
(1998) 04 MAD CK 0080
In the Madras High Court
Case No : HCP No.1121 of 1997

Kumar

APPELLANT

Vs

State of Tamil Nadu and two others

RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
National Security Act, 1980 — Section 3(4)

Citation : (1998) 2 CTC 78

Hon'ble Judges : C. Shivappa, J;A. Ramamurthi, J

Bench : Division Bench

Advocate : Mr.S. Shanmugavelayatham, for the Appellant; Mr.
R.Shanmugasundaram, Public Prosecutor, Mr.K. Kumar, A.C.G.S.C., for the
Respondent

Final Decision : Dismissed

Judgement

Judgement Pronounced by C. Shivappa, J.—The respondent No.2 herein, on 9.8.1997 passed an order of detention under sub-section (2)

of Section 3 of the National Security Act, 1980, Central Act 65 of 1980 (hereinafter referred to as "The Act" in short), against the petitioner

herein in order to prevent him from indulging in an activity prejudicial to the maintenance of public order. In pursuance of the said order, the

petitioner has been detained at the Central Prison, Madurai. In the grounds of the order of detention, the facts and particulars which lead to the

satisfaction to pass the impugned order, are stated in detail and we do not propose to reiterate the same, since, if done, it may swell the order to

several pages.

2. The learned counsel for the petitioner Mr. Shanmughavelayutham though invited our attention to several contentions urged in the petition,

confined his submission only to three contentions, viz., (1) The ground case on which the detenu has been detained does not constitute the

ingredients of acting in a manner prejudicial to the maintenance of "public order" and it may at best amount to the maintenance of "law and order";

(2) There was no material to record the finding that the detenu was in remand on the date of detention and (3) As stated in the grounds of

detention, though representations with postal acknowledgments through the Superintendent of Jail, with a request to despatch to all concerned

were made, still remain undisposed of, except by respondent No.3.

3. The learned counsel for the petitioner contended that the petitioner along with his associates was found indulging in criminal activity armed with

weapons, committing the murder of one Lingam and at best, it may be a case of settling score with one individual. Where a complaint in this regard

has been lodged by the wife, on which, action has been taken and investigation is pending, the penal law can deal with such a situation. The Act

contemplates that only with a view to prevent a person from acting in any manner prejudicial to the security of the State or in any manner

prejudicial to the maintenance of public order, the authority can pass an order detaining a person.

4. The learned counsel relied on a decision in Dr. Ram Manohar Lohia Vs. State of Bihar and Others, (Head-note (d) and urged that public order

was meant where the disorder was of such a grave nature what the authorities thought was necessary to prevent, in view of the emergent situation.

Such is not the case invoking the provisions of the Act and amounts to exercising the power without material, or in the absence of ingredients

constituting disturbance of public order.

5. The learned Public Prosecutor Mr. Shanmugasundaram, repelling these contentions, invited our attention to a decision of the Apex Court

reported in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta 1995 SCC (Cri) 454 wherein at para 9, it has been held thus:-

Further, sub-section (1) of section 3 of the Act confers power on the State Government and a District Magistrate or a Commissioner of Police

under the direction of the State Government to detain a person on being satisfied that it is necessary to do so with a view to preventing him from

acting in any manner prejudicial to the maintenance of "public order". The

explanation attached to sub-section (4) of Section 3 reproduced above

in the foregoing para contemplates that "public order" shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in sub-section (4) directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Sub-section (4) of Section 3 also provides that for the purpose of Section 3, a person shall be deemed to be ""acting in any manner prejudicial to the maintenance of public order"" when such person is a ""dangerous person"" and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a dangerous person"" his alleged activities fall within the ambit of the expression ""public order"". A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of ""acting in any manner prejudicial to the maintenance of public order"" the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of ""law and order"" or it amounts to ""public order"". If the activity falls within the category of disturbance of ""public order"" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghosh Vs. State of West Bengal, this Court had an occasion to deal with the distinction

between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Again in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another, this Court took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land".

6. In addition to this legal aspect factually in the grounds of detention, it is stated that the deceased Lingam was cut and murdered by the people of Thevar Community because of the prevailing communal clashes. The locality of the incident was at Gramma Munsif Street when the deceased was on his way to meet the Village Administrative Officer. It is also stated in the grounds of detention that the detenu and his associates made certain statements that they would retaliate as one for one and wished to do one more such act also. In view of these circumstances, the detaining authority recorded a statement that the act of the detenu and his associates created an

alarm and a feeling of insecurity in the minds of public of that area and thereby the detenu acted in a manner prejudicial to the maintenance of public order.

7. The scope of the expressions ""public order"" and ""law and order"" was considered by the Supreme Court in several decisions. In Dr. Ram

Manohar Lohia Vs. State of Bihar and Others, , the Apex Court has held that whether the act relates to law and order or to public order depends

upon the impact of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or

dislocate the even tempo of the life of the community.

8. The deceased belonged to the rival community and he was beaten up in a public street and done to death and the general public were scared by

the utterances. In the absence of any enmity against the deceased when the statement were made in general to the members of the rival community

and the consequences of which, disturbed the normal life of the community and they were scared, such activities reveal that the detenu and his

associates were of daredevils in nature, and if not dealt with under the Act, they would become a menace to the society at large. Therefore, we

conclude that such incidents fall within the ambit of causing disturbance to the public order and reject the first contention.

9. Regarding the second contention, it is found at page 65 of the paper book that a remand order was made available, wherein the remand was

extended from 7.8.1997 to 21.8.1997, and the impugned order is dated 9.8.1997. This fact situation shows that there was availability of relevant

material to form an opinion that the detenu was in remand.

10. The last contention is the non-disposal of the representation as required in law. The Respondent No.1 has filed a counter and stated that the

representation dated 3.12.1997 was received on 8.12.1997. After calling for remarks and after receipt of the same circulation note was submitted

to the Government on 16.12.1997. 20th and 21st of December, 1997 being holidays, the same was considered and the representation was

rejected on 19.12.1997 and the intimation was sent on 22.12.1997. Having regard to the process at various stages and in view of the intervening

holidays, we do not find any unreasonable delay or calous indifference in considering the representation of the petitioner.

11. For the aforestated reasons, the petition is liable to be dismissed and is accordingly dismissed.