

(1991) 11 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No's. 7942 to 7946 of 1991

Manoj and etc.

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 08-11-1991

Acts Referred:

Arms Act, 1959 — Section 25, 3
Essential Commodities Act, 1955 — Section 3, 7
Explosive Substances Act, 1908 — Section 4
National Security Act, 1980 — Section 3
Passports (Entry into India) Act, 1920 — Section 2, 3
Penal Code, 1860 (IPC) — Section 285, 307, 353, 7
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3

Citation : (1992) CriLJ 2053

Hon'ble Judges : T.S. Arunachalam, J;S. Marimuthu, J

Bench : Division Bench

Advocate : D. Veerasekaran, for the Appellant; B. Sriramulu, Public Prosecutor, for the Respondent

Judgement

Arunachalam, J.—All these Writ Petitions are disposed of together by a common order, since the detenus concerned in these writs, are

stated to be involved in the same transaction. The contentions raised are also identical. All these writ petitions have been filed for the issue of a

habeas, for the production of the respective detenus, before this Court, for their being set at liberty, after quashing the impugned orders of

detention dated 15-2-1991 passed by the second respondent, viz., the District Magistrate and Collector, Pudukkottai. In all these writ petitions

the affidavits have been sworn to by one T. S. Mani, who claims himself to be the fiends of the detenus. He has further averred, that he has filed

these writ petitions on the instructions and the facts furnished by the respective

detenus. The said Mani has also claimed that he is the State

Organising Secretary of Dravidar Kashagam, which supports the organisation called ""The Liberation Tigers of Tamil Eelam"" (in short, LTTE) of Sri

Lanka. Further details in the activities of the LITE, need not have to be stated, for the disposal of these Writ Petitions.

2. Facts which led to be passing of the impugned orders of detention, will have to be narrated. All these orders of detention have been made in

exercise of the powers conferred under sub-sec. (2) of S. 3 of the National Security Act, 1980 (Central Act 65 of 1980), with a view to

preventing the detenus from acting in any manner prejudicial to the maintenance of public order and to the maintenance of supplies and services

essential to the community. A police check-post had been created at Arasangarai village in Pudukkottai District on the highway between Thondi

and Sethubavachatram, for the purpose of checking, the movements of all vehicles and other unlawful activities and more particularly vehicles of

Srilankan Tamil Militants, for detecting the illegal transporting of commodities like diesel, petrol and weapons from India to Srilanka for their own

use in Srilanka. Special Armed Police parties were posted at the check-post to control the unlawful entry of Srilanka Tamil Militants in sea-shore

areas of Indian territory and also to control the movements of Srilankan Tamil Militants, who had entered into India without any valid passport,

through unconventional channel and were involved in unauthorisedly transporting huge quantity of petrol, diesel, motor oil and acid to Srilanka, for

their own use.

3. While the police party was engaged in checking the vehicles at Arasangarai village checkpost, at or about 4 a.m. on 26-1-1991, the Inspector

of Police, Mimisal stopped the jeep bearing Registration No. T.N.-07-A-2088 and Mitshubishi Van, bearing Registration No. TSJ 5324. The

Inspector of Police found eight persons, including two ladies, having occupied the jeep. This group included the driver as well. In the van, inclusive

of the driver, five persons were the travellers. As soon as the vehicles were stopped, four persons got down from the jeep, wielding A.K. 47

Rifles. They informed the police officials, that they were Tamil Militants and their vehicles should not be checked. They further threatened to open

fire, if their request was not heeded to. Thereafter, two of the militants, removed

the cross-bar of the check-post. Meanwhile, the driver of the jeep started the vehicle, crossed the check-post and halted. When the militants in the van attempted to cross the check-post, the police replaced the cross-bar in its original position. The driver of the van, after attempting to dash the vehicle against the police, tried to escape towards Thondi. The Inspector of Police, who was unable to arrest the movement of the van, ordered the Special Armed Police Constable LNK 905 and P.C. 955 to open fire, at the tyres of the van. Accordingly both the constables opened fire and as a result the van was stopped. The militants got down from the van and opened fire at the police party. Meanwhile, the four militants, who were standing near the jeep, got into the jeep and sped away towards north. The other militants, who had travelled in the van, escaped after opening fire. Soon thereafter, Additional Superintendent of Police arrived at the spot and on his instructions attempts were made to trace the jeep and the van. The Inspector of Police. Mimisal, found the jeep abandoned near the bank of Nadu Pamparu. The jeep was found empty and, therefore, a search was made for the militants. The Inspector of Police proceeded in search of the militants, tracing the foot-prints and he was able to trace two lady militants and six male militants hiding in the thorny bushes at Pamparu Kanmoi, in Thiruppunavasal village at 10.15 a.m. on 26-1-1991. The militants threatened to shoot the police, if they continued to follow them. The Inspector of Police warned the militants to surrender. As there was no effect, P.C. 955 and LNK 905 opened fire. The militants commenced escaping in different directions from their hideouts. The police party then rounded them up and caught eight militants including two ladies and all of them were arrested in the presence of two independent witness. They were interrogated. They admitted that they were militants belonging to LTTE group and that the other five militants, who escaped with fire arms also belonged to the same organisation. The Inspector of Police seized cyanide capsules from the possession of the detenu Manoj (W.P. No. 7942 of 1991), and detenu Ramesh alias Kubedran (W.P. No. 7946 of 1991), under mahazar. From the jeep, two black cans each containing approximately 25 litres of diesel were seized. The jeep was also found to contain a suit case with plastic bags, two big plastic bags containing books and clothes. The abandoned van was

also traced. From the van, 21 black plastic cans, each approximately containing 100 litres of petrol, 8 plastic cans each containing approximately

35 litres of acid, one cloth bag, one book bag, one album and cash to the tune of Rs. 20,643/- were seized under mahazar. The arrested detenus

with the seizures were taken to Thiruppuna Vasal Police Station, where Cr. No. 7/91, under Ss. 5 and 6(a) of Registration of Foreigners Act,

1935, S. 25(1)(a) r/w S. 3 of the Indian Arms Act, S. 3(2)(1)(f) of Essential Commodities Act, S. 4 of Indian Explosives Substances Act r/w S.

285 of the Penal Code and S. 7(1)(a) CrL. Law Amendment Act read with S. 307 of the Penal Code, was registered. The arrested detenus were

produced before the concerned Magistrate. Thought bail was refused to the detenus, some of them were directed to be released on bail by this

Court. The Deputy Superintendent of Police, who took over investigation, included the offences under S. 12(c) of Passport Act, 1957 read with

S. 3(2)(a) of Passport (Entry into India) Act, 1920 and under S. 2(M) of the Motor Spirit and High Speed Diesel (Prevention of Malpractices in

Supply and Distribution) Order, 1990, read with S. 7(1) of the Essential Commodities Act and S. 353 of the Penal Code, in the crime already

registered. After follow up action, the impugned orders of detention were clamped.

4. Mr. D. Veerasekaran, learned counsel appearing on behalf of the detenus contended, that no arms had been recovered, in spite of the

statement, that the militants wielded A.K. 47 Rifles and threatened the Police party. He contended that the detenus, who were Srilankans, wanted

to get back to Srilanka, after the new Government took over in Tamil Nadu and hence they were found near the seashore area, to achieve their

purpose. The diesel or petrol found, was only for the purpose of operating the van and the jeep and using it as a fuel for the boat, which would

take them to Ceylon. Transportation of petrol, diesel, acid was not for any illegal purpose. He also contended, that no crime has been registered

earlier, against any of the detenus and hence they had no bad antecedents. He urged, that even if the detenus, had threatened the raiding police, at

the check-post, it would not amount to disturbance of public order. It could only be viewed as a mere law and order problem. He then submitted,

that in view of Explanation to S. 3(2) of the National Security Act, the petitioners could not have been detained under S. 3(2) of the Act, especially

when a crime had been registered under the provisions of the Essential Commodities Act.

5. On these contentions, we have heard Mr. B. Sriramulu, learned Public Prosecutor. He pointed out, that the orders of detention specifically state,

that on interrogation, the apprehended militants admitted, that the other five militants who had escaped, had run away with fire arms and that they

also belonged to LTTE Organisation. He contended, that the seizure of petrol, was of quite a huge quantity. From the van 2100 liters of petrol

were seized and 50 liters of diesel were seized from the jeep, leave alone the acid, cash and other items, referred to in the seizure mahazar. He also

further brought to our notice the confession statements of the detenus, which revealed the following details :-

He argued, that under Sec. 3(2) of the National Security Act, the State Government would be competent, to validly promulgate the impugned

orders of detention, if it was satisfied, that the detenus were acting in any manner prejudicial to the maintenance of public order or to the

maintenance of supplies and services essential to the community. The material placed before the detaining authority was abundant enough, to

attract these two clauses, contemplated under Sec. 3(2) of the National Security Act. He submitted that Explanation to Sec. 3(2) of the National

Security Act will have to be read in conjunction with the explanation to Sec. 3(1) of Prevention of Black-Marketing and Maintenance of Supplies

of Essential Commodities Act, 1980, and if that were to be done, there is no substance in the contention advanced by the learned counsel

representing the petitioners that the impugned orders could not have been validly made, merely because of the registration of the crime, for

offences under the Essential Commodities Act, as well. He further contended, that the same set of facts may given rise to offences under different

enactments, and merely on that score, it cannot be urged, that the power under Sec. 3(2) of the national Security Act, cannot be invoked. He

contended the threatening the Police force at the checkpoint wielding A.K. 47 Rifles, attempting to escape after removing the check-post bar,

threatening over again when sought to be apprehended, that five would be opened, would be sufficient to hold that there was disturbance of public

order sufficiently to affect the even tempo, of the life of the community at large.

6. We have carefully considered the rival contentions placed before us by the counsel for the petitioners and the learned Public Prosecutor.

7. The non-recovery of arms, can be of no consequence, to strike down the impugned orders of detention. As rightly pointed out by the learned of

Public Prosecutor, the orders of detention, contain averments, that admittedly, the militants who had escaped had gone away with A.K. 47 Rifles.

The argument, that the detenus wanted to return to Srilanka and hence they were near the sea-shore, with little quantity of petrol or diesel, to

facilitate their return, does not appear to have any foundation or basis. If these facts are to constitute the defence of the detenus, it will be open for

them, to canvass such defence for consideration by the trial Magistrate, in the crime registered against him, if it ultimately ends in a final report being

filed. The confessions of the detenus, which are relevant material for passing the impugned orders of detention, clearly contain contra details,

showing the clandestine activity of the detenus, who were desirous of taking away petrol, diesel, acid etc., for the use of the Militant Organisation,

to fight against the Cylonese Army and for preparation of bombs, towards that end. 2100 litres of petrol and 50 litres of diesel can by no stretch

of imagination be stated to be a negligible quantity, as sought to be contended by Mr. D. Veerasekaran. Non-registration of any crime earlier

against the detenus, can have no significance whatever, to affect, the valid passing of the impugned orders of detention. The claim of the detenus"

counsel as thought they had all come to India as refugees, stands contradicted, by the contents of the confession statements, made by them. They

have admitted, that their arrival into India clandestinely, was about 15 days prior to their apprehension, the avowed object being to take away the

articles seized from them, to Srilanka, which had been collected by the members of their Organisation at Salem. The confession statements show

that diesel, petrol and acid were intended for illegal export to Srilanka. There appears to be no substance in the argument, that the purchase of

diesel or petrol from agencies situated in India, will not affect the community at large. If the manner in which diesel and petrol are obtained for use

in this country is taken note of, any attempt to clandestinely take it from India, would certainly prejudicially affect the citizens of this country.

8. Explanation to Sec. 3(2) of the National Security Act reads as follows :-

For the purposes of this sub-section ""acting in any manner prejudicial to the maintenance of supplies and services essential to the community"" does

not include acting in any manner prejudicial to the maintenance of supplies of commodities essential to the commodity as defined in the Explanation

to sub-section (1) of Section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and

accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under the Act.

9. To appreciate the contention of the learned counsel for the petitioner, it will be necessary to extract the explanation appended to Sec. 3(1) of

the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. It reads as hereunder :-

Explanation :- For the purposes of this sub-section, the expression ""acting in any manner prejudicial to the maintenance of supplies of commodities

essential to the community"" means -

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955), or under any

other law for the time being in force relating to the control of the production, supply of distribution of, or trade and commerce in, any commodity

essential to the community; or

(b) dealing in any commodity -

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law, as is referred to in clause (a),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law

aforesaid.

10. The contentions of the learned counsel for the petitioners, that in view of Explanation to Sec. 3(2) of the Act, the ground of detention was not

germane, with the object of prevention of prejudicial activity to the maintenance of supplies and services essential to the community, has to be

stated only to be repelled. Needless to add that clandestinely obtaining petrol and diesel for transportation to Srilanka, would certainly attract that

limb of Sec. 3(2) of the Act, relating to acting in any manner prejudicial to the

maintenance of supplies and services essential to the community. The two explanations extracted above clearly show, that they operate in two different fields and one cannot be confused with the other. The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 was intended for detention in certain cases, for the purpose of prevention of black-marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith. The said object cannot be confused with the object sought to be achieved by the National Security Act, 1980. We also hold, that the nature of acts committed and the intention with which they were committed, were sufficient to satisfy a reasonable mind, that the detenus if let large, would indulge in similar activities and thus prejudicially affect the maintenance of supplies and services essential to the community.

11. The stage has reached to consider, whether the grounds disclose a mere law and order problem or relates to disturbance of public order. The facts narrated earlier clearly show, that some of the travellers in the van and in the jeep, all of them belonging to the LTTE Organisation, threatened the Police party wielding A.K. 47 Rifles. They further threatened to fire at the police party, when they were sought to be apprehended, from their hide-outs. A crime has been registered under Sec. 307 of the Penal Code as well as under the provisions of the Arms Act and Explosives Substances Act. The check-post police party were keeping watch at Arasangarai village with the avowed object of checking the movements of LTTE militants. Hence they were the custodians of law and order as well as public order. The material appended to the order of detention and the grounds show, that the residents in the neighbouring locality, crowded at the scene.

12. The Apex Court in *Ashok Kumar Vs. Delhi Administration and Others*, , while considering the distinction between public order and law and order, observed as follows (Para 13) :-

The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one, but this does not mean that there can be no overlapping. Acts similar in nature but committed in different

contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life to the community which makes it prejudicial to the maintenance of public order. That test is clearly fulfilled in the facts and circumstances of the present case It is the length, magnitude and intensity of the terror wave unleashed by a particular act of violence creating disorder that distinguishes it as an act affecting public order from that concerning law and order. Some offences primarily injure specific individuals and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. The question is of the survival of the society and the problem is the method of control.

We are satisfied that the activities of the detenus cover a wider field and fall within the contours of the concept of public order.

13. In *Nandalal Roy Vs. State of West Bengal*, , while considering the validity of the order of detention passed under the West Bengal Prevention of Violent Activities Act, 1970, the Apex Court observed as follows (Para 4) :-

Attacking the Railway Police Party with bombs at the Railway Station Yard is surely a serious matter and was bound to cause a scare among all

the members of the public who would be visiting the station yard and interfere with their activities of getting the goods loaded or unloaded. It was

not a mere question of maintenance of law and order. It was a kind of disturbance which would be comprehended by the expression ""ordre

publique"" as explained in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, . The acts may be sometimes similar in quality but

what has to be seen is their potentiality in the sense as to what reverberations may be caused which might affect the even tempo of the life of the

community. (See W.P. No. 308 of 1971 *Nagendra Nath Mondal Vs. The State of West Bengal*, .

14. In *Netaipada Shah Vs. The State of West Bengal*, the following observation were made (Para 5) :-

It was not as if the petitioner alone was armed with bombs. He had with him his associates also armed with bombs. It was also not as if the

petitioner alone threw a bomb. The ground expressly stated that both the petitioner and his associates hurled bombs at the police party. Such acts were bound to create panic in the Station area amongst the people residing in or frequenting that area, and must have also caused disturbance of public order.

Similar was the view taken in *Sridam Saha Vs. The State of West Bengal*, . In that case, the detenu and his associates while committing theft of rice from a wagon at a railway station yard attacked the members of the Railway Protection Force with bombs when challenged by them. It was held that the acts of the detenu and others fell within the ambit of Sec. 3(2)(d) of the West Bengal (Prevention of Violent Activities) Act, 1970, as they created panic in the Station area and the adjoining locality and as such disturbed public order.

15. In *S.K. Kedar Vs. State of West Bengal*, , while distinguishing between the acts prejudicial to law and order and the acts prejudicial to public order, the Supreme Court stated as follows :-

The question whether an act is a breach only of law and order or has caused disturbance of public order is one of degree of disturbance and its effect upon the life of the community in a locality and whether the acts committed are of such a nature or potentiality as to travel beyond the immediate victims and affect the general or local public and thus are prejudicial to the maintenance of public order, depends on the facts of each case.

In that case, the detenu along with others, while removing material from the wagon at the railway station yard attacked the on duty Railway Protection Force party with bombs and ballasts when challenged by them. It was observed, that the acts of the detenu were prejudicial to the maintenance of public order and would fall within the ambit of Sec. 3(2)(b) and (d) of the West Bengal (Prevention of Violent Activities) Act, 1970.

16. Ultimately, the question as to whether the acts attributed were prejudicial to law and order or to public order will depend upon the facts alleged. No hard and fast rule for universal application can be laid down. If the police force, who are supposed to be the custodians of law and order as well as public order, are sought to be threatened with guns and the

offenders choose to remove the check-post bar and go into the hiding and again administer several threats when sought to be apprehended, would certainly have an impact on the even tempo of the life of the community, for the potentiality of unleashing terror wave in the locality had surfaced. We are satisfied that the grounds alleged would attract Sec. 3(2) of the Act, for the detenus are stated to have acted in a manner prejudicial to the maintenance of public order, apart from the other limb of acting in a manner prejudicial to the manner of supplies and services essential to the community.

17. At this stage, Mr. Veerasekaran contended, that the detenus are foreigners and they can be deported to Srilanka and, therefore, the impugned orders of detention should not be allowed to survive. We are unable to agree. We are concerned with Sec. 3(2) of the Act. Regulation the continued presence of a foreigner or making arrangements for his expulsion from India form part of Sec. 3(1)(b) and Sec. 3(1)(a) of the Act which operate in a different field, to prevent a person from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers or the security of India. The independent and severalic power under each one of these parts of Sec. 3 of the Act, cannot be confused.

18. We are satisfied that the orders of detention have been validly made. All the grounds of attack having been negatived, these writ petitions deserve dismissal. All the writ petitions are accordingly dismissed.

19. Petitions dismissed.