

(1990) 10 MAD CK 0042
In the Madras High Court
Case No : Writ Petition No. 5297 of 1990

Pandurangan

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 19-10-1990

Acts Referred:

Penal Code, 1860 (IPC) — Section 336, 380, 392, 394, 397

Citation : (1991) CriLJ 1694

Hon'ble Judges : K.M. Natarajan, J;K. Swamidurai, J

Bench : Division Bench

Advocate : Mrs. R. Subadra Devi, for the Appellant; Public Prosecutor, for the Respondent

Judgement

K.M. Natarajan, J.—This writ petition has been filed by the detenu himself under Art. 226 of the Constitution of India for issuance of a writ

of Habeas Corpus directing the respondents to produce the petitioner before Court and set him at liberty.

2. In exercise of the powers conferred by sub-section (1) of S. 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drugs

Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act 1982 (Tamil Nadu Act 14 of 1982, hereinafter referred to as the Act,

with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order, the Commissioner of police,

Madras City, the second respondent, passed the impugned order. The detenu came to the adverse notice as a goonda in view of 15 adverse cases

referred to in the preamble to the grounds of "detention and has been detained on the ground case dated 17-I-1990. Though several grounds were

raised in the petition, the learned counsel for the petitioner confined her

arguments on only one ground, namely, the ground case would at the most come under the category of law and order problem and at no stretch of imagination it can be mentioned that he acted in a manner : prejudicial to the maintenance of public order, and therefore the order is liable to be quashed. It is seen from the various adverse cases that from 4- 2-1989 to 7-1-1990 the detenu was involved in various cases for committing offences of house trespass and theft in dwelling houses by breaking open the " front door. Charge-sheets have been laid for various offences under Sections 457, 380, 511 and 75, IPC. It is seen that he is also an old offender. It is now represented that those cases were pending at the time of passing of the impugned order and subsequently he pleaded guilty and he was convicted in all those cases and sentenced to imprisonment ranging upto one year. In the counter-affidavit filed on behalf of the second respondent it is stated in para 9 that it is not correct to say that the ground case would come under the purview of law and order and not under public order. It is also stated that the petitioner along with his associates not only committed robbery but also threatened one Balu, the owner of the property, at the point of knife with dire consequences, hurled jelly stones over Balu and others who were chasing him and later when the police party came, they were also threatened with dire consequences by the detenu and thereby created terror and panic as disclosed in the grounds of detention.

3. The facts involved in the ground case as disclosed from the grounds of detention are briefly as follows : One Balu was returning from Mount Road at about 7.15 p.m. on 17-1-1990. He noticed the detenu and another Mohamed Ali standing at the junction of Marshall Road and Montieth Road. Though in the first instance the detenu and Mohamed Ali called Balu and asked him whether it is the way to go to Woodlands Theatre, when Balu showed them the way to the theatre, the associate of the detenu asked Balu as to whether he was having a match box. When he replied in the, negative, the detenu asked the said Balu as to the contents of his pocket. When Balu replied that he did not have anything in his pocket, the detenu and his associate caught hold of Balu and the Associate removed Rs. 25/- from his pocket and the detenu removed his gold ring weighing 1/2 sovereigns from his left hand. While committing robbery. Balu raised a hue and cry. The detenu as well as his associate took out a pen knife

and terrorised Balu by saying that he would be stabbed. Balu became panicky. It is stated that the detenu terrorised Balu by holding the knife over his stomach. They further terrorised Balu and asked him to run away without turning. Balu noticed one Ravi and Vadivelu at that time and he requested to help him. When all the three joined together and rushed to apprehend the detenu and his associate, they in front of the Airlines Office picked up jelly stones which were kept on the road and pelted the same at Balu and others saying that they would stab and remove the intestine if they have come near to catch them. Balu and others did not do anything. One of the jelly stones pelted by Mohamed Ali caused an injury to Balu over his left side chest and he suffered pain due to the attack. The detenu and his associate, by brandishing the knife against Balu and others, terrorised them. They also moved here and there and terrorised every one at the spot. The public who were proceeding on the road side having noticed the atrocious activities of the detenu and his associate, feared danger to their life and property and moved here and there. The cyclists who were crossing the road side having noticed the atrocious activities of the detenu and his associate feared danger to their life and property and turned back in the same direct on. Mohamed Ali and the detenu terrorised the public at the spot by saying they were standing and witnessing and that they should run away. The public who were at the spot ran away. Having noticed the atrocious activities of the detenu and his association, a tender coconut vendor feared danger and abandoned his pulling cart and ran away. A police party consisting of Head Constable. Chelliah and others, who were proceeding on best duty, noticed the atrocious activities of the detenu and his associate Mohamed Ali and they rushed to apprehend the culprits. The detenu and his associate terrorised the police party also with dire consequences. The police party with the assistance of the Balu and others, apprehended the detenu arid Mohamed Ali and later brought them to the police station. The police party seized the ring and Rs. 25/- as well as the knives. A case in Cr. No. 103 of 1990 under Sections 392 read with 397, 394, 336 and 506(II), I.P.C. of F. 2 Egmore Police Station was registered on the complaint of Balu.

4. The learned counsel for the petitioner, drew our attention to two decisions reported in Kanniappan v. Commissioner and Secretary to

Government of Tamil Nadu, 1988 2 MWN 120 and W.P. No. 7789 of 1987 dated I-3-1988 (Singaram alias Paathi Moonji Singaram v. The

State of Tamil Nadu, rep. by its Special Commissioner and Secretary to Government and another), of which one of us (K.M.N.J.) was a party,

and submitted that in similar circumstances it was held by this court that the detenu resorted to acts of violence only to escape from his pursuers

and the acts of the petitioner were those directed only against those who have tried to catch hold of him and not against the public at large and that

they are acts detrimental to law and order but not to the maintenance of public order. The decision in Kanniappan v. Commissioner and Secretary

to Government of Tamil Nadu, 1988 2 MWN 120 is case where, when the inmate of a house woke up on hearing a noise, the inmate of the house

saw the detenu carrying with him a brass vessel belonging to the said inmate. When the inmate tried to catch the culprit, he pushed him aside and

ran away. He raised noise and the neighbours came to his help. When the detenu was chased by those persons, he took out a knife and threatened

the pursuers. He also took the old bottles from the nearby old bottle shop and broke them on the street. This has created terror and panic. The

people who came to the milk booth and women who came to the scene ran out of fear. The detenu who was chased, fell down and he was

apprehended. Only in that circumstance, it was held in that case that the detenu has resorted to acts of violence only with a view to escape from his

pursuers. That decision is not at all helpful to the case of the petitioner. Similarly, in W.P. No. 1789 of 1987, the detenu was found taking a purse

from the shirt pocket of Shekul Hameed. He ran towards west and was chased by the said Shahul Hameed and was caught by him. The detenu

wriggled out from the cultches and tried to run away. The neighbours came to the assistance of Shahul Hameed and they also chased him. At that

time the detenu took out a folded knife and threatened them with dire consequences. However, he was prevented from escaping by the pursuers.

It was only in that circumstance, it was held that the acts of the petitioner were those directed only against those who have tried to catch hold of

him and they are not acts of such magnitude as to lead to the conclusion that they were prejudicial to the maintenance of public order, but they are

acts detrimental to law and order.

5. In the instant case, it is seen that the detenu is an old offender and during the period of 11 months he had committed as many as 15 house

trespass and theft in dwelling houses of various articles worth about Rs. 500/- to Rs. 50,000/- All those cases were investigated and charge-

sheets were also filed. Properties were also recovered in many cases. It is not in dispute that all those cases ended in conviction on the plea of guilt.

In Ashok Kumar Vs. Delhi Administration and Others, , the first information report shows that the petitioner is a desperate and dangerous

character. He along with his associates had been involved in serious criminal activities like theft, robbery , and snatching of ornaments by the use of

knives and firearms during a span of four years only in particular residential areas of Delhi. While he and his associates were facing trial or matters

were still under investigation the impugned order of detention under the National Security Act was served on him. It was held :

The prejudicial activities of the detenu, as revealed in the grounds of detention, consist of a consistent course of criminal record. The detenu

appears to have taken to a life of crime and become a notorious character. The fact that the petitioner and his associates are facing trial or the

matters are still under investigation, only shows that they are such dangerous characters that people are afraid of giving evidence against them. The

armed hold up by gangsters in exclusive residential areas of the city where persons are deprived of their belongings at the point of knife or revolver,

reveal organised crime. The particular acts enumerated in the grounds of detention clearly show that the activities of the detenu cover a wide field

and fall within the contours of the concept of public order.

It was further held :

Preventive detention is devised to afford protection to society. Any preventive measures, even if they involve some restraint or hardships upon

individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. Justification

for such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. The Executive

is empowered to take recourse to its power of preventive detention in those cases where the Court is genuinely satisfied that no prosecution could

possibly succeed against the detenu because he is a dangerous person who has

overawed witnesses or against whom no one is prepared to

depose." Ultimately it was held that there was public order. It is worthwhile to quote the observations of Their Lordships :

The distinction between the concepts of "public order" and "Law and order" lies in the degree and extent of the reach of the act upon society.

Acts similar in nature but committed in different contexts and circumstances might cause different reactions. What essentially is a problem relating

to law and order may due to sudden sporadic and intermittent acts of physical violence on innocent victims in the metropolitan city of Delhi result in

serious public disorder. It is the length, magnitude and intensity of the terror wave unleashed by 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. It is the potentiality of the act to

disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.

Applying the ratio to the facts of this case, it is seen that the detenu is an old offender and he has committed various acts of house trespass and

theft in dwelling houses in the city of Madras even after obtaining bail in each case. Further, in the ground case, as distinguished from the other

cases relied on by the learned counsel for the petitioner, while committing robbery, namely, snatching the gold ring and cash from the pocket of the

victim, the victim raised a cry when the detenu took out a pen knife and terrorised him by holding the same over his stomach. Similarly, his

associate also did it. It is not the case that the detenu, in order to escape from the pursuers when he was chased, resorted to violence as was done

in the other cases. The overt-acts attributed in the ground case clearly show that they are all acts which do-constitute maintenance of public order

attracting S. 3(1) of the Act. No other point is urged.

6. In the result, the writ petition fails and stands dismissed.

7. Petition dismissed.