that order is read with Section 9 (as it should be), it means that the Secretary of State was satisfied from the certificate of the two doctors that Miss Henderson was a defective. This reference to the medical certificates means that they are to be read with the order as part of the record. And "satisfied" in the Act means reasonably satisfied. If, on reading the medical certificates, no reasonable person would have been satisfied that she was a defective, the order is liable to be quashed.

It will thus be seen that the test laid down in these cases is that if on the language of the statute the authority is to be satisfied on certain material, then "satisfied" means "reasonably satisfied". If the material is before the Court, it is open to the Court to examine and see whether on reading the material no reasonable person could have been satisfied, and if that is the conclusion at which the Court arrives, the order would be liable to be quashed. We may also refer to certain observations in *M.R.S. Mani Vs. District Magistrate and Another*, . The District Magistrate, Madurai, passed an Order of detention u/s 2(1)(a) of the Madras Maintenance of Public Order, 1947. The grounds of detention were communicated to the detenu, and he submitted his explanation thereafter. It was contended on behalf of the detenu that the order of detention was not bona fide as the grounds communicated could not justify the order. The learned Judges of the Madras High Court accepted the contention and directed the release of the prisoner. We may only refer to a few observations of Vishwanatha Sastri J., who delivered a concurring judgment. After citing a passage from the opinion of Lord Wright in *Liversidge's case*, "satisfied must mean reasonably satisfied, it cannot import an arbitrary or irrational state of being satisfied." the learned judge proceeded to observe:

Suppose a person convicted of cheating, forgery, or murder, served his sentence 10 years ago and is detained u/s 2(1)(a) of Act I of 1947 on the ground of his previous conviction and his consequent undesirable antecedents. This Court is entitled to say that the detention is bad either because the detaining authority had not exercised its mind at all on the relevant considerations or because that the satisfaction of the detaining authority which is required by Section 2(1) did not exist. Similarly, if a person is detained merely on the ground of his religious, political or economic beliefs and opinions or because he is addicted to some personal vice, without anything relating to the maintenance of public safety or order appearing from the grounds, then also the detention would be held to be bad for the same reasons.

Again at page 175, the learned Judge observes:

But if the reasons which influenced the detaining authority in making the order of detention are disclosed and put on the record by the Government, this Court can scrutinise them to find out the condition of the mind of the detaining authority

when it made the order.

Finally, we may refer to the classical pronouncement of Patanjali Sastri J., as he then was, in *Rex v. Basudeva* AIR 1950 FC 67. The detenu in that case was a dealer in kerosene of I which was an essential commodity as defined in the U.P. Prevention of Black Marketing (Temporary Powers) Act, 1947. On the allegation that the Provincial Government was satisfied that the respondent habitually indulged in black-marketing, he was arrested on 19th December 1948 and ordered to be detained in exercise of the powers conferred by Section 3(1)(i) of the Act. Patanjali Sastri J., who delivered the judgment in Court, referred to an argument advanced by the Advocate-General, namely, that habitual black-marketing in essential commodities was bound sooner or later to cause a dislocation of the machinery of controlled distribution which, in turn, might lead to breaches of the peace and that, therefore, detention with a view to prevent such black-marketing was covered by the entry, and observed:

It is true that black-marketing in essential commodities may at times lead to a disturbance of public order, but so may, for example, the rash driving of an automobile or the sale of adulterated food stuffs. Activities such as these are so remote in the chain of relation to the maintenance of public order that preventive detention on account of them cannot, in our opinion, fall within the purview of Entry 1 of List II.... The connection contemplated must, in our view, be real and proximate, not far-fetched or problematical.

It will thus be clear that when the material has come up before the Court, it is open to the Court to see how far the "satisfaction of the District Magistrate is well founded. The District Magistrate has merely recited as if by way of chanting a Mantra that a senior Police Officer placed the material before him, he applied his mind to that material, and he felt satisfied about the need of passing the order of detention. In the context of his being satisfied, he has not referred to the articles at all. He has referred to the articles only in a passing way when he said that the petitioner belongs to a group of persons who celebrated the release of Godse and Karkare and made speeches expressing appreciation and admiration for Nathuram's act of assassinating Mahatma Gandhi. He has nowhere said that he read the articles, tried to understand them, considered the effects and saw whether there was reasonable nexus between the writing and the possible breach of public order or danger to public safety.

8. In considering the question of the application of mind, it is necessary to refer to Rule 36(1)(f) of the Defence of India Rules, 1962. Rule 30(1) provides that the Central Government or the State Government, if it is satisfied, with respect to any particular person that, with a view to preventing him from acting in any manner prejudicial to the defence of India etc., it is necessary so to do, may make an order. Clauses (a) to (h) provide for the kind of order that the District Magistrate may pass in the circumstances of each case. One of them is directing a detention of the person concerned. The other clauses speak of other kinds of actions such as to direct that person to remove himself from a particular area,

prohibiting him from entering a particular area, keeping him confined in a particular place, requiring him to notify his movements or to report his movements etc. Clause (f) provides for imposing upon him such restrictions as may be specified in the order...in respect of his activities in relation to the dissemination of views or propagation of opinions. Clause (g) relates to restricting the possession or use by him of any articles mentioned in the order. Clause (h) is general and provides "otherwise regulating his conduct in any such particular as may be specified in the order". It is for the District Magistrate to consider what kind of restraints are necessary to be put upon the person concerned, and to modulate his order accordingly. It is significant to note that clause (f) deals with the case of a person which is carrying on activities in relation to the propagation of opinions and says that appropriate restrictions may be imposed upon such person. It is true that, as pointed out by the learned Government Pleader, there may be cases where even for the propagation of opinions the District Magistrate may feel the need of passing an order of detention. At the same time, since specific reference is made to the activity of propagation of opinions and specific action has been provided for in that respect, it is necessary for the detaining authority to consider whether he should pass an order under Clause (f) or Clause (b). The articles in question are written in January, February and March. The order of detention was passed on 31st March. The learned Government Pleader suggested that the District Magistrate probably apprehended that the petitioner would repeat his action and continue to write obnoxious articles. Section 44 of the Defence of India Act, 1962, provides: "Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose ensuring the public safety and interest and the defence of India and civil defence". Whether this section is construed as mandatory or directory, the fact remains that the section enjoins upon the District Magistrate to consider whether minimum interference could meet the requirement of the situation. In other words, the District Magistrate must explain that he felt satisfied that he was required to take recourse to the extreme step of passing an order of detention. If it is the apprehension of the detaining authority that repetition of the same act was likely to take place, certainly the remedy provided by Clause (f) would have been equally efficacious and would have been in consonance with the spirit of the provision of Section 44 of the Defence of India Act. This again illustrates the correctness of the proposition that the District Magistrate has not applied his mind to the facts of this case.

9. The learned Government Pleader submitted that, even on an examination of the articles, the conclusion which a reasonable man can form would be that there was need of curbing the activities of the petitioner by keeping him under detention. With that end in view, he took us through the articles and drew our attention to certain passages which, according to him, would clearly indicate that the writer has used language contemptuous of the Great Mahatma and has expressed approval, or, at any rate, justification of the act of assassination of

Mahatma Gandhi. He has also eulogizing Nathuram Godse as a man cast in heroic mould and having an exemplary character. The learned Government Pleader also argued that the articles contain contemptuous and abusive language not only towards Mahatma Gandhi, but also Ali Brothers and Maulana Abdul Kalam Azad, whose memory has been cherished by Muslims of India and by a large number of congress-minded Hindus. According to the learned Government Pleader, the articles show a tendency to foment ill-feeling and hatred between Hindus and Muslims. In view of this argument, it is necessary for us to examine the three articles in the light of the settled principles, such as the articles must be read as a whole, that the passages must be read in their context, that the occasion for the writing should be taken into account, and that a possible effect of the writings in the minds of the readers should be kept in view.

10. The first article is under the caption "Re-narration of the Exciting History". The caption itself will show that the article purports to give an account of the events before and after partition of India, At page 18 of the January-issue of "Painjan", the writer has explained the occasion which induced him to undertake the said writing. He has pointed out in his petition that he is a columnist. It is his function, to write on subjects of topical interest. He goes on to state that Godse and Karkare were released after serving their life sentence, that a function was held celebrating a Satyanarayan Mahapuja to express joy and satisfaction at the release, and that on account of the speech delivered by Ketkar, an order of detention was passed against him. According to the writer, the function was arranged with a view to enable Godse and Karkare to make themselves acceptable to the society. He has observed that although the function was held for the purpose of bringing the ex convicts into the fold of the society, it has resulted in Ketkar himself getting out of the fold of the society.

This, according to the petitioner, was the immediate cause which induced him to undertake the writing. It cannot be disputed that the question was of a topical interest. Another reason that the author has given for undertaking the writing of this article is that last year a new book on the biography of Sardar Patel was published by P.U. Patel, and that thereafter his death anniversary was celebrated in Delhi which, the writer says, was saved from the Muslims by the firm steps taken by Sardar Patel. He explains that the celebration shows that the devotees of Mahatma Gandhi living outside Maharashtra also were convinced about the ability of Sardar Patel. The writer, therefore, says that it would not be inappropriate that a brief account of the steps taken by Sardar Vallabhai Patel for protecting Delhi from falling into the hands of Muslims is given. He also says that this account will show how Sardar Patel incurred the wrath of Mahatma Gandhi on account of the steps taken by him and how it culminated in Gandhi's demanding resignation of Sardar Patel. That is why the writer has given a historical narrative of the events which took place after partition. In order to enable the reader to understand the viewpoint which the writer wants to expound, he has reverted to the past history and also to the philosophy of non-violence preached by Mahatma Gandhi. So far as the discussion of the

philosophical aspect of Gandhiji's pacifism is concerned, the writer has relied on certain passages appearing in the biography written by Pyarelal, one of the chief disciples of Mahatma Gandhi. According to the writer, Gandhiji's philosophy of non-violence is born out of his ignorance of history and his cowardice. The learned Government Pleader contended that this part of the exposition amounts to offering insult to the memory of Mahatma Gandhi. We do not think that that is the true effect of the writing. The writer may be right or wrong in the view expounded by him. The writer may have even given a twisted interpretation to the passage cited by him, but, by and large, the exposition is objective and it is impossible to hold that it amounts to tarnishing the name of Mahatma Gandhi as suggested by the Government Pleader. Nor do we think that he used contemptuous language in discussing this part of Gandhi's views. There have been strong criticisms and even condemnations of the extreme pacifism preached by apostles of peace all over the world in the past as well as contemporaneously, just as views have been expressed from time to time glorifying or making an apotheosis of violence. We are not concerned with the correctness of one side or the other. It is true that the writer has attributed cowardliness to Gandhiji in so far as the latter espoused the cause of non-violence. It is also true that he has used expressions which ought not to have been used, such as, Gandhiji's position in Indian Politics was that of a bat and, therefore, he tried to create a strong niche for himself in Indian politics with the help of Muslims and after serving them. The writer has then explained as to how Barrister Jinnah, who was a nationalist Muslim, was ousted from the Congress in order to give importance to Ali Brothers whom he has called "Rampuri Dacoits". He has borrowed this phrase from the Times of India. According to him, the only object of Ali Brothers in joining hands with the national movement was to strengthen the cause of Khilapat. The writer has then quoted a sentence which the late Mohammad Ali is reported to have uttered before some Muslims within the hearing of Mahatma Gandhi: "Gandhi thinks that he is leading us, but he does not know that we are leading him by the nose", In the next two paragraphs which are headed "Gandhi v. Nathuram, the writer has narrated the events which took place in September 1944. Mahatma Gandhi was about to go to Bombay to meet Barrister Jinnah. Godse and his associates did not want Gandhiji visiting Barrister Mohammad Ali as they were afraid that in his zeal for Muslims, Gandhiji would concede the demand for partition. They, therefore, decided to picket the hut in which Gandhiji was staying. We were told that the batch was headed by Apte, the colleague of Nathuram Godse in the Mahatma Gandhi murder case who was also sentenced to death along with Nathuram Godse. The account of this picketing has been given in the words of Pyarelal in his biography of Mahatma Gandhi "Mahatma Gandhi, the Last Phase" The next paragraph runs under the caption "The Open Announcement of Gandhiji's Murder". After giving a summary in Marathi of an English passage from Pyarelal's book, the writer states that in spite of the fact that the head of the batch of volunteers which included Nathuram had made an open announcement that one day Gandhi would be murdered, no steps were taken by Police for protecting the life of Mahatma

Gandhi. He has gone on to state that this was an unpardonable crime on the part of the police. He has then pointed out that there was an explosion of bomb in the prayer meeting by Madanlal. The writer says that at least on this occasion the old announcement of the volunteers headed by Apte ought to have been recalled by Pyarelal. In the succeeding paragraph, which is headed "Maulana Azad is responsible for Gandhiji's murder", the writer has quoted a passage from the speech of Maulana Azad delivered by him in the A. I. C. C. on 22-2-1948. The writer laid particular emphasis on the last sentence of that passage, namely, "I found drops of Gandhi's blood on my hands". In the next paragraph, the writer has compared the statement of Maulana Azad with the confession of Lady Macbeth, and then referred to the editorial articles written by Godse in "Agrani" dated 30-4-1946, in which Nathuram Godse had attacked Maulana Azad and also Mahatma Gandhi by reason of the hold which Maulana exercised over the latter. In the article, Nathuram had advocated that it was necessary to retire an organisation similar to the one started by Savarkar in 1905 under the name "New India. The writer has then asked the authority, which has been appointed to inquire into the question as to who, besides the conspirators, were responsible for the murder of Mahatma Gandhi, to take this history and in particular the writing of Nathuram Godse, into account. In the same paragraph the writer has criticised Maulana Azad for having made poisonous attack upon Sardar Vallabhbhai Patel in his book "India Wins Freedom". The writer has proceeded to charge Morarji Desai, who was then the Home Minister, for not having given proper weight to the article written by Nathuram Godse in the issue of "Agrani" dated 30-4-1946. In the subsequent two paragraphs, the writer has given the account of what he calls "Rebellion of Muslims in Delhi", which account is based on a passage from Pyarelal's book, "Mahatma Gandhi. The Last Phase". The passage is taken from page 437 of that book. He has then stated that the situation in Delhi was very critical, that in several houses the Muslims had collected rifles, sten-guns, bran-guns etc., that they had opened fire which was a signal for a general revolt, and that this rebellion was eventually quenched by Vasantrao Oak, who was then the leader of R. S. S. in Delhi at that time. According to the writer, the Police Force in Delhi was very much depleted, and, therefore, was not capable of meeting the new menace or challenge that was given by the Muslims and ultimately the help of R. S. S. people proved to be of decisive importance. He has then cited another passage from Pyarelal's book at page 693 in which Pyarelal has quoted Sardar Vallabhbhai's statement saying that his quarrel with R. S. S. was not that they were communal fanatics, but occasionally they weakened the administration by taking the law in their hands. He has again cited another passage from the same book at page 693 (Part II),: "After all R. S. S. men are not thieves and dacoits. They are patriots, who love their country; only their trend of thought is misdirected". The next paragraph is devoted to the bitter quarrel which took place between Sardar Vallabhbhai Patel, on the one hand, and Mahatma Gandhi, Abdul Kalam Azad and Nehru, on the other hand. According to the writer, the fast undertaken by Gandhi on 14th January 1948 was directed against Vallabhbhai Patel. In giving this account he

has relied on passages from Maulana Azad's book "India Wins Freedom at pages 216 and 217, and a passage from the book "Sardar Patel" by Purshottam Patel. In the next paragraph, the writer deals with what he calls "Gift made by Gandhi of 55 Crores to Pakistan" & he says that the Government had to reverse their earlier decision of not granting this amount to Pakistan, because by doing so, India would be giving help for producing ammunition for fight which was then going on in Kashmir, because of the fast undertaken by Gandhiji. It is thereafter that he has explained why he was undertaking the "Recall of the past events to which reference has been made earlier. In the next three paragraphs, the writer has offered a sort of an explanation as to why G.V. Ketkar was not bound to disclose the information which he had about Godse's plan to murder Mahatma Gandhi. In that context he has referred to Gandhiji's views in his later life in which Gandhiji had stated, "Even if he (conspirator) had admitted his guilt to me, I would be bound not to disclose it to the police. I could not be reformer and informer at the same time". In the next paragraph, he has given the instance of N.V. Gadgil who, having learnt in 1934 that somebody was going to throw a bomb on Mahatma Gandhi while the latter was to proceed towards the Poona Municipality for receiving reception, had not disclosed the same either to Gandhiji or to the Police. In the last paragraph the writer has referred to the views held by Gandhiji in 1919. He has quoted a passage appearing at page 786 of Pyarelal's book, giving an account of the conversation which Gandhiji had with the Police Commissioner of Bombay. In effect, Gandhiji told the Police Commissioner that if Umar Sobhani (who had joined Gandhiji's movement in that year) felt convinced that a revolution was the best way to secure the well-being of India, then he expected Umar Sobhani to tell him plainly about his intentions, in which case Gandhiji would disclose this to the Police Commissioner. In the concluding paragraph, the writer states that during the British regime, he was required to carry on his writings under the threat of persecution and that he had to do the same under the present regime. He has then asserted that he has decided to continue that writing in spite of the danger facing him, but that he would not say anything without an authority in support of the statement. The learned Government Pleader contended that the latter part of this writing clearly amounts not only to an approval of the stand taken by Ketkar, but also amounts to an approval of the conspirators. We are unable to accept this interpretation of the latter part of the article in any case. As pointed out above, the writer has repeatedly pointed out that there were warnings given to Gandhiji and the Government that Gandhiji's life would be taken, firstly by the incident of picketing and secondly by the writing of Nathuram Godse in the issue of "Agrani" dated 30-4-1946. The writer has complained that in spite of these warnings, no steps were taken to save Gandhiji's life. He has described this as an act of negligence on the part of the then Home Minister. He has gone to the extent of saying that in not taking the precautions, the authorities have committed an unpardonable crime. It is well settled that the article must be read as a whole, and in its proper context, A stray sentence here and there is not to be taken as a guide for determining the intent of the writer. Undoubtedly, in some passages

strong language has been employed. In one or two places, the writer has taken recourse to sarcasm and satire. It is equally clear that the writer dislikes Gandhian philosophy of non-violence or pacifism. According to the writer, the cult of nonviolence is against the trend of Indian history. He has gone to the extent of saying that Gandhiji's pacifism is born out of his cowardice. We may not agree with this last statement, and there are many who will not agree with such a sweeping generalisation. As stated above, the article has to be read as a whole. If the criticism is Fair and objective, then merely because the criticism has been made of one whose memory is held clearly by millions of people would not be a ground for coming to the conclusion that the writer wanted to tarnish Mahatma Gandhi's name. It is one thing to criticise the philosophy of Gandhiji and quite another to abuse him or to slander him. It is also noteworthy that for most of the statements contained in the articles, the writer has given authorities. The historical account given by the writer in this article is more or less based on authorities such as Pyarelal and Maulana Abdul Kalam Azad. It is the right and privilege of every thinker to express his judgment on historical events in a fearless manner. Otherwise, we will not get a true and faithful history of our country. History is not to serve as the handmaid of a particular school of thought. History must be impartial and objective. To re-write the history, according to the views which are popular or which are necessary for bolstering up nationalistic egoism or jingoism is perversion of history. It is implicit in the freedom of press that every one ought to have the privilege of expressing opinions which are unpopular or distasteful. Right to dissent is the very essence of democracy. Conformity to accepted norms and belief has always been the enemy of freedom of thought. The learned Government Pleader suggested that inasmuch as the writer has not condemned the act of assassination of Mahatma Gandhi, it should be held that he has expressed admiration for that act. For the purpose of supporting this proposition, he relied on what he called certain sarcastic words used in describing the role of Gandhiji in 1919 & later. What we have to consider is the effect that the writing has produced on the mind of an average reader. We cannot read too much or read between the lines of the writing. The learned Government Pleader had to pick up a few words from a lengthy writing with a view to support the theory which he advocated before us. It is true that there is no word of condemnation either of Nathuram Godse or the act of assassination committed by him. But the question is, was there any occasion for the writer to deal with that question? The writer was concerned with two questions; one, whether Ketkar's detention was because of his so-called fault or failure in not disclosing the information which he had that Nathuram, one day would go to the length of killing Mahatma Gandhi, and the other was what was the role played by Gandhiji from 1919 onwards, which, according to the writer, was the role of appeasement of Muslims. As stated above, we are not concerned with the correctness or otherwise of the views expressed by the writer. On a fair reading of the article, we are inclined to the view that the writing contains a fairly correct account of history, that it is well-documented and written with the object of suggesting that there was no proper justification of the detention of Ketkar

Because others in high authority also had failed to convey information about the intention of Nathuram Godse in putting an end to the life of Mahatma Gandhi. There is no justification for the criticism made by the learned Government Pleader that, according to the writer the act of Nathuram Godse in putting an end to the life of Gandhiji was a meritorious deed. Not a word of praise has been uttered in the course of the lengthy article for the act of the assassination. The learned Government Pleader had to take recourse to a circuitous and long argumentation to convince the court that the admiration for Nathuram Godse in his act of assassination is implicit in the entire writing. The fact, that the learned Government Pleader was driven to have recourse to subtle and hair-splitting arguments in that connection shows that the effect of the writing on the average reader would not be the same as the learned Government Pleader has tried to spell out by following his highly sophisticated method.

11. That takes us to the article appearing in the issue of February under the caption "Nationalism v. Gandhiji", In the introductory portion, the writer states that just as there is danger to Indian nationalism from these following Marxism and these following Mohammadism, in the same way there is danger from the followers of Gandhiji, The first paragraph runs under the caption "The General who Unpardonably neglected the Defence of the Country". In this paragraph he has given a lengthy quotation from Gandhiji's article appearing in "Harijan" dated 14-10-1939. It would be recalled that soon after the Second World War, the leadership of the Congress was divided in two camps, one camp advocating conditional co-operation with the Government in the matter of defence, and the other advocating that in no circumstances India should be defended by power of arms. Gandhiji belonged to the second camp. In the article mentioned above, Gandhiji has stated that he (as the leader) would be held responsible for the stage of unpreparedness on the part of congressmen for non-violent defence against armed invasion. According to Gandhiji, it would be a tragedy if the Congress threw its lot with these who believed in the necessity of armed defence of India. According to the writer, the policy of Gandhiji amounted to betrayal of country's interest. The caption of the second paragraph is that "The advice of the Non-violence is meant for Hindus Only". In support of this point of view, the writer has referred to a sentence appearing in the "Harijan" dated 7-10-1939; "My principal work lies through teaching at least the Hindus to learn the art of non-violence". He has then cited a small passage from the same article in which Gandhiji had said that if both parties are nonviolent, then there is no meaning in the words "non-violence", and in order that non-violence should play an effective role, one of the two parties must take recourse to violence. He has then described this view as the expression, in pious words of a sadistic mentality and has condemned this mentality as irreligious, or impious. According to him, the R. S. S. under Dr. Hedge has been organised with a view to enable the Hindu Community to defend themselves and to save the Hindus from the activities of the Muslims which would lead to the genocide of Hindus. It is true that the writer has expressed strong and bitter language against Gandhiji and his

non-violence. But as explained earlier, the discussion of the issue is more or less of a theoretical nature, and every writer is entitled to hold his own views. The third paragraph runs under the heading "The gift of India; to Muslims". In this paragraph, he has referred to Gandhiji's article in "Harijan" dated 23-3-1940, which runs thus:

It is the Muslims who will impose their will by force, singly or by British assistance on unresisting India. If I can carry the congress-with me I would not put the Muslims to the trouble of using force. I would be ruled by them for it would still be Indian rule.

The writer has used caustic and satirical language-in respect of the view advocated by Gandhiji in the above passage. In support of this point of view, he has referred to the speech of Abdul Gaffarkhan, who was known as Frontier Gandhi, as it appeared in the report of the "Free Press: Journal" dated 13-9-1940. Abdul Gaffarkhan was credited as having said that if the resolution passed in the Working Committee of Wardha was endorsed by the A. I. C. C. to be held in Poona, he as well as Gandhiji would have no place in the organisation. The writer states that the object of Abdul Gaffarkhan, whom he called a cunning leader, was to emasculate the Hindu community so that the Muslims would be able to rule over them. He has then quoted a statement of Shrinivas Iyengar, who was at one time the president of Indian National Congress, as saying non-violence is betrayal of the nation". The caption for the next paragraph is "The damage done to the majority community by indigenous, army". The writer has put a question mark against the caption. He has quoted a sentence-from the article written by Mashruwalla in the "Harijan" dated 4-11-1939: "The masses have really less to fear from invading armies than that from the country's own armies". The petitioner has asserted that Indian Politics has been reduced to a farce on account of Gandhiji's non-violent dotage. The expression "non-violent dotage" is harsh and uncalled for. At the same time, it must be conceded that the writer has not accused Gandhiji of dotage. He has used the adjective "dotage" in the context of non-violence. He has criticised in strong terms the view of Mashruwalla as reflected in the sentence cited from "Harijan". In the next paragraph, he has referred to another article of Mashruwalla under the heading "Practical Non-violence". According to Mashruwalla, ordinary people are generally more good-willed towards a distant enemy or opponent, than towards a near one. According to Mashruwalla, this would explain why ordinary men were more non-violently inclined towards Britishers and their agents than towards opposing political parties. In the next paragraph, he has again referred to a passage from Pyarelal's book "Mahatma Gandhi, The Last Phase", at page 669. Pyarelal in that passage has referred to the view of the well-known psychoanalyst Jung in which Jung has described the strife that goes on in the present day democracy as a form of "introverted war" or mitigated civil war. According to Jung, the warfare that goes on in a democracy is more civilised and marks an advance on the road to civilization. The writer has subjected this statement of Jung, which appears to have received Pyarelal's approval, to strong

criticism. He says that according to Pyarelal and men of his way of thinking, the country should engage itself in party warfare. The writer says that if this happens then that will lead to downfall of the nation. The next paragraph is captioned "Warning to these who are devoted to Hinduism". He has referred to an article written by him in "Agrani" dated 9-7-1947. The substance of the article was that the leaders of Hindu Maha Sabha should carry on their activities under great restraint and should not give any handle to the Government, which he calls "a Government of Khaddar clad people", to crush Malta Sabha. In other words, he has suggested that the Maha Sabha should carry on their activities in a constitutional way such as by holding meetings, processions and organisations. In the last paragraph, the writer refers to the fact that because of the article written by him in the "Agrani" under the caption "Warning to the Devotees of Hinduism", he was relieved of sub-editorship of "Agrani". The writer says that although at that time he was enraged at the act of Apte and Godse, he felt relieved when he came to know that Godse and Apte were arrested for the murder of Mahatma Gandhi, and he felt grateful to both of them for having relieved him from the staff of "Agrani". In our view, in addition to the fact that the statements contained in the article are supported from the writings of Pyarelal, Mashruwalla and Manatama Gandhi, the article is devoted to an abstract discussion of the utility of non-violence and the practical effect of non-violence on Indian nationalism. Of course, in this article also the writer has occasionally given a twist to the views of Gandhiji and Mashruwalla. In particular, his analysis of Jung's view does not appear to us as correct. But as stated above, we are not concerned with the correctness or otherwise of the views of the writer. It is significant that as far back as 1947, the writer had warned the Hindu Sabha people not to have recourse to methods which would bring them into an open clash with the Government. He has exhorted them to follow constitutional ways such as holding meetings, processions and silent organisations. It is equally significant that he has expressed a sort of gratitude to Godse and Apte for severing his connection with other activities and with editorial work of "Agrani". It is impossible to hold that there is even an umdireijfe praise or admiration for Nathuram Godse Or Apte, nor do we think that there is condemnation of Gandhiji as such. If anything has been condemned, demned, it is Gandhiji's views on non-violence.

12. We then deal with the third and the last article appearing in the March issue of Painjan under the caption "Conspiracy of Nathuram, Whether Confined to Maharashtra or Interstate". In the introductory part of the article, the writer refers to the release of Savarkar which took place on 6--1-1924, He has pointed out that there was a public reception accorded to Savarkar, and even the foreign Government did not think of incarcerating Savarkar for having accented the reception and the purse offered to him by these who organised the reception. Our Government should, therefore, reconsider the detention of Godse and Karkare by pondering over the aforesaid instance. He has then said that Godse and Karkare have suffered the sentence-awarded to them on account of the

crime committed by them. In these circumstances, it does not beheld our Swadeshi Government to keep them in jail on the pretext that some people, who are suspects, have held a reception in their honour. If the Government released Godse and Karkare after following the precedent in Savarkar's case, they (Godse and Karkare) will also adjust their behaviour according to the changed, times after realising that they have become responsible for the detention of several of their friends. Then it would be possible for the Government to consider the case of the other detenus in accordance with the recommendations of the Pathak Commission. The writer has in unmistakable language expressed the view that Godse and Karkare committed a crime in killing: Mahatma Gandhi. He has also described the persons who arranged the reception as suspects meaning that they are either non descripts or men of doubtful reputation. He has also expressed the hope that in case Godse and Karkare are released, they would behave according to the spirit of the changed times. The sentiments expressed here unmistakably point to the conclusion that the writer is not interested in holding Godse and Karkare in admiration or applause. His sole object, on the other hand, is to request the Government to follow old precedent and release Godse and Karkare. He has expressed a sort of surprise for the detention of Godse and Karkare merely because some non descripts thought of holding reception in their honour. In the next paragraph he has referred to. the paper started by Arther Griffiths under the name "Scissors and Paste. Arther Griffiths was driven to start that paper because every paper that he had started earlier was suppressed by the British Government. The object of the writer in referring to the paper called "Scissors and Paste" is to show that what he has done in this article is to follow the same method. In other words, he has merely quoted the authorities, and has left the readers to make their own inferences. It is to be seen whether the writer has carried out the promise given by him, namely, that he would rely upon authorities only and would not offer his comments without their basis. On reading the article, we are convinced that he has fulfilled that promise. He has then posed a question as to whether the conspiracy to kill Mahatma Gandhi was confined to the territory of Maharashtra or its roots were spread through the whole subcontinent. He explains that Maharashtra was much maligned because Nathuram happened to belong to Maharashtra. He has pointed out that Karkare understood only one language i.e. Marathi, Shankar Kistaya knew only Telugu and Madanlal Pahava knew only Punjabi and Hindustani languages. He has then stated that the three other conspirators Gangadhar Dandawate, Gangadhar Jadhav and Suryadeo Sharma of Gwalior have gone underground. According to him, if they had not gone underground, then the inter-State character of the conspiracy would have more clearly come to the front. He has then referred to Digambar Badge, the approver in the murder case, and stated that Badge came into contact with Dixitji Maharaj, who was the religious head of Gujarati Vaishnavas in connection with the illicit trafficking of weapons. He has then narrated the story as to how Dixitji Maharaj helped Apte in his illegal activities and in that connection has heavily drawn upon the testimony of Dixitji Maharaj recorded in the Gandhi murder case. He has prefaced the account which he

proposed to give on the basis of the evidence of Dixitji Maharaj, by referring to the declaration made by Rajendra Prasad in 1940 as the President of the Jaipur Indian National Congress, in which he had stated that it is the duty of each and every well-wisher of the country, whether Hindu or Muslim, to nullify the attempts aimed at dividing India into two. The writer has then pointed out that this was not a solitary pronouncement from Rajendra Prasad, but that there was regular torrent of speeches advocating similar views. According to the writer, Godse and Karkare were influenced by this torrential eloquence of the leaders, and both of them had taken a decision to defeat the attempts at dividing India even at the cost of their lives. In that context, he has referred to the decision taken by Godse and Apte for dynamiting the building where the Constituent Assembly for Pakistan was to be held some time in June 1947. This account is based upon what Dixitji Maharaj stated to the Court in the Gandhi Murder Case. He has then applauded the role played by Dixitji Maharaj in the matter of carrying on the work of purification of the downtrodden Hindu men and women against whom atrocities were committed during the Noakhali riots. Dixitji Maharaj was informed that Apte and Godse, who had also devoted themselves to the same cause had taken decision to explode the building where the Constituent Assembly for Pakistan was likely to meet. He has then referred to the fact that Apte was described as "Agranf by the members of the Consultative Committee of Press whenever he attended the said meeting. In the next two paragraphs, he has given an account of the antecedents of Dixitji Maharaj and his visit to Anandashram. Dixitji Maharaj met Apte in Yoon. Apte told him that he required necessary arms and ammunition for carrying on his act of blowing off the Pakistan Constituent Assembly building. Apte had asked for money from Dixitji Maharaj for his activities. Dixitji Maharaj had promised to consider the matter after having a look at the guns which he intended to purchase. Nothing could be done in the matter because Apte was arrested in the first week of July. He was released after the advent of Independence on 15-8-1947. The article then refers to Apte's plan of committing dacoities on the custom stations in the Hyderabad State. Apte had also planned to blow up the train which was to carry arms and ammunition to Pakistan. The writer then states that from the account given by Dixitji Maharaj of his activities, it is clear that Dixitji Maharaj was the leader of the conspiracy for defeating the plan for partition of India. In the next paragraph, the writer has given an account of the share of Calcutta in the said conspiracy. This again is based upon the account given by Dixitji Maharaj in his evidence. In the next paragraph, the writer says that the conspiracy to kill Mahatma Gandhi was more or less an open conspiracy. In that context, he has referred to a book published by Atre under the caption "Such things and such amusing events". Atre has stated that Godse had told him that he wanted to kill Gandhiji. Atre proceeded to state that he had scoffed at Nathuram for the said boast. The writer says that when Atre knew from his personal experience that Nathuram was not a mere braggard, because the latter had once beaten him, Atre ought to have known him better. He then makes a somewhat sweeping generalisation by referring to all the editors of papers in Bombay as people having no intelligence,

no ideals and no courage and all of them are mercenaries. He says that such people are incapable of understanding men like Nathuram and Apte who carry on their activities by holding their heads straightway in their hands. The learned Government Pleader contended that the statement, namely, that Godse and Apte were carrying on their activities by holding their heads in their hands clearly amounts to eulogising them and their activities. It is true that the sentiment expressed in the sentence amounts to admiration for the courage of Godse and Apte, But there is not even a faint suggestion that the act of murder or assassination committed by them was praised as a commendable act. In the same context he has referred to the fact that Ketkar made an attempt to give a warning to the Government about Nathuram's talk. He has also stated that Ketkar came up for a very strong criticism at the hands of tops of the Congress for disclosing his attempt in forewarning Government in an unguarded moment on the occasion of the performance of the Satyanaravam Mahapuja. He then contrasted the inaction of the Bombay papers and the warning given by Ketkar based on words uttered by Nathuram in a sarcastic vein, and has stated that the editors turned out to be wise people, and Ketkar, who was attempting to warn the Government so that they should protect the life of Gandhiji, has proved himself to be a fool. It is true that in the passage referred to above, the writer has expressed appreciation of what Ketkar did and said. But his admiration is based on the assumption that Ketkar did convey the warning to the then Government and that all that is said in the course of Satyanarayan Mahapuja function was that he referred to that warning. Admittedly, the petitioner was not present during the function. He had not heard the speech delivered by Ketkar. There is no means of knowing on what version on what account he was relying in this respect. It is, however, clear from the sentence quoted above that the account which he received was that Ketkar had conveyed warning to the Government and that he gave expression to this in the course of the function of Satyanarayan Mahapuja held on 12-11-1964. The next paragraph runs under the caption "Gandhi did not die by the pistol of Nathuram". This heading is obviously misleading. The contents show that what the writer wanted to suggest was that the pistol produced before the Court was not the pistol which was used by Nathuram in killing Mahatma Gandhi. It is not clear who gives the subheadings and sub-titles. It is possible that subtitles were given by the editor of the magazine. Whatever that may be, the title is evidently incorrect, and we have to rely on the actual passage and not the sub-title. The learned Government Pleader contended that the only object, which inspired the writer in writing this article, was to make it appear to the world that Nathuram may be an innocent person, We are not prepared to accept this interpretation. What he has pointed out was that on account of the fact that Nathuram himself had admitted that he fired the shot, the question as to whether the pistol before the Court was the pistol from which the shots went out and killed Gandhiji was not considered by the Court at all. He has then stated that light would be thrown upon the dark corner of this aspect of the Gandhi murder trial in the course of inquiry to be held by Pathak Commission. The last paragraph is captioned "Who gave

information to Nathuram about the secret movements of Gandhiji". He has then suggested that somebody, who was in the know of the private programme of Gandhiji must have informed Nathuram that Gandhiji was to go to Delhi. This decision, according to Pyarelal, was taken on 27-1-1948. The writer poses a question, how is it that Nathuram came to know of this decision on the same day? The suggestion is that there were many others who were involved in this conspiracy. The article is based on the evidence given by Dixitji Maharaj in the Gandhi murder case. It was not contended that the account given by the writer is not faithful to the evidence of Dixitji Maharaj. As stated above, the sole object of the writer in writing this article was to show to the world that other States also must share the blame for this conspiracy and thus wash away the stigma which is attached to the fair name of Maharashtra. The only passage on which reliance is placed by the learned Government Pleader is the one in which the writer has described that Apte and Godse were persons holding their heads straightway on their palms. We have already pointed out that, at best, that sentence praises "in a general way the courage of Nathuram Godse and Apte. There is no praise of the act of assassination, even by implication.

13. After going through all these articles, we feel no hesitation in holding that the articles do not contain anything which can be described as objectionable or prejudicial matter. The expression "prejudicial act" has been defined in Rule 35 of the Defence of India Rules 1962. Of course, that definition is for the purpose of Part V - Prevention of Prejudicial Acts and Control of Information. Rule 30 falls under Part IV - Restriction of Movements and of Persons. The purpose of prevention and that of restriction may overlap as in Clauses (f) and (g) of Rule 30(1), (Part IV) and Rule 41 (Part V). It would not, therefore, be inappropriate to invoke the said definition by way of analogy for interpreting prejudicial writings or speeches. The "prejudicial acts" have been enumerated in Clauses (a) to (s) of Rule 35(6) of the Defence of India Rules. Clause (e) refers to the act of bringing into hatred or contempt or to exciting disaffection towards the Government established by law, and Clause (g) refers to promoting feelings of enmity and hatred between different classes of persons in India. It is all along the contention of the learned Government Pleader that the writings promote ill-feeling, or to use the words repeatedly used by him, "or to foment feelings of hatred and ill-will between different classes of people in India". If that was the view taken by the District Magistrate of the articles, we feel no hesitation in holding that the view is clearly unfounded. In order that a person is detained-merely for his activity of writing articles, the District Magistrate must be satisfied that the article was likely to prejudice one of the various purposes mentioned in Clauses (a) to (s) of Rule 35(6). Rule 35(6)(f) is a residuary clause and includes in its ambit the purpose of public safety and public interest. According to the District Magistrate the petitioner's detention is intended to safeguard public safety and maintenance of public order. The District Magistrate's view that public safety or maintenance of public order has been prejudiced or endangered as a result of the writings of the petitioner is untenable, and if that is so, the learned District Magistrate has

acted on a material which must be treated as either irrelevant or non-existent. In any case, we feel no hesitation in holding that the satisfaction of the District Magistrate is not reasonable. "Satisfied" must necessarily mean "reasonably satisfied", and this postulates a close application of mind to the articles a clear understanding of their import and the likely effect on the mind of the readers. The affidavit gives no indication that the District Magistrate applied his mind to the writings or that he has understood the meaning and import of these writings. The result is that the application succeeds. The order of the detention of the petitioner is hereby set aside, and the petitioner is directed to be set at liberty forthwith.