

(2013) 07 SC CK 0024

In the Supreme Court Of India

Case No : Civil Appeal No. 4815 of 2013 (Arising out of SLP (C) No. 32704 of 2010)

N. Sengodan

APPELLANT

Vs

Secretary to Government, Home (Prohibition and Excise)
Department, Chennai and Others

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Indian Penal Code, 1860 — Section 505, 505(1)(b)
Prevention Of Dangerous Activities Of Bootleggers, Drug-Offenders, Forest Offenders,
Goondas, Immoral Traffic Offenders And Slumgrabbers Act, 1982 — Section 2(a), 2(f),
2(a)(f), 3(2), 8(2), 10, 12(2)
Police (Incitement To Disaffection) Act, 1922 — Section 3
Police-Forces (Restriction of Rights) Act, 1966 — Section 3, 4
Goondas Act, 1923 — Section 14
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2013) 8 AD 248 : (2013) 9 JT 516 : (2013) 4 LW 558 : (2013) 2
LW(Cri) 361 : (2013) 2 OLR 1056 : (2013) 3 RCR(Criminal) 988 : (2013) 8
SCALE 213 : (2013) 8 SCC 664 : (2013) 3 SLJ 131

Hon'ble Judges : Sudhansu Jyoti Mukhopadhyaya, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sudhansu Jyoti Mukhopadhyaya, J.—Leave granted.

2. In this appeal the judgment dated 16th August, 2010 passed by the Division Bench of the Madras High Court in W.A. No. 1426 of 2010 is under challenge. By the impugned judgment the Division Bench upheld the judgment dated 27th April, 2010 passed by the learned Single Judge in W.P. No. 1243 of 2003 and dismissed the appeal, affirming the finding recorded by the learned Single Judge. The learned Single Judge by his judgment dismissed the writ petition preferred by the Appellant claiming the damages and praying for issuance of a writ of mandamus directing the Respondents to pay him jointly and severally a sum of Rs. 10,00,000/- for his alleged illegal detention and confinement.

3. The relevant facts of the case are as follows:

The Appellant is an Ex-service man who served in the Indian Army for a period of seven years; later he joined in the Tamil Nadu Subordinate Police Services and retired from the service on 21st October, 1997 as Inspector of Police at Attur Police Station, Salem District. The 2nd Respondent by name V. Jegannathan, is a former Inspector General and Commissioner of Police, Salem City and the 3rd Respondent, Ramasamy, is former Inspector of Police, Fairlands Police Station, Salem City. The 4th Respondent, E. Gopi, is former Inspector of Police, Sooramangalam Police Station, Salem City on whose complaint a case in Crime No. 11/98 was registered against the Appellant u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the Indian Penal Code.

4. According to the Appellant, he had served both the Indian Army and State Police Service with devotion and had the privilege to win the appreciation of his superior officers in both the capacities. He is a family man and his wife is working as Senior Lecturer in the Government Arts College, Salem. His sons having completed their seven year course in Medicine in Russia are doing their internship in the Government Kilpauk Medical College, Chennai. They are all living together as a happy close knit family sharing their joys and sorrows with one another. Besides, the Appellant has wide relations as well as friends who are all having high esteem on him and his family. The version of the Appellant is that after his retirement, he had the opportunity to realize the difficulties encountered by each and every member of the police force in Tamil Nadu and had voiced the merits of forming an Association through which demands of members of the police force could be legally made to set right the wrongs committed to them. Further, according to the Appellant, he neither indulge in any act/acts leading to any resentment in the mind of any personnel in the police service nor was propagating anything seditious.

While so, Tamil Daily Malai Murasu dated 18th December, 1997, published a news item allegedly authored by the Appellant. Based on the said news item, on 6th January, 1998, the 3rd Respondent, Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City had registered a case in Crime No. 11/98 for offence u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the Indian Penal Code. Further, on 7th January, 1998 the Appellant was arrested by the 3rd Respondent and remanded to judicial custody. He was remanded in judicial custody by the Judicial Magistrate No. V, Salem in connection with the above said case and lodged in Central Prison, Salem for a period of two month. It is also alleged that while the Appellant was confined in Central Prison, Salem the Superintendent, Central Prison, Salem served on him a detention order in C.M.P. No. 04/Goonda/Salem City/98, dated 9th January, 1998 passed by 2nd Respondent the then Inspector General and Commissioner of Police, Salem City. By the said order, the Commissioner of Police, Salem City detained the Appellant under "The Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic

Offenders and Slumgrabbers Act, 1982 (hereinafter referred to as the 'Tamil Nadu Act 14 of 1982')". The said order appears to be passed by the 2nd Respondent based on the proposal submitted by 3rd Respondent.

5. On 9th February, 1998, the Appellant made a written representation to the Secretary to Government of Tamil Nadu and sent it through the Superintendent, Central Prison, Salem. He raised several pleas in the representation. The Advisory Board established under the provisions of the Tamil Nadu Act 14 of 1982, exercising its powers under the provisions of Sub-section (2) of Section 12 of the said Act and addressing itself to all the facts and the connected records, having found nothing recommended for the revocation of detention order of the Appellant. The Governor of Tamil Nadu, in view of the recommendation, revoked the order of detention and directed that the Appellant be released forthwith by the Government Order Rt. No. 636, Prohibition and Excise (XIV) Department, dated 3rd March, 1998.

6. According to the Appellant, the above detention order was clamped by the Respondents against him with a malafide intention of detaining the Appellant under the Tamil Nadu Act 14 of 1982 with a view to punish him. The 3rd Respondent, Ramasamy, the then Inspector of Police, Fairlands Police Station had registered the said complaint given by 4th Respondent Gopi in his Police Station Crime No. 11/98 and the Appellant was arrested in connection with the said crime and subsequently detained under the Tamil Nadu Act 14 of 1982 for a period of two months till he was released by the order of the Advisory Board revoking the order of detention dated 3rd March, 1998. It is alleged that after the release from prison, there was no action from the part of the 3rd Respondent for a long time and no charge sheet was filed against the Appellant in the Police Station Crime No. 11/98. Ultimately, a final report was filed which was received by the Judicial Magistrate No. V, Salem Court in the month of June, 2001 and the same has been accepted by the learned Magistrate and numbered as R.C.S. No. 19/2001 and the same was recorded. The Appellant received the copy of the same on 29th June, 2001.

7. Further, the case of the Appellant is that since he was subjected to harassment particularly by the 2nd Respondent, V. Jegannathan, the then Inspector General and Commissioner of Police, Salem City; the 3rd Respondent, the then Inspector of Police, Fairlands Police Station by undergoing imprisonment as a remand prisoner and as a detenu in Central Prison, Salem on the basis of a false case registered against him with the object of destroying his reputation and image. The Appellant was very much affected both in body and mind. The Appellant was also subjected to mental cruelty and was also physically affected as a result of the confinement in Central Prison, Salem. The family members of the Appellant have also suffered physically and mentally due to malafide acts of the 2nd and 4th Respondents. The 1st Respondent has been arrayed as one of the Respondents in view of the prayer for damages sought for in the writ petition.

8. The Appellant served lawyer's notice dated 27th June, 2002 to all the

Respondents claiming damages in terms of money for a sum of Rs. 10,00,000/-. The 2nd Respondent, V. Jegannathan, the then Inspector General of Police forwarded a reply dated 1st July, 2002 to the lawyer's notice claiming immunity to his actions. The 4th Respondent, Gopi also forwarded a reply by letter dated 24th July, 2002 claiming innocent and denying the allegation that he had any malafide intention to foist a case against him. No reply has been filed by both the 1st and 3rd Respondents.

9. The 2nd Respondent, V. Jegannathan filed a counter-affidavit in the writ petition and took a plea that the Appellant falsely claimed to be the convener of Tamil Nadu Police Employees Association and that in that capacity he had been visiting several Districts and insisting the members of the disciplined police force to join the said Association so as to raise their voice against the Government. It was also stated that the Appellant submitted a representation dated 9th February, 1998 in which he tendered apology for his conduct and gave assurance that he will not indulge in any activity in future and on that basis prayed for revocation of detention order. The 2nd Respondent forwarded the same to the Chief Office, Chennai with his report. The 3rd Respondent was present before the Advisory Board when the matter came up for review and he presented a copy of the representation of the Appellant. Only on the basis of the undertaking of the Appellant that he will not indulge in any such activity in future, the Advisory Board ordered the release of the Appellant. It was alleged that the Appellant had willfully suppressed the material fact that he tendered an apology and gave in writing an undertaking that he will not indulge in any such activity in future.

10. Further, according to the 2nd Respondent, the order of detention issued by him was confirmed by the Government of Tamil Nadu in G.O. Rt. No. 195, Prohibition and Excise Department dated 20th January, 1998. Before issuing the detention order on the basis of the report of the 3rd Respondent, the concerned legal advisor was consulted by the 2nd Respondent and only after he gave his opinion that the activities of the Appellant would attract the provisions of the Tamil Nadu Act 14 of 1982 the detention order was issued. Therefore, according to the 2nd Respondent, he issued the detention order in a bonafide manner and in exercise of power vested with him in his official capacity. The 2nd Respondent further pleaded that he had no malafide intention and only on the basis of materials placed before him and being satisfied that it is just and essential to detain the Appellant under the Tamil Nadu Act 14 of 1982 he issued the detention order in a bonafide manner.

11. The 1st Respondent, the Secretary to the Government, Home (Prohibition & Excise) Department, Government of Tamil Nadu filed a separate affidavit in the writ petition. He has also taken pleas that the Appellant falsely claimed to be the convener of the Tamil Nadu Police Employees Association and that in that capacity he had been visiting several Districts and insisting the members of the disciplined police force to join the said Association so as to raise their voice against the Government. It is stated that before issuing the detention order on

the basis of the report of the 3rd Respondent, the legal advisor was consulted by the 2nd Respondent and only after getting his opinion; the detention order was issued by G.O. Rt. No. 195, Prohibition & Excise Department, dated 20th January, 1998. The 1st Respondent has taken a similar plea that the Appellant has wilfully suppressed the material fact that he gave an undertaking in writing that he will not indulge in any such activity in future and that the Respondents never had any malafide intention and only on the basis of the materials placed and being satisfied that it is just and essential to detain the Appellant under the Tamil Nadu Act 14 of 1982, the Respondents issued the detention order in a bonafide manner in their official capacity. The 1st Respondent has also taken similar plea that the 2nd Respondent issued the detention order in a bonafide manner in his official capacity, the claim for damages made is unsustainable.

12. Learned Single Judge by the judgment dated 27th April, 2010 dismissed the writ petition on the ground that the Appellant has failed to establish malafide intention on the part of the Respondents in registering a criminal case and detaining him under Tamil Nadu Act 14 of 1982. The said judgment was upheld by the Division Bench by the impugned judgment dated 16th August, 2010.

13. The Appellant has highlighted the relevant facts as noticed above and the learned Counsel placed reliance on the First Information Report, the communication made by the parties, order of detention, etc. It was submitted by the learned Counsel for the Appellant that the burden was wrongly placed on the detenu particularly when no explanation was given by the Respondents as to why action was taken for detention of the Appellant. It was further contented that the High Court erred in holding that the Appellant was involved in habitual activities prejudicial to the interest of the public order by touring various Districts and soliciting the police officials to join the association, though there was no material available on record to support the same. According to the learned Counsel for the Appellant, in absence of any evidence against the Appellant it was not open for the High Court to hold that the Appellant toured various Districts to mobilize public opinion.

14. Learned Counsel for the Ist Respondent strenuously took pain to define malafide intention to suggest that nothing malafide either on facts or in law has been proved by the Appellant.

15. The only question requires for our consideration is whether in the facts and circumstances of the case the Appellant is entitled for any damage for having detained for around two months u/s 3(2) of the Tamil Nadu Act 14 of 1982 in the Crime No. 11/98.

16. From the record we find that much after his retirement a press statement was released by the Appellant on 8th December, 1997 in a Tamil Newspaper "Malai Murasu", which reads as follows:

PRESS STATEMENT

This is the Requisition sent by Inspector S. Sengodan, State Organizer on behalf of the officials working in the Tamil Nadu Police Department to the Hon'ble Chief Minister of Tamil Nadu Dr. Kalaingar.

The Police Department is forced to seek protection for themselves as we have no solution as to how to stress our demands to the Government.

For example on 30.11.97 in the incident that took place in Kovai one Constable Thiru Selvaraj was attacked and died and even this incident could not be brought to the notice of the Government by police constables for taking proper action in this regard and on their behalves, their respective wives are forced to fight for their rights by coming to the street in bringing this to the notice of the Government.

Thus in order to avoid this situation, already a request was made to the Government by the officials in the Police Department to form an Association/ Union and to act accordingly. As a reminder, again such request is made for forming of an association for the purpose of seeking proper protection to the constables and to over come their difficulties and to explain their true state of affairs.

Therefore, the Hon'ble Doctor Kalaingar who is treating the people belonging to various community, as equal, is requested to accord sanction to form an association for the above said purposes.

Sd/.

S. Sengodan State Organizer Tamil Nadu Police Department employees

Dated: 08/12/1997

17. Based on the aforesaid press statement the First Information Report was lodged by the 4th Respondent, E. Gopi, the then Inspector of Police, Sooramangalam Police Station, Salem City on 6th January, 1998 impleading the Appellant as an accused. A case (Crime No. 11/98) was registered in the Fairlands Police Station, Salem for the offence u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the Indian Penal Code, relevant portion of which reads as under:

IN THE COURT OF JUDICIAL MAGISTRATE NO. 5, SALEM

CRIME NO: 11/98, FAIRLANDS POLICE STATION, FIRST INFORMATION REPORT.

XXXX XXXX XXXX

XXXX XXXX XXXX

Humbly Submitted:

Today i.e. On 6.1.98 at about 8.00 p.m. Night while I being the Inspector of Police was at the station, the Inspector of Police, Sooramangalam Police Station,

Salem City Thiru Gopi was present at the station and gave a report along with a paper News cutting dated 8.12.97 published in the news paper called 'Malai Murasu' at page 2 which reads as follows:

From:

E. Gopi, Inspector of Police, Sooramangalam P.S. Salem City.

To

The Inspector of Police, Fairlands Police Station, Salem City.

Sir,

I am working as Inspector of Police, Sooramangalam Police Station, Salem City. Today 6.1.98, I read Malai Murasu dated 8.12.97 and I came to know that one Thiru N. Sengodan, formerly Inspector of Police, Attur Police Station, Salem District now retired and settled at 3/90 P & T Colony, New Fairlands, Salem. 16, Salem City has given a statement to Malai Murasu, Salem Edition as "In the Report given by Sengodan, Organizer of the Tamil Nadu State Police Department Association 'it has been stated as follows:

The Police Department which is giving protection to the General public is forced to seek protection for themselves as we have no solution as to how to stress our demands to the Government.

In the incident that took place in Kovai one Constable Selvaraj was attacked and died and even this incident could not be brought to the notice of the Government by police constables for taking proper action in this regard and on their behalves, their respective wives are forced to fight for justice by coming to the street in bringing this to the notice of the Government.

Thus in order to avoid this situation, already a request was made to the Government by the Police Department to form an Association/Union and to act accordingly. I request you once again as a reminder to form an Association for the purpose of seeking proper protection to the constables and to overcome their difficulties and to explain their true state of affairs.

From the above statement, it is clear that the above said Thiru N. Sengodan, Inspector of Police (Retired) intentionally caused disaffection towards the Police Department, Established by Law, in Tamil Nadu and also with the intention of committing a breach of discipline among the police force and also induces them to withhold their services. I am also enclosing a copy of the paper cutting of Malai Murasu, Salem Edition dated 8.12.97 in page No. 2, for your perusal and action.

Hence I request you to take suitable action against Tr. N. Sengodan, Inspector of Police (Retd.) in this regards.

Yours faithfully, Sd. E. Gopi Inspector, Dt. 6.1.98.

On the basis of the above said report, received by me, I registered a case in Crime No. 11/98 on the file of Fairlands Police Station for the offence u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) Indian Penal Code and sent the copies of the First Information Report to the concerned officials and taken the case on file for investigation.

Sd. Inspector of Police Fairlands 6.1.98

In view of the aforesaid criminal case the Appellant was arrested on the same day, 6th January, 1998 and was taken in custody.

18. The very same press note was used for issuance of detention order dated 9th January, 1998 by the 2nd Respondent, V. Jegannathan, the then Inspector General and Commissioner of Police, Salem City for detaining the Appellant under Tamil Nadu Act 14 of 1982, which reads as follows:

PROCEEDINGS OF THE INSPECTOR GENERAL AND COMMISSIONER OF POLICE,
SALEM CITY

PRESENT: THIRU V. JEGANNATHAN, I.P.S.,

Office of the Inspector General and Commissioner of Police, Salem City.

C.M.P. No. 04/GOONDA/SALEM CITY/98

Dated: 09-01-1998

DETENTION ORDER

Whereas, I, V. Jegannathan, I.P.S., Inspector General and Commissioner of Police, Salem City, on the materials placed before me, am satisfied that Thiru. N. Sengodan, Male, aged 59 years, son of late Nanjappa Gounder, No. 3/9, P&T Colony, (East) New Fairlands, Salem-16, Fairlands Police Station Limits, Salem City is a "Goonda" as contemplated under Tamil Nadu Act 14 of 1982, and

Whereas the aforesaid individual is found indulging in an activity prejudicial to the maintenance of Public Order and details of which are set out in detail in the grounds of detention.

Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slumgrabbers Act, 1982 (Tamil Nadu Act 14/1982) read with the orders issued by the Government in G.O. Ms. No. 221, Prohibition and Excise (XIV) Department dated: 18.10.1997 under Sub-section (2) of Section 3 of the said Act, I hereby direct that the said, Thiru N. Sengodan, Male, aged 59 years, son of late Nanjappa Gounder, No. 3/90, P&T Colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits, Salem City who is a 'GOONDA' be detained at the Central Prison, Salem.

Given under my hand and seal of this office, this the 9th day of January 1998.

Sd/- INSPECTOR GENERAL AND COMMISSIONER OF POLICE, SALEM CITY.

To Thiru N. Sengoan, Male, aged 59 years, Son of late Nanjappa Gounder, No. 3/90, P&T Colony (East) New Fairlands, Salem-16. Fairlands P.S. Limits, Salem City. (Now in Central Prison, Salem)

Through the Superintendent, Central Prison, Salem.

19. The Appellant having taken in Central Prison made a representation before the 2nd Respondent, Inspector General and Commissioner of Police, Salem City by stating that he has no criminal antecedents. It was further stated that he was in the 'Police TASK FORCE' under the State which was formed to nab the notorious sandal wood smuggler Veerappan and his associates. As a Police officer his service record remained extremely good and he had been rewarded a number of times and that meritorious service entry has been made in his service record. He took plea that even if the act alleged to have indulged is taken to be true, it neither constitute an offence nor will it result in the disruption of public order. He requested the Commissioner of Police, Salem City to revoke the order of detention and gave an undertaking that he will not indulge in any activity which is per se illegal and unlawful. The relevant portion of the representation dated 9th February, 1998 reads as follows:

I most respectfully submit as hereunder:

On 7-1-1998 the Inspector of Police, Fairlands, Salem City arrested me in my residence and took me to the Police Station. The grounds of arrest he informed is that a case has been registered at his station in Crime No. 11 of 1998 for offences u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and u/s 505(1) (b) Indian Penal Code and that the same was under investigation. I was further informed that the said case has been registered on 6.1.1998 upon a complaint said to have been given by Thiru. Gopi, Inspector of Police, Sooramangalam, Salem City to the effect that I was attempting to form an Association to fight for and secure certain rights to the serving Police personnel in the State of Tamil Nadu and thereby incidentally inciting the police personnel. Which is in a manner prejudicial to the maintenance of the public order on being produced before the Judicial Magistrate, I was remanded to judicial custody and lodged in the Central Prison, Salem.

On 9.1.1998 at about 3.45 p.m. The Superintendent, Central Prison, Salem served the order in reference on me. The Inspector General and Commissioner of Police, Salem City has passed the said order exercising the powers vested in him as the detaining authority under Act 14 of 1982, The detaining authority has passed this detention order on the basis and acting upon an Affidavit filed by Thiru. M. Ramasamy, Inspector of Police, Fairland Police Station as the sponsoring authority.

I submit that I had never been cited much less convicted for any offence previously, I have retired as a honest Police Officer I have never come to adverse

notice even during my service, I have been an ex-serviceman while in service while many officers were not willing to join the 'TASK FORCE' that was formed to nab the notorious sandal wood smuggler Veerappan I offered to join and indeed served in the "TASK FORCE".

I humbly submit that my record of service as a Police Official was extremely good. I have won several rewards and meritorious service entries.

I submit that even if the acts alleged to have indulged in are assumed to be true cannot be said they will result in the disruption of the Public Order it is nowhere said that as a result of my acts at any point of time or at any place a public order was disrupted.

I submit that I undertake not to indulge in any activities which is per se illegal and unlawful. I submit that I have not taken any part in the strike or in the connected activities. So I request that I am a innocent and I may be released at an early date. I assure you that I will not take any part in future in this connection.

I therefore request the Commissioner of Police to be pleased to consider this Memorial and revoke the order of detention.

Yours sincerely, Sd/- (N. SENGODAN)

DATED: 9-2-1998

20. The detention order was placed before the Advisory Board u/s 10 of the Tamil Nadu Act 14 of 1982. After taking into consideration the representation and the connected records the Advisory Board expressed its unanimous opinion that there was no sufficient cause for detention of the Appellant, N. Sengodan. In view of the non-approval of the detention order by the Advisory Board and its finding, the Government of Tamil Nadu revoked the detention order dated 9th January, 1998 by G.O. Rt. No. 636 dated 3rd March, 1998 issued from Prohibition & Excise (XIV) Department, Chennai. The revocation order dated 3rd March, 1998 reads as follows:

GOVERNMENT OF TAMIL NADU

ABSTRACT

PREVENTIVE DETENTION-Salem City-Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act 1982-Detention of Thiru. N. Sengodan, Goonda-Order of detention-Revoked.

PROHIBITION 7 EXCISE (XIV) DEPARTMENT

G.O. Rt. No. 66

Dated: 3-3-98.

Read:

1. From the Commissioner of Police, Salem City, Lr.CMP No. 4/Goonda/SLM/C/98, Dt: 12.1.1998.
2. G.O. Rt. No. 195/P&E Department, dated: 20-1-98.
3. From the Chairman, Advisory Board, report dt: 19-2-98.

ORDER:

The grounds of detention etc., of the detenu Thiru. N. Sengodan, s/o Thiru. Nanjappa Gounder, No. 3/90, P&T Colony (East) New Fairlands, Salem-16, Fairlands Police Station Limits, Salem City, were placed before the Advisory Board u/s 10 of the Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act 1982 (Tamil Nadu Act 14/1982). The Advisory Board after perusing the grounds of detention the report of the detaining authority to the Government, the written representation of the detenu dated: 9-2-98 and the connected records and also the oral representation of the detenu before the Advisory Board has expressed its unanimous opinion that there is no sufficient cause for the detention of Thiru. N. Sengodan. Therefore, in accordance with the Provisions of Sub-section (2) of Section 12 of the aforesaid Act, the Governor of Tamil Nadu hereby revokes the order of detention dated: 9-1-98 made by the Commissioner of Police, Salem City against the said Thiru. N. Sengodan and direct that Thiru. N. Sengodan be released forthwith from detention under the Tamil Nadu Act 14/1982 unless he has been detained under any law or is serving any sentence having been convicted by any court.

R. POORNALINGAM, SECRETARY TO GOVERNMENT.

21. In criminal case Crime No. 11/98 after investigation, the Respondents failed to get any ingredients to submit chargesheet against the Appellant, N. Sengodan. The 3rd Respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, who was dealing with the said criminal case after consulting the Assistant Prosecutor, Murugesan and going through the CD file opined that there was no necessary ingredients available to curb and hook-up the Appellant, N. Sengodan u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the Indian Penal Code and therefore, advised to drop further action. In view of the aforesaid opinion and materials on record Ramasamy, Inspector of Police, Fairlands Police Station submitted his final report dropping the case which reads as follows:

In the Court of the Judicial Magistrate No. V. Salem RCs. No. 19/2001, FINAL REPORT IN FAIRLANDS P.S. Cr. No. 11/98 u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) Indian Penal Code.

One Thiru. E. Gopi, the then Inspector of Police, Sooramangalam P.S. Preferred a complaint at Fairlands Police Station on 6.1.98 to the effect that the statement

given by Tr. Sengodan, a retired Inspector of Police and published in page No. 2 of second edition of Malai Murasu dated: 8.12.97 was inciting the police personnel of Tamil Nadu to form an Association to fight for their likely rights and produced the paper cutting. The statement was likely to incite the police personnel who read it to form an Association to fight for their rights and made out the offences, punishable u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) Indian Penal Code. So a case in Fairlands P.S. Cr. No. 11/98 under the abovesaid section, of law was registered and investigation was taken up.

The said retired Inspector of Police was arrested on 6-01-98 at his residence and produced before the court of JM. 5 on 7.1.98. He was remanded in Judicial custody. Finally, he was detained u/s 14 of Goondas Act by the Commissioner of Police, Salem vide CMP No. 04/Goondas/Salem City/98, dated: 2.1.98. But the Advisory Board revoked the said detention order vide G.O. Rt. No. 636 dated: 3.3.98 by virtue of which he was released.

Then I consulted the Assistant Prosecutor Tr. Murugesan, He went through the CD file and offered his opinion that the necessary ingredients to hook-up the said Tr. Sengodan under the said sections of law were lacking and in one and advised to drop further action.

Accordingly, further action in this case is hereby dropped.

Sd/- Ramasamy, Inspector of Police, Fairlands P.S.

In the meantime, because of criminal case and the detention order the Appellant had to remain under detention for a period from 6th January, 1998 to 3rd March, 1998.

22. From the counter-affidavit we find that M. Subbannan, Assistant Commissioner of Police, Western Range, Salem City, Salem by letter dated 7th January, 1998 informed the Inspector General and Commissioner of Police, Salem City, Salem that the Additional Director of Prosecution, I/C Salem on perusal of the records of the Crime No. 11/98 opined that the accused (Appellant herein) is a fit person to be detained as 'Goonda' under the Tamil Nadu Act 14 of 1982. He thereby requested that the action may be taken against the Appellant to detain him as 'Goonda' under the Tamil Nadu Act 14 of 1982. The said letter dated 7th January, 1998 reads as follows:

Dated: 7-01-1998.

D. THIRU. NAVUKKARASU, ASST. DIRECTOR OF PROSECUTION, DHARAMPURI i/ c SALEM.

I have perused the case diary file of Thiru. N. Sengodan, male aged 59 years, s/o late Nanjappa Gounder, 3/90 P&T Colony (East), New Fairlands, Salem-16, concerned in Fairlands P.S. Cr. No. 11/98 u/s 3 of the Police (Incitement to Disaffection) Act, 1992 and Section 505(1)(b) Indian Penal Code. Registered on

06.01.98.

2. The records reveal that the activities of the accused Thiru. Sengodan, in having instigated the police personnel by issue of press statement, to form an Association of their own, are prejudicial to the maintenance of public order. (copy of press statement enclosed).

3. While he was in service, Tr. Sengodan, claimed to be the President of South Arcot Distt. Police Association and after retirement from service as Inspector of Police on 31.10.1997, he has reportedly floated a self styled Union, viz., Tamil Nadu Government Police Officials Union and he claims to have applied for recognition of his Union by the Government.

4. Considering his past history and present activities inciting the police personnel to form an Association of their own to fight for their rights, I am of the opinion that the prevailing penal law is of no avail to curb his activities and with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order of detention and the accused is a fit person to be detained as GOONDA under Tamil Nadu Act 14/1982.

Asst. Director of Prosecution, Dharampuri i/c Salem.

23. On the same date, i.e., 7th January, 1998, 3rd Respondent, Mr. M. Ramasamy, Inspector of Police, Fairlands Police Station, Salem City by an affidavit before the Inspector General and Commissioner of Police, Salem City requested to issue an order of detention u/s 3(2) of the Tamil Nadu Act 14 of 1982. In the said letter 3rd Respondent, M. Ramasamy shown himself as Petitioner and the Appellant-accused as the Respondent. In the said affidavit he informed that he had come across the activities of the Appellant, who retired from service on 31st October, 1997 and is known for his pro-Police Association activities even while he was in Government service and claimed himself to be the President of South Arcot District Police Association and, therefore, requested to detain him as he would indulge in such activities continuously unless he was detained under the Tamil Nadu Act 14 of 1982. The affidavit dated 7th January, 1998 filed by the 3rd Respondent, Mr. M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City reads as follows:

BEFORE THE INSPECTOR GENERAL AND COMMISSIONER OF POLICE, SALEM CITY.

AFFIDAVIT FILED BY THIRU M. RAMASAMY, INSPECTOR OF POLICE, FAIRLANDS P.S., BEFORE THE COMMISSIONER OF POLICE, SALEM CITY, PRAYING FOR AN ORDER OF DETENTION u/s 3(2) OF THE TAMIL NADU ACT 14/1982.

I, M. Ramasamy, aged 43 years, son of Thiru Maruthaiah, Inspector of Police, Fairlands Police Station, Salem City, do hereby solemnly affirm and sincerely state as follows:

(1) I submit that I am the Inspector of Police, Fairlands P.S., having jurisdiction

over Fairlands P.S. Limits. I have been entrusted with the work of enforcement of law and order, detention of crime, prohibition and other related offences, prosecution of criminals who commit offences in violation of the provisions which adversely affect the public order.

(2) During the course of my above mentioned duties, I came across the activities of Thiru N. Sengodan, male, a retired Inspector of Police, aged 59 years, son of late Nanjappa Gounder, residing at No. 3/90 P&T Colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits, Salem City. Thiru Sengodan who retired from service on 31.10.97 is known for his pro-Police Association activities even while he was in Government service and claimed to be the President of South Arcot District Police Association. He is the self styled leader of Tamil Nadu Government Police Officials Union now.

(3) Further, on 08.12.97, he has come to adverse notice by issuing a press statement that appeared in Malai Murasu, inciting the police personnel of Tamil Nadu to form an association to fight for their rights and later he has toured the districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited the serving police personnel over forming of an association, and acted in a manner prejudicial to the maintenance of public order. In this connection, a case in Fairlands P.S. Cr. No. 11/98, u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) Indian Penal Code has been registered against him and the case is under investigation.

(4) I also submit that Thiru N. Sengodan was produced before the Judicial Magistrate No. V, Salem on 07.01.1998 and he was remanded to judicial custody at Central Prison, Salem as ordered. Now, Thiru N. Sengodan, is in remand at Central Prison, Salem, as a remand prisoner.

(5) The marks of identification of the accused are properly entered in the P.S.R. As below:

- (1) Two old wound scars on the forehead above the left eye.
- (2) Two old wound scars on the forehead above the left eye.
- (3) A block mole below the left eye.

The extract of the P.S.R. Is enclosed.

(6) Hence, there is every likelihood that Thiru N. Sengodan would indulge in such activity continuously unless he is detained under Tamil Nadu Act 14 of 1982.

I, therefore, request that necessary action may kindly be taken against him, under Tamil Nadu Act 14/1982, if deemed fit, by the Detaining Authority.

INSPECTOR OF POLICE, FAIRLANDS POLICE STATION, SALEM CITY.

Solemnly affirmed at Salem, this 7th day of January 1998 and signed his name in my presence.

24. The same ground was shown in the order of detention vide proceedings dated 9th January, 1998 of the Inspector General and Commissioner of Police, Salem City, which reads as follows:

PROCEEDINGS OF THE INSPECTOR GENERAL AND COMMISSIONER OF POLICE.

SALEM CITY.

PRESENT: THIRU V. JEGANNATHAN, I.P.S.

C.M.P. No. 04/GOONDA/SLM(C)/98

DATED: 09.01.1998.

Sub: Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers Act, 1982 (Tamil Nadu Act 14/1982)-Detention of Thiru N. Sengodan, male, aged 59 years, son of late Nanjappa gounder, residing at No. 3/90, P&T colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits, Salem city u/s 8(2) of the Act-Grounds of detention.

ORDER:

Thiru N. Sengodan, male, aged 59 years, son of late Nanjappa gounder and a retired Inspector of Police, residing at No. 3/90, P&T Colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits; Salem City; has come to adverse notice as detailed below:

(i)Thiru N. Sengodan, who retired as Inspector of Police on 31-10-1997 from Attur Town Police Station in Salem District, is known for his pro-Police Association activities.

(ii) Even while he was in Government service, he had indulged in such Police Association activities and claimed himself as the President of South Arcot District Police Association.

(iii)After his retirement on 31-10-1997 from Govt. Service, Thiru N. Sengodan, has floated an Association called, "Tamilnadu Government Police Officials Union" for the police personnel: (The Press statement of Tr. N. Sengodan appeared in "Malai Murasu" on 8.12.97 will speak to this effect)

2) A detention order u/s 3(2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14/1982) has been made against Thiru N. Sengodan, male, aged 59 years, son of late Nanjappa gounder, residing at No. 3/90, P&T Colony (East), New Fairlands, Salem-16, Fairlands Police Station limits, Salem City in C.M.P. No. 04/Goonda/Salem City/98, dated 09-01-1998.

3) The grounds on which detention has been made are as follows:

On 08-12-1997, Thiru N. Sengodan, male, aged 59 years, son of late Nanjappa gounder, residing at No. 3/90, P&T Colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits, Salem City, has issued a press statement that appeared in "Malai Murasu", Salem edition, in which, he has, in the capacity of Organiser, Tamil Nadu Government Police Officials Union, reiterated his earlier demand placed before the Government on formation of an Association for police personnel. Further, he has urged formation of such an Association to protect the interests of police personnel and to ventilate their grievances.

Further, after issuing the above press statement, Thiru N. Sengodan has toured the districts of Coimbatore, Tirucheniappalli, Pudukottai and Chennai City and incited the service police personnel over formation of an Association, and acted in a manner prejudicial to the maintenance of public order. This is evident from the statements got recorded from the witnesses: (1) Thiru Ramachandran, PC 1804, Dheevattipati P.S., (2) Thiru Duraisamy, H.C. 439, Hasthampatti P.S. (Crime).

Following appearance of press statement in "Malai Murasu" Thiru E. Gopi, Inspector of Police, Sooramangalam Police Station appeared at Fairlands Police Station at 2000 hours on 06.01.98 and preferred a complaint to the effect that the statement issued by Thiru N. Sengodan, is inciting the Police personnel of Tamil Nadu to form an Association to fight for their rights. He requested to take appropriate action against Thiru N. Sengodan.

The Inspector of Police, Fairlands Police Station recorded the said complaint in the G.D. At 2000 hours on 06.01.98 and registered a case in Cr. No. 11/98, u/s 3 of the Police (Incitement to disaffection) Act, 1922 and Section 505(1)(b) Indian Penal Code, against Thiru N. Sengodan, for commission of offences in inciting the police personnel to form an Association.

The Inspector of Police, Fairlands P.S. Took up investigation of the case, and he, alongwith his party proceeded to the residence of Thiru N. Sengodan, No. 3/90, P&T Colony (East), New Fairlands, Salem-16, and arrested him at 2200 hours, on 06.01.98. On being interrogated, Thiru N. Sengodan, admitted of having given the press statement to "Malai Murasu" on 08.12.97 on the need for the formation of an Association for Police personnel. He was then brought to Fairlands Police Station at 2230 hours on 06.01.98 and was handed over to the station sentry Gr. 1 PC. 2340 Selvakumar for custody. Later, Thiru N. Sengodan was produced before the Judicial Magistrate No. 5, Salem at 0100 hours on 07.01.98 and was remanded to judicial custody for 15 days upto 20.01.98, at Central Prison, Salem. The case is under investigation.

4) Hence, I am satisfied that Thiru N. Sengodan habitually committing violent crimes and is also acting in a manner prejudicial to the maintenance of public order and as such he is a Goonda as contemplated Under Sections 2(a)(f) of the Tamilnadu Act 14/1982.

5) xxxxxxxx

6) xxxxxxxx

7) xxxxxxxx

Inspector General and Commissioner of Police, Salem City.

On the same date, i.e., 9th January, 1998 the detention order was issued by the Inspector General and Commissioner of Police, Salem City.

25. From the different communications, report, FIR and orders as quoted above, we find that the following allegations were levelled against the Appellant:

i) the Appellant, retired Inspector of Police by press statement published in the second edition of " Malai Murasu" dated 8th December, 1997 incited the police personnel of Tamil Nadu to form an Association to fight for their likely rights;

ii) the statement aforesaid was likely to incite the police personnel who read it to form an Association to fight for their rights;

iii) the aforesaid incitement and press note made out the offences, punishable u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the Indian Penal Code;

iv) the records reveal that the activities of the accused-Appellant, in having instigated the police personnel by issue of press statement, to form an association of their own, are prejudicial to the maintenance of the public order;

v) while he was in service, the Appellant claimed to be the President of South Arcot District Police Association and after retirement from service as Inspector of Police on 31st October, 1997, he had reportedly floated a self-styled Union, viz., Tamil Nadu Government Police Officials Union and he claimed to have applied for recognition of his Union by the Government; and

vi) his past history and present activities in inciting the police personnel to form an Association of their own to fight for their rights and such activities are prejudicial to the maintenance of the police order which cannot be curtailed by prevailing penal law and, therefore, it was necessary to declare him "Goonda" for detention under the Tamil Nadu Act 14 of 1982.

26. Section 3 of the Police (Incitement to Disaffection) Act, 1922 stipulates penalty for causing disaffection towards the State, etc. Reads as follows:

Section 3. Penalty for causing disaffection, etc. Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause disaffection towards the Government established by law in India amongst the members of a Police Force, or induces or attempts to induce, or does any act which he knows is likely to induce any member of a police force to withhold his service or to commit a breach of discipline shall be punished with imprisonment which may extend to six months or with fine which may extend to two hundred rupees, or with both.

27. Thus the question that arises is whether the intention of the Appellant (a

retrieved police officer) to form Association of Police force amounts to causing disaffection towards the Government established by law to attract Section 3 of Police (Incitement to Disaffection) Act, 1922. To decide such issue one may refer one of the Central Acts enacted by the Parliament known as "The Police-Forces (Restriction of Rights) Act, 1966 (Act 33 of 1966) (hereinafter referred to as the "1966 Act") to provide for the restriction of certain rights conferred by Part III of the Constitution in their application to the members of the Forces charged with the maintenance of public order as to ensure the proper discharge of their duties and the maintenance of discipline among them. Section 3 of the 1966 Act restricts right to form association, freedom of speech, etc., which reads as follows:

Section 3. Restrictions respecting right to form association, freedom of speech, etc.-

(1) No member of a police force shall, without the express sanction of the Central Government or of the prescribed authority,-

(a) be a member of, or be associated in any way with, any trade union, labor union, political association or with any class of trade unions, labor unions or political associations; or

(b) be a member of, or be associated in any way with, any other society, institution, association or organization that is not recognized as part of the force of which he is a member or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the bona fide discharge of his duties or is of a purely literary, artistic scientific character or is of a prescribed nature.

Explanation.- If any question arises as to whether any society, institution, association or organization is of a purely social, recreational or religious nature under Clause (b) of this Sub-section, the decision of the Central Government, thereon, shall be final.

(2) No member of a police-force shall participate in, or address, any meeting or take part in any demonstration organized by any body of persons for any political purposes or for such other purposes as may be prescribed.

28. u/s 4 of the 1966 Act penalty is prescribed as: if any police officer violates the said provisions, shall, without prejudice to any other action that may be taken against him, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

29. It is apparent from Section 3 of the Act 1966 that there is no specific ban to form association but there is a restriction to form association. A Police personnel

can be a member of, or can be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations only with the express sanction of the Central Government or of the prescribed authority. For attracting the penalty u/s 3 for causing disaffection, it is to be proved that the person concerned intentionally caused or attempted to cause or done any act which is likely to be disaffection towards the Government established by law in this country among the members of the Police force or induces or attempts to induce or does any act which he knows likely to induce any member of the Police force to withhold his service or committed breach of discipline.

30. From the press statement dated 8th December, 1997 it is apparent that no incitement has been made by the Appellant against the State Government nor the Police force has been instigated. The Appellant cited past incident of 30th November, 1997 in which one Selvaraj a Police constable was attacked and killed which could not be brought to the notice of the Government by Police constables for taking proper action and their wives were forced to fight for their rights by coming to the street in bringing this to the notice of the Government. A reminder was given to the Chief Minister to allow to form Association or Union for the purpose of seeking proper protection to the Police constables and to overcome their difficulties and to explain their true state of affairs as apparent from the following part of the press note dated 8th December, 1997:

For example on 30.11.97 in the incident that took place in Kovai one Constable Thiru Selvaraj was attacked and died and even this incident could not be brought to the notice of the Government by police constables for taking proper action in this regard and on their behalves, their respective wives are forced to fight for their rights by coming to the street in bringing this to the notice of the Government.

Thus in order to avoid this situation, already a request was made to the Government by the officials in the Police Department to form an Association/ Union and to act accordingly. As a reminder, again such request is made for forming of an association for the purpose of seeking proper protection to the constables and to overcome their difficulties and to explain their true state of affairs.

Therefore, the Hon'ble Doctor Kalaignar who is treating the people belonging to various community, as equal, is requested to accord sanction to form an association for the above said purposes.

31. Section 505 of the Indian Penal Code relates to the statements conducing public mischief. Sub-section (1)(b) of Section 505 Indian Penal Code reads as follows:

Section 505. Statements conducing to public mischief.-

(1) Whoever makes, publishes or circulates any statement, rumour or report,--

(a) xxx xxx xxx

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) xxx xxx xxx,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

32. In the present case nothing has been brought to the notice of this Court to prove that the Appellant with intent to cause, fear or alarm to the public, or to any section of the public or to induce to commit an offence against the State Government or against the public tranquility, issued the above said press statement.

Therefore, it is not clear on what basis the charge u/s 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the Indian Penal Code was levelled against the Appellant.

33. From the final report filed in the Fairlands Police Station Crime No. 11/98 by Mr. M. Ramasamy, Inspector of Police, Fairlands Police Station, as quoted above, we also find that in absence of ingredients to hook-up the Appellant under the aforesaid sections of law it was advised to drop the criminal case and the same was accordingly dropped.

34. The Appellant was declared as 'Goonda' under detention order dated 9th January, 1998 and was detained under the Tamil Nadu Act 14 of 1982. 'Goonda' is defined u/s 2(f) of the Tamil Nadu Act 14 of 1982 which reads as follows:

Section 2(f) "Goonda" means a person, who either by himself or as a member of or leader of a gang habitually commits, or attempts to commit or abets the commission of offence, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act XLV of 1860).

35. Section 2(a) of the Tamil Nadu Act 14 of 1982 defines "acting in any manner prejudicial to the maintenance of public order", which in the case of 'Goonda' means

Section 2(a): "acting in any manner prejudicial to the maintenance of public order" means -

(iii) in the case of a goonda, 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.

36. In the present case the Respondents have failed to bring on record the evidence to show that the Appellant was engaged, or was making preparations for engaging, in any of his activities as a 'Goonda' which may affect or are likely to affect adversely the maintenance of public order. There is nothing on record to

suggest that the Appellant, who either by himself or as a member of or leader of a gang habitually committed, or attempted to commit or abetted the commission of offence punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code. In fact, in absence of any such ingredients, the Advisory Board constituted u/s 10 of the Tamil Nadu Act 14 of 1982 rightly held that there was no sufficient cause for detention of the Appellant. For the same very reason the State Government revoked the order of detention dated 9th January, 1998 made by the Commissioner of Police, Salem City by G.O. Rt. No. 66 dated 3rd March, 1998 issued from Prohibition and Excise (XIV) Department.

37. The 4th Respondent, E. Gopi, the then Inspector of Police, Sooramangalam Police Station, Salem who preferred the complaint on 6th January, 1998 (FIR) referring to the press statement observed that the Appellant intentionally caused disaffection towards the Police Department, established by law, in Tamil Nadu and the same was made with the intention of committing a breach of discipline amongst the Police Force and to induce them to withheld their services.

The same view was taken by the 2nd Respondent, the then Inspector General and Commissioner of Police, Salem City who declared the Appellant as "Goonda" on the basis of the aforesaid material on record and issued order of detention on 9th January, 1998.

Mr. D. Navukkarasu, Assistant Director of Prosecution by letter dated 7th January, 1998 referring to the aforesaid incident, reported as follows:

2. The records reveal that the activities of the accused Thiru. Sengodan, in having instigated the police personnel by issue of press statement, to form an Association of their own, are prejudicial to the maintenance of public order. (copy of press statement enclosed).

3. While he was in service, Tr. Sengodan, claimed to be the President of South Arcot Distt. Police Association and after retirement from service as Inspector of Police on 31.10.1997, he has reportedly floated a self styled Union, viz., Tamil Nadu Government Police Officials Union and he claims to have applied for recognition of his Union by the Government.

4. Considering his past history and present activities inciting the police personnel to form an Association of their own to fight for their rights, I am of the opinion that the prevailing penal law is of no avail to curb his activities and with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order of detention and the accused is a fit person to be detained as GOONDA under Tamil Nadu Act 14/1982.

38. The 3rd Respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City in his affidavit stated that the Appellant who retired from service on 31st October, 1997 is known for his pro-police association activities even while he was in service. It was further stated that the Appellant claimed to be the President of the South Arcot District Police Association while in

service and is a self styled leader of Tamil Nadu Government Police Officials Union now. He further submitted by his affidavit dated 7th January, 1998 before the Inspector General and Commissioner of Police, Salem City and stated that the Appellant was inciting the police personnel of Tamil Nadu to form an Association to fight for their rights and later he toured districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited the serving police personnel for forming an association and acted in a manner prejudicial to the maintenance of the public order. It is also stated that the Inspector General and Commissioner of Police accepted the aforesaid stand taken by the other Respondents.

39. We have already noticed that there is nothing on the record to suggest that the Appellant while in service took part in pro-police association activities or formed any association such as South Arcot District Police Association. There is nothing on the record to suggest that he formed another association after retirement, namely, Tamil Nadu Police Officials Union. The Respondents have failed to bring on record any evidence to suggest that the Appellant incited the police personnel of Tamil Nadu to form an association to fight their rights against the Government. The Respondents have also failed to bring on record that the Appellant toured to the Districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited serving police personnel over forming an association in a manner prejudicial to the maintenance of the public order.

40. The Respondents have filed certain statements of some police officers but they cannot be relied upon. They are not the statements made by any person u/s 161 of the Code of Criminal Procedure or before any Court of law. Neither any date is shown therein nor it is stated that they are true copies of the original documents.

41. In the present case, though there is no sufficient cause for the detention of the Appellant, in the counter-affidavit filed by the 1st Respondent, 2nd Respondent, V. Jegannathan, the then Inspector General and Commissioner of Police, Salem City and the 3rd Respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City, they have taken similar plea that the activities of the Appellant in having instigating the police personnel by issuing a press statement to form an association of their own which was prejudicial to the maintenance of the public order. Again similar plea has been taken that the Appellant was the President of South Arcot District Police Association and after retirement on 31st October, 1997 he floated a self styled Union, viz., Tamil Nadu Government Police Officials Union and there is a past history and present activities to show that he incited the police personnel to form an association of their own to fight for their rights against the Government. These statements made in the counter-affidavit are not based on the record and the justification given for detention clearly shows that the 1st Respondent, 2nd Respondent, V. Jegannathan, the then Inspector General and Commissioner of Police, Salem City and the 3rd Respondent, M. Ramasamy, the then Inspector of Police, Fairlands

Police Station, Salem City with an intention detained the Appellant on 6th January, 1998 based on facts which were not in existence. The Appellant had to remain in custody for more than two months on the basis of opinion given by the Respondents based on facts which were not in existence.

42. We have noticed that the Respondents have not even repented in taking wrong action, they have nowhere mentioned that the Appellant was wrongly apprehended and taken in custody.

43. From the plain reading of the press note published in the Tamil Newspaper "Malai Murasu" it merely shows that the Appellant had made a requisition on behalf of the officials working in the Tamil Nadu Police Department to the Hon'ble Chief Minister of Tamil Nadu, Dr. Kalam stating that the police is forced to seek protection for themselves as they have no solution as to how to stress their demands to the government. Example of the incident of 30th November, 1997 has been shown in the said press statement when one of the constables was attacked and killed and wives of the police personnel were forced to fight for their rights by coming to the street to bring certain facts to the notice of the State Government. It was mentioned that in order to avoid this situation a request has already been made to the Government by the officials in the Police Department to form an Association/Union to act accordingly. Thereby, Hon'ble Dr. Kalam, the then Chief Minister was requested to accord sanction to form an Association for the above said purpose.

44. The aforesaid press statement does not make out a case either u/s 3 of the Police (Incitement to Disaffection) Act, 1992 or u/s 505(1)(b) of the Indian Penal Code. On the other hand, the press release shows that the Appellant acted in accordance with the 1966 Act under which permission is required to form an Association.

45. In the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, this Court defined mala fides and held:

50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not

sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

This Court in the same case of P.P. Sharma (supra) further held that the person against whom mala fides or bias was imputed should be impleaded as a party Respondent to the proceedings and given an opportunity to meet those allegations.

46. In this case the Appellant has not only made assertion but demonstrated by placing either by admitted or proved facts and circumstances obtainable that even though the case is not made out but he was harassed.

47. Personal liberty is of the widest amplitude covering variety of rights. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of Constitution and is not empowered to trample upon the personal liberty of a person when he has acted by malafides, as held by this Court in the case of P.P. Sharma (supra).

48. It has already been noticed that the Respondents before the Advisory Board or before the trial court failed to bring on record any evidence to frame the charges against the Appellant u/s 3 of the Police (Incitement to Disaffection) Act, 1992 and u/s 505(1)(b) of the Indian Penal Code or under the Tamil Nadu Act 14 of 1982. In spite of the same, 1st Respondent, 2nd Respondent, V. Jegannathan, the then Inspector General and Commissioner of Police, Salem City and the 3rd Respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City before this Court have taken similar plea that the Appellant was inciting the police personnel in Tamil Nadu to form an association to fight for their rights and toured the districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited the serving police personnel over forming of an association, and acted in a manner prejudicial to the maintenance of public order. By way of additional affidavit certain so called statements of persons have been enclosed which have been filed without any affidavit and were neither the part of the trial court record or material placed before the Advisory Board. The aforesaid action on the part of the 1st, 2nd, 3rd and 4th Respondent in support of their act of detaining the Appellant illegally by placing some material which has beyond the record justifies the Appellant's allegation that the Respondents abused their power and position to support their unfair order.

49. In view of the observation made above, though we do not give specific finding on mala fide action on the part of the 1st, 2nd, 3rd and 4th Respondent but we hold that the Respondent-State and its officers have grossly abused legal power to punish the Appellant to destroy his reputation in a manner non-oriented by law by detaining him under the Tamil Nadu Act 14 of 1982 in lodging a Criminal Case No. 11/98 u/s 3 of the Police (Incitement to Disaffection) Act,

1992 and u/s 505(1)(b) of the Indian Penal Code based on the wrong statements which were fully unwarranted.

50. This Court in the case of Bhut Nath Mete Vs. The State of West Bengal, held that an "Administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power". The present case is also covered by the observation as we find that the action taken by the Respondents based on reasons of fact which do not exist, therefore, the same is held to be infected with an abuse of power.

51. In view of the finding aforesaid, we allow the appeal and impose a cost of Rs. 2 lacs on the State of Tamil Nadu for payment in favour of the Appellant. The Respondents are directed to ensure the payment within two months. However, there shall be no separate order as to costs.