

(2011) 06 MAD CK 0576
In the Madras High Court
Case No : H.C.P. (MD) No. 1091 of 2010

Arumugam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 336, 341, 380, 392, 420

Citation : (2011) 4 CTC 353 : (2011) 8 RCR(Criminal) 973

Hon'ble Judges : T. Sudanthiram, J;S. Nagamuthu, J;K.N. Basha, J

Bench : Full Bench

Advocate : S. Doraisamy, for V. Elangovan and V. Kannan, for the Appellant; I. Subramaniam, Public Prosecutor for M. Mohamed Riyaz, Government Advocate, for the Respondent

Judgement

K.N. Basha, J.—This matter has been placed before this Bench on the orders of the Hon"ble The Chief Justice in the following background:

(i) The Petitioner, who is the brother of the detenu by name Madhavan @ Kannan, has come forward with this Habeas Corpus Petition challenging the order of detention passed by the Second Respondent by the proceedings in No. 62/ BDFGISSV/2010 dated 18.8.2010 holding that the detenu as a "Goonda" as he is indulging in an activity prejudicial to the maintenance of public order.

(ii) This Petition was originally filed before the Madurai Bench of this Court. When the matter was heard by a Division Bench consisting of one of us (Hon"ble Mr. Justice T. Sudanthiram) as the member of the Bench, the main contention made was the solitary incident of robbery mentioned in the ground case cannot attract the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) (hereinafter referred to as "the Act") to pass the impugned detention order. In support of such contention, a decision of the Division Bench of this Court in Rajendran v. The Commissioner of Police Greater Chennai, Egmore and

Anr. CDJ 2007 MHC 4642, was relied upon. The said decision was rendered by the Division Bench mainly following two decisions of the Hon''ble Apex Court in R. Kalavathi Vs. The State of Tamil Nadu and Others, ; and Durban Kumar Sharma @ Dharban Kumar Sharma v. State of Tamil Nadu 2003 (1) Crimes 446.

(iii) The Division Bench, after going through the above said two decisions of the Hon''ble Apex Court, expressed its reservation in respect of the decision of the Division Bench in Rajendran v. The Commissioner of Police Greater Chennai, Egmore and Anr. CDJ 2007 MHC 4642, (cited supra). It is relevant to refer the particular paragraph of the order of the Division Bench expressing its reservation as hereunder:

5. We have our own reservation as regards the said decision. To quote the decision of the Apex Court reported Union of India (UOI) Vs. Amrit Lal Manchanda and Another, , law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other. Given the object of the enactment that preventive detention is not punitive but only preventive, we doubt the correctness of the law declared by this Court that one instance of ground case would not be a sufficient legal compliance in testing the conduct of the detenu as likely to affect adversely the maintenance of law. Going by the purport of the Legislation and that the decision of the Hon''ble Apex Court reported in Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of Tamil Nadu, relates to a case as regards the detenu threatening the victim alone and there were no material that by committing the offence, the detenu endangered the public peace and orderliness, we feel that the law declared by this Court in the decision reported in Rajendran v. The Commissioner of Police, Greater Chennai, Egmore and Anr. CDJ 2007 MHC 4642, requires to be tested and re-considered before the Full Bench of this Court.

(iv) In view of the above said reason, the Division Bench directed the Registry to place the papers before the Hon''ble Chief Justice and accordingly the Hon''ble Chief Justice has directed the matter to be posted before this Full Bench and that is how the matter is before this Bench for consideration.

2. Mr. S. Doraisamy, learned Counsel appearing for the Petitioner, would contend that the solitary instance mentioned in the grounds of detention would not be prejudicial to the maintenance of public order. In support of his contention, learned Counsel placed reliance on the following decisions:

(i) Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another, ;

(ii) Mrs. T. Devaki Vs. Government of Tamil Nadu and others, ; and

(iii) Shri Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police and Ors. 1995 (3) Crimes 18.

3. Per contra, Mr. I. Subramaniam, learned Public Prosecutor, would contend that even a solitary incident forming part of number of acts of a particular individual

is sufficient to pass an order of detention, if such an act is prejudicial to the maintenance of public order. It is contended by the learned Public Prosecutor that the Detaining Authority has to see whether the particular act of a person would be prejudicial to the maintenance of public order and for the said purpose, even a single incident is sufficient to attract the provisions under the Act. The learned Public Prosecutor would further contend that the Statute does not make any distinction between the ground case and the other adverse cases and as such, there is no bar for the Detaining Authority to arrive at the subjective satisfaction to the effect that a single act of an individual would be sufficient to be prejudicial to the maintenance of public order. The learned Public Prosecutor placed reliance on the Division Bench decision of this Court in *Subbaiah v. The Commissioner of Police, Madras City* 1993 LW (Cri.) 113.

4. We have given our careful and anxious consideration to the rival contentions put forward by either side and also perused the order under reference placed before us.

5. Before going into the facts of the case, let us make it clear that we have not been called upon to decide the validity of the detention order which is under challenge. We have been called upon in this Writ Petition by means of this reference only to declare the law as to whether a solitary instance is sufficient to detain a person, who has been branded as a "Goonda" as per provision u/s 3 of the Act. Therefore, it is made clear that this order is confined only to the above question referred to us.

6.0. It is relevant to refer the provision u/s 3 of the Act and the provision u/s 2(f) of the Act.

6.1. Section 3 of the Act reads as hereunder:

3. Power to make orders detaining certain persons -- (1) The State Government may, if satisfied with respect to any bootlegger or drug offender or video pirates or forest-offender or goonda or immoral traffic offender or slum-grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (1), exercise the powers conferred by the said Sub-section:

Provided that the period specified in the order made by the State Government under this Sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do,

amend such order to extend such period, from time to time, by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

6.2. Section 2 of the Act defines the term "Goonda" as follows:

Section 2. Definitions -- (1) In this Act, unless the context otherwise requires (a) to (ee)....

(f) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commits or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860....

7. A reading of the above two provisions make it crystal clear that in order to detain a person under the Act, the Detaining Authority has to satisfy about two conditions, namely, firstly, the materials available on record should establish that the individual could be branded as a Goonda and secondly, after branding a person as a Goonda, the Detaining Authority further should be satisfied that the acts or anyone of the act of the said person are/is prejudicial to the maintenance of public order. If a such subjective satisfaction is arrived at by the Detaining Authority, then the Detaining Authority will be justified to pass an order of detention with a view to prevent such an individual from acting in any manner prejudicial to the maintenance of public order.

8. Now coming to the question as to how a person is liable to be branded as a Goonda, the definition of the Goonda u/s 2(f) of the Act would make it abundantly clear that "Goonda" is a person, who either by himself or as a member of leader of a gang, habitually commits, or attempts to commits or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860.

9. The Hon^{ble} Apex Court in Shri Mustakmiya Jabbarmiya Shaikh v. Shri M.M. Mehta, Commissioner of Police and Ors. 1995 (3) Crimes 18, while dealing with the similar provisions of the similar act relating to preventive detention, namely, Sections 2(c) and 3(1)(4) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred as "the Gujarat Act"), in which, the person to be branded as "dangerous person" came across the definition of "dangerous person" considering the expression "habitual" and held as hereunder:

8 The Act has defined "dangerous person" in Clause (c) of Section 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abates the commission of any of the offences

punishable under the chapters XVI or XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression "habit" or "habitual" has however, not been defined under the Act. According to The Law Lexicon by P. Ramanatha Iyyar, Reprint Edition 1987 page 499 "habitually" means constant, customary & adducted to specified habit and the term habitual criminal may be applied to any one who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word "habitually" means "usually" and "generally". Almost similar meaning is assigned to the words "habit" in Aiyar's Judicial Dictionary, 10th Edition -page 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In Gopalanachari Vs. State of Kerala, , this Court had an occasion to deal with expressions like "bad habit", "habitual", "desperate", "dangerous", and "hazardous" This Court observed that the word habit implies frequent and usual practice. Again in Vijay Narain Singh Vs. State of Bihar and Others, , this Court construed the expression "habitually" to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows that in order to bring a person within the expression "dangerous person" as defined in Clause (c) of Section 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of the I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapters XVI or XVII of I.P.C. or Chapter V of Arms Act cannot be characterised as a habitual act referred to in Section 2(c) of the Act.

10. The above said decision rendered by the Hon"ble Apex Court relating to the Gujarat Act makes it manifestly clear that Section 2(c) of the Gujarat Act defining "dangerous person" is in pari materia with Section 2(f) of the Act. In the decision cited supra, the Hon"ble Apex Court while interpreting the expression "habitual" made extensive and deep survey of various judgments and ultimately held, as stated above, to the effect that a single or isolated act falling under Chapters XVI or XVII of Indian Penal Code or Chapter V of Arms Act cannot be characterised as a habitual act referred to in Section 2(c) of the Gujarat Act.

11. In yet another decision in R. Kalavathi v. State of T.N. 2006 (4) CTC 566 (SC) (cited supra), the Hon"ble Apex Court has elaborately dealt with the interpretation and definition of the expression "habitual" in respect of the terms of Sections 3(1) and 2(f) of the Act and held as hereunder:

9. A bare reading of the provision makes the position clear that in order to

attract action in terms of Section 3(1) of the Act, the detenu must be one who is a "Goonda" as defined u/s 2(f) of the Act. Though in other preventive detention laws, even a single act which has the propensity of affecting the even tempo of life and public tranquility would be sufficient for detention, being prejudicial to maintenance of public order. For the purpose of the Act the detenu has to be a "Goonda" as defined u/s 2(f) of the Act.

10. Habitual: The meaning of the words "habit" and "habitually" as given in the Advanced Law Lexicon (3rd Edn.) by P. Ramanatha Aiyar is:

"Habit" - Settled tendency or practice, mental constitution. The word "habit" implies a tendency or capacity resulting from the frequent repetition of the same acts. The words by "habit" and "habitually" imply frequent practice or use."

"Habitual" - Constant; customary; addicted to a specified habit".

11. The Court in Vijay Narain Singh v. State of Bihar 1984 SCC (Cri.) 361, considered the question of a habitual criminal and in para 31 the expression "habitually" was explained as follows:

The expression "habitually" means "repeatedly" or "persistently". It implies a thread of continuity stringing together similar repetitive acts-repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit.

The expression "habitual" would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that the tenant was a habitual defaulter. [See Vijay Amba Das Diware and Others Vs. Balkrishna Waman Dande and Another, .

12. The expression "habit" or "habitual" has not been defined under the Gujarat Prevention of Anti-Social Activities Act, 1985. The word "habitually" does not refer to the frequency of the occasions but to the invariability of a practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word "habitually" means "usually" and "generally". Almost similar meaning is assigned to the words "habit" in Aiyar's Judicial Dictionary, 10th Edition, at p.485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. [See Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, .

13. The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. [See: Ayub @ Pappukhan Nawabkhan Pathan Vs. S.N. Sinha and another, .

14. From one single transaction though consisting of several acts, a habit cannot be attributed to a person.

15. Judged in the background of legal position delineated above the order of detention cannot be maintained because it only refers to one act. There is also no material to justify the conclusion that the Accused was habitually committing crime. There is no reference to any other crime. Therefore, the order of detention cannot be maintained."

(Emphasis made by this Court)

12. The principle laid down by the Hon"ble Apex Court in *R. Kalavathi v. State of T.N.* 2006 (4) CTC 566 (SC) (cited supra) would make it crystal clear that in order to detain a person under the Act by invoking the provision u/s 3(1) of the Act, the Detaining Authority should be satisfied that the said person is a Goonda as per the definition in Section 2(f) of the Act and further the act/acts of such person would be prejudicial to the maintenance of public order. It is pertinent to note that in the decision cited supra *R. Kalavathi v. State of T.N.* 2006 (4) CTC 566 (SC), the Hon"ble Apex Court pointed out that the Detaining Authority has referred to only a solitary case and in the detention order there is no reference about the other crimes said to have been committed by the said person and in that factual background, the Hon"ble Apex Court has held that there is no material to justify the conclusion that the Accused was habitually committing the crime and therefore, the detention order was not maintainable.

13. In view of the authoritative pronouncements of the Hon"ble Apex Court in the decisions cited supra, we have no hesitation to hold that for characterizing a person as Goonda, it is absolutely necessary that the said person has been implicated in more than one case involving the offences punishable under Chapters XVI or XVII or XXII of the Indian Penal Code.

14. At this juncture, it is also made clear that if a person has been implicated in one solitary case, by no stretch of imagination, he could be branded as a Goonda as such solitary incident would not attract the provision u/s 2(f) of the Act. Consequently, a single case cannot be the basis to pass the detention order by invoking the provision u/s 3 of the Act to prevent such person from acting in any manner prejudicial to the maintenance of public order. To put it otherwise, in a given case if there is one single case against an individual which may or may not have the propensity of affecting the maintenance of public order, he cannot be detained u/s 3 of the Act, because he will not fall within the scope of the definition of Goonda as defined in Section 2(f) of the Act.

15. The next question is whether all such cases or at least more than one case should have the propensity of affecting the maintenance of public order. In our considered opinion, it is not so for the following reasons:

First of all, Section 3 of the Act while using the expression "with a view to prevent him from acting in any manner prejudicial to the maintenance of public

order" does not contemplate that all such cases against him which bring him within the scope of the term Goonda should have the propensity of causing disturbance to the maintenance of public order. It is only to bring a person within the scope of the term Goonda it is necessary that there are to be more than one case. In a given case, let us assume that there are four cases falling within the penal provisions of the Chapters as enumerated in Section 2(f) of the Act out of which three cases do not have enough propensity to disturb the maintenance of public order, whereas, one single case may have such propensity to disturb the maintenance of public order, in such an event, in our considered opinion, the said single case, which is of such a gravity which may be prejudicial to the maintenance of public order can alone be the basis for passing a valid detention order. Here what we would like to clarify is that for branding a person as a goonda, there are to be more than one case against him; but, to detain him u/s 3 of the Act it is not necessary that all such incidents relating to the said cases should have the propensity of causing disturbance to the maintenance of public order. If one single case or more than one case has/have got the propensity of causing prejudice to the maintenance of public order, that by itself would be suffice to make an order directing the detention of the said person.

16. At this juncture, it is worthwhile to refer to the decision of the Division Bench of this Court in Subbaiah v. The Commissioner of Police, Madras City 1993 LW (Crl.) 113, wherein, in paragraph 28 of the judgment, the Division Bench has held as follows:

28. ...The definition of "goonda" refers to the habitual commission or attempt to commit or abatement of the commission of offences specified in the Section. When a person is found to be a goonda it goes without saying that he is a person who habitually commits or attempts to commit or abets commission of offences. Hence, it is not necessary further for the authority to wait for his committing another act which is likely to cause prejudice to the maintenance of public order. If the facts and circumstances placed before the authority are sufficient to enable him to arrive at the conclusion that he is a goonda then those facts and circumstances are sufficient to consider the second question also as to whether such acts will cause prejudice to the maintenance of public order. The object of the Act is to prevent the person concerned to act in a manner prejudicial to the maintenance of public order. It would be futile to contend that the authority should wait till he acts in such a manner. In that case it will not be preventive detention but a case of detention after the commission of the offence. Hence a reading of Section 3(1) together with Section 2(a) and (f) of the Goondas Act makes it clear that if the commission of offences is sufficient to brand a person as a goonda within the meaning of Section 2(f) they can themselves be taken into account for considering the question whether he is acting in a manner prejudicial to the maintenance of public order.

17. As held by the above Division Bench of this Court, while examining the correctness of a detention order made u/s 3 of the Act, the Court is called upon

to examine two questions primarily. The first one is whether the detenu has been rightly branded as a Goonda as defined in Section 2(f) of the Act, as discussed above. If once, the Court comes to the conclusion that such characterization of the detenu as a Goonda is legally correct, then the Court has to adjudicate upon the second question as to whether the detention order is necessary as defined u/s 3 of the Act. It is only while deciding the said question the Court has to see, from the materials available on record, such as the cases against the Accused, be it a single case or multiple cases, as to whether the said materials would indicate that such a detention order is absolutely necessary to maintain public order or not.

18. In *Rajendran v. The Commissioner of Police Greater Chennai, Egmore and Anr.* CDJ 2007 MHC 4642 (cited supra), which is the subject matter of the order under reference, the Division Bench mainly placed reliance on the decisions of the Hon'ble Apex Court in *R. Kalavathi v. State of T.N.* 2006 (4) CTC 566 (SC) (cited supra) and in *Durban Kumar Sharma @ Dharban Kumar Sharma v. State of Tamil Nadu* 2003 (1) Crimes 446 (cited supra). As we have already pointed out, *R. Kalavathi v. State of T.N.* 2006 (4) CTC 566 (SC), relates to branding a person as Goonda as per the provision u/s 2(f) of the Act and the Hon'ble Apex Court in that decision elaborately dealt with the expression "habitual" and held that in that case the detention order only refers to one act and there is no reference to any other crime and also there is no material to justify the conclusion that the Accused was habitually committing crime and therefore, the order of detention cannot be maintained.

19. As far as *Durban Kumar Sharma @ Dharban Kumar Sharma v. State of Tamil Nadu* 2003 (1) Crimes 446 (cited supra) is concerned, the Hon'ble Apex Court in that decision has held as hereunder:

5. ...Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act it is stated that in the case of "Goonda" the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order". The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention.

20. From a careful reading of the above judgment of the Hon'ble Apex Court, it is quite apparent that the Hon'ble Apex Court was of the view that the incident in the said case created a problem of law and order rather than a problem of public order and, therefore, the detention order was held to be not justified. The

Hon"ble Apex Court has observed in the said decision that even though the detenu was a Goonda in the sense he had committed several offences coming within the Chapter XVII of the Indian Penal Code, such incidents, particularly the last incident on the basis of which the order of detention was passed, related to an incident involving law and order rather than public order. In the subsequent decision in *R. Kalavathi v. State of T.N.* 2006 (4) CTC 566 (SC) (cited supra), as we have already pointed out, the Hon"ble Apex dealt with a single incident as the detenu has been implicated in respect of a solitary incident and as such, the Hon"ble Apex Court came to the conclusion that the detenu cannot be branded as a Goonda and therefore, the order of detention cannot be maintained.

21. It is pertinent to note that yet another Division Bench of this Court in *Boopathy, w/o. Raji v. The Commissioner of Police, Salem and Ors.* 2007 (1) LW (Crl.) 464, had an occasion to refer the above said two decisions of the Hon"ble Apex Court, namely, *R. Kalavathi v. State of T.N.* 2006 (4) CTC 566 (SC), and *Darban Kumar Sharma @ Dharban Kumar Sharma v. State of Tamil Nadu* 2003 (1) Crimes 446, and had taken a similar view as hereunder:

13. From a careful reading of the aforesaid decision, it is apparent that the Supreme Court was of the view that the incident in the said case created a problem of law and order rather than a problem of public order and, therefore, the detention order was not justified. As observed by the Supreme Court in 2006 (3) SCC (Cri) 11 (cited supra), in order to pass an order of preventive detention under Act 14 of 1982, the Appropriate Authority is required to come to two conclusions, whether (1) detenu is a Goonda, and (2) it is necessary to prevent such person acting in a manner prejudicial to the maintenance of public order.

14. In the decision of the Supreme Court in *Darpan Kumar Sharma's* case it can be said that even though the detenu was a Goonda in the sense he had committed several offences coming within the Chapter XVII of the Indian Penal Code, such incidents, particularly the last incident on the basis of which the order of detention was passed, related to an incident involving law and order rather than public order. In the subsequent decision of *R. Kalavathi's* case, even though it could have been said that the incident related to the question of public order, since the offence committed was a singular offence by the detenu, the Supreme Court came to the conclusion that the detenu was not a Goonda and therefore, the order of detention should not have been passed.

22. In *Rajendran v. The Commissioner of Police Greater Chennai, Egmore and Anr.* CDJ 2007 MHC 4642 (cited supra), which is the subject matter of the question involved in the order under reference, the Detaining Authority took note of the four adverse cases pending against the detenu for the offences under Sections 420 and 380, I.P.C. respectively and one ground case for the offences under Sections 341, 336, 392 and 506(2), I.P.C, and in the said ground case, it was alleged that the detenu wrongfully restrained the complainant, beat him in his cheek, tore his shirt and threatened him and snatched Rs. 140/- and his wrist watch from him. It is also alleged that when the complainant prevented the same

and raised hue and cry, the detenu took out a knife and threatened to kill him and he has also snatched the chain hanging in Complainant's neck and pushed him on the road and kicked him with his leg and on hearing the hue and cry of the Complainant, the public at the spot came to the rescue and the detenu threatened them at the knife point to kill them and as a result, public ran for safer places out of fear of danger to their lives and properties. Therefore, the fact remains that the detenu in *Rajendran v. The Commissioner of Police Greater Chennai, Egmore and Anr.* CDJ 2007 MHC 4642, had been implicated in number of cases and that he was habitually committing crimes and was acting in a manner prejudicial to the maintenance of public order. However, the Division Bench in *Rajendran v. The Commissioner of Police Greater Chennai, Egmore and Anr.* CDJ 2007 MHC 4642, by placing reliance on the decisions of *R. Kalavathi v. State of T.N.* 2006 (4) CTC 566 (SC), and *Dharban Kumar Sharma @ Dharban Kumar Sharma v. State of Tamil Nadu* 2003 (1) Crimes 446, has held that though the detenu in the said case is said to have been implicated in three adverse cases and one single incident of robbery, it cannot be stated that he acted in a manner prejudicial to the maintenance of public order for sustaining the detention order. We are of the view that the Division Bench in *Rajendran v. The Commissioner of Police Greater Chennai, Egmore and Anr.* CDJ 2007 MHC 4642, has not correctly applied the law laid down by the Hon'ble Apex Court in *R. Kalavathi v. State of T.N.* 2006 (4) CTC 566 (SC), and *Dharban Kumar Sharma v. State of Tamil Nadu* 2003 (1) Crimes 446 (cited supra). The Division Bench in the said judgment has almost made an impression as though a single case against a detenu is not sufficient to pass an order u/s 3 of the Act. We regret, we are unable to agree with the said view expressed by the Division Bench. As we have already discussed, it is only to brand a person as Goonda the law requires that there are to be more than one case and if once a person is found to fall within the scope of the definition of Goonda, out of number of cases against him, even if a single case against him is in the nature of causing disturbance to the public order, then based on the said single case, there can be a valid order of detention passed.

23. In order to further clarify the position, we may also refer to the definition of the term "Bootlegger" which reads as follows:

2(b) "bootlegger" means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937) and the Rules, Notification and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance of any receptacle or any other material whatsoever in furtherance or support of the doing of any one of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing;

24. A close reading of the above said definition, as extracted above, would go a long way to show that the expression "habitual" is missing. This is an intentional omission made by the Legislature. While defining the term "Goonda" the Legislature thought it fit to incorporate the term "habitually", whereas, while making definition of the term "Bootlegger" consciously the Legislature has omitted the said expression. This would only indicate that in respect of a Bootlegger, to brand him so, even a single incident giving rise to a single case would be sufficient and if that single case is of the nature as defined in Section 3 of the Act, there can be a valid order of detention made. But in respect of a Goonda, first of all, to brand him as a Goonda as we have already concluded, a single case is not sufficient, be it a case in the nature as enshrined in Section 3 of the Act or not. It requires more than one case involving offences falling within the chapters as enumerated in Section 2(f) of the Act. Therefore, we want to reiterate that it is only to pass a detention order, the Detaining Authority has to see whether even that single case or all those cases put together or some of the events would make a detention absolutely necessary as enshrined in Section 3 of the Act.

25. We are of the considered view that there cannot be a straitjacket formula or universal rule as held by the Division Bench in *Rajendran v. The Commissioner of Police Greater Chennai, Egmore and Anr.* CDJ 2007 MHC 4642 (cited supra) to the effect that a single incident giving rise to a single case is not enough to justify the order of detention. But, it all depends upon the facts and circumstances of each case, where the Detaining Authority has to consider from the materials available on record and thereafter, to arrive at a conclusion that a particular person is a Goonda and after branding the said person as a Goonda, it has to consider further as to whether his act on the basis of the single incident constituting offences or more than one case would amount to act/acts which is/are prejudicial to the maintenance of public order necessitating an order of detention.

26. In view of the foregoing discussions, we answer the question referred to us in the following manner:

(i) To brand a person as Goonda as defined u/s 2(f) of the Act, it is absolutely necessary that there are to be more than one case involving offences punishable under the Chapters of the Indian Penal Code as enumerated in Section 2(f) of the Act.

(ii) To detain a Goonda, it is not necessary that there are to be more than one case which has got the propensity of disturbing the maintenance of public order. Out of all the cases against him even if a single incident resulting in a single case has the propensity of affecting the even tempo of life and public tranquillity being prejudicial to the maintenance of public order that by itself would be sufficient to pass a valid order of detention. There cannot be any straitjacket formula or universal rule in respect of number of cases because the necessity for passing a detention order depends upon the facts and circumstances of each case.

27. Thus, we are constrained to overrule the law laid down in Rajendran v. The Commissioner of Police Greater Chennai, Egmore and Anr. CDJ 2007 MHC 4642.

28. The Habeas Corpus Petition may be posted before the Division Bench for final disposal.