

(1991) 03 MAD CK 0025
In the Madras High Court
Case No : Writ Petition No. 16909 of 1990

Paul Pandi

APPELLANT

Vs

The State of Tamil Nadu and others

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 124A, 147, 148, 307, 324
Prevention of Insults to National Honour Act, 1971 — Section 2

Citation : (1992) CriLJ 1394

Hon'ble Judges : Mishra, J;Janarthanam, J

Bench : Division Bench

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

Judgement

Mishra, J.—The petitioner herein has been detained u/s 3(1) 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 of 1982). It is stated in the

grounds of detention that he has been involved in Sivakasi East P.S. Cr. No. 288 of 1990 under sections 147, 148, 324 and 307 of the Indian

Penal Code in which case he was arrested on 27-6-1990, sent for remand and later released on bail on 25-7-1990. This case related to an

occurrence dated 20-6-1990 committed at about 20.00 hours at Pitchandi Street at Sivakasi in which the petitioner along with 21 others formed

into an unlawful assembly, armed with deadly weapons and caused a stab injury to one Pandiyarajan on the back of his left with a broken soda

bottle, it is said, on account of previous enmity. In yet another case, Sivakasi Town P.S. Cr. No. 406 of 1990, he was arrested on 27-6-1990 and

released on bail on 18-7-1990. This was in connection with an occurrence dated 24-6-1990 at about 05.00 hours at Pudhu Road, Sivakasi in

which occurrence, the petitioner allegedly trespassed into the dais and severed the head of a statute of Dr. Ambedkar with respect to which one S.

P. Raj, State President, Scheduled Caste Liberation Movement, lodged a complaint with the police for the alleged offences under sections 447,

427 and 124-A of the Indian Penal Code and Section 2 of Prevention of Insult to National Leader's Honour Act, 1971. Soon thereafter, it seems,

on 28-8-1990, the petitioner was found involved in another occurrence giving rise to Sivakasi East P.S. Cr. No. 445 of 1990, in which the

petitioner was accused of pelting stones on the house of one Ramar and causing damage to the tiles worth about Rs. 50/- as well as threatening

Ramar with dire consequences. The occurrence in this case allegedly took place on 28-8-1990 at 20.00 hours at Pudhu Street, Sivakasi. The

petitioner was arrested on 1-9-1990 and sent for remand, but later released on bail on 5-9-1990. This offence, it is said, was also committed by

the petitioner on account of previous enmity.

2. The case, however, which has been described as the ground case, has been registered on a reported by one Karuppiyah of Pudhu Street,

Sivakasi, Karuppiyah belongs to Parayar Community and he is a member of Dr. Ambedkar Liberation Movement. Since on 24-6-1990 at about

5.00 hours (Sivakasi East P.S. Cr. No. 456/90 the petitioner has caused damage to the statute of Dr. Ambedkar, it is said, the above incident

annoyed the members of the Dr. Ambedkar Liberation Movement particularly Karuppiyah. On 1-9-1990 at about 12.00 hours, Karuppiyah

happened to see the petitioner at Rathina Vilas Bus Stop in Sivakasi. He confronted the petitioner and asked him :

and tried to rab him. It is said, thereupon, the petitioner immediately brandished a soory knife and shouted,

and threatened Karuppiyah. This made Karuppiyah hesitant. The petitioner then took up a soda bottle from a nearly shop and threw it at Karuppiyah.

As Karuppiyah stepped aside, the said bottle broke into pieces and spread out on the road. In the ground case, it is thereafter said,

The daring act of Thiru Paul Pandi alias Emakandan created an alarm among the members of the public. Further, brandishing a soory knife, he

threatened Thiru Karuppiah and the General Public in a rowdy way shouting, On hearing this threat, the pedestrians and general public of the area ran here and there out of fear. The shop keepers shut their shops. The platform vendors stopped their business and ran out of fear abandoning their goods. The passengers, who travelled in the cycle rickshaw got down and ran out of fear. The women folk who were drawing water from the nearby Municipal water lorry ran out of fear from that place abandoning their pots in the public place. The drivers abandoned their buses, lorries, cycle, rickshaws in the middle of the road and ran away. The entire traffic in the by-pass road, Sivakasi came to a stand-still for about twenty minutes. Thus Thiru Paulpandi alias Emakandan created terror and caused disturbance to the public tranquillity. However Thiru karuppiah getting encouraged overpowered Thiru Paulpandi alias Emakandan. But the latter stabbed Thiru Karuppiah on his left forearm and voluntarily caused incised wound. At last Thiru Karuppiah caught hold of Thiru Paulpandi alias Emakandan, seized the soori knife from him and produced him with the seized weapon before the Sub-Inspector of Police, Sivakasi East Police Station and on the complaint by Thiru Karuppiah at about 12.30 hrs. On 1-9-90 a case was registered in Sivakasi East P.S. Cr. No. 4569/90u/Ss. 324, 506(II), IPC against Thiru Paulpandi alias Emakandan. The case is under investigation.

3. It is well settled that undeterred by any description, every fact leading to the conclusion that a certain person is a goonda and that his acts a goonda affect adversely or likely to affect adversely the maintenance of public order is a ground of detention. The facts aforementioned show that the petitioner committed offences in Sivakasi East P.S. Cr. No. 288 of 1990 and Sivakasi East P.S. Cr. No. 445 of 1990 to assault one Pandiarajan causing a stab injury on the back of his left leg with a broken soda bottle and damage to the tiles of the house of one Ramar by pelting stones due to previous enmity. These two cases shall not in any manner show that the petitioner is engaged in activities prejudicial to public order. Public order now has been so well explained by a series of judgments of this Court and the Supreme Court, that we need not reiterate the principles applied to distinguish between disturbances pertaining to public order and law and order. The two instances that is to say the instances in

Sivakasi East Cr. No. 288/90 and Sivakasi East Cr. No. 445/90 are at best acts of vandalism affecting the individual victims, Pandiarajan and Ramar respectively.

4. The ground case is one in which provocation came from the complainant Karuppiah. The petitioner no doubt reacted violently and behaved in

an unruly manner. He took up soda bottles and threw them on the road and thus created a serious disturbance to the general public. Can this

however be said to be an act prejudicial to the public order ? As indicated in the judgments of this Court and the Supreme Court, we have come

to understand that public order for the purpose of preventive detention law must not always be equated with every disturbance caused to the

public at large. There is some element of disturbance as has been indicated in the pronouncements of the Courts caused to the public order by

every violation of law even if such violation is directed against one or more individuals. Whether it affects even flow of life or not is the test. But for

the provocation provided by Karuppiah, the petitioner would not have acted with violence. The violence was not such that it would have created

an alarm of a kind which would in the circumstances be called prejudicial to the public order. The occurrence is Sivakasi Town P.S. Cr. No. 406

of 1990 however is one which undoubtedly provided such provocations which created a grave danger to the public order. The petitioner insulted

the honour of a national leader, a father figure for many in our country. This act of his was a grave provocation to all such people, who not only

respected but revered Dr. Ambedkar. His arrest and remand alone could ensure that the people did not retaliate. That however remained a

solitary act of the petitioners grave though it seem, was not refuted by the petitioner at any time including in the ground case that is to say Sivakasi

Town Cr. No. 406/90. He did the act violently in this occurrence but the violence was limited to the provocation caused by Karuppiah. In the case

of Mrs. T. Devaki Vs. Government of Tamil Nadu and others, , it has been said that a solitary act of violence which had the tendency to disturb

the public order will not be enough for detention u/s 3(1) of the Act. We would have been slow in applying the ratio of Devaki's case to the facts

of this case in view of the commission of the offence in Sivakasi Town P.S. Cr. No. 406 of 1990 as the violence therein, in our opinion, was a sort

of invitation to a communal or caste-war. In *State of Punjab Vs. Sukhpal Singh*, , the Supreme Court considered the case of a person, who had made certain provocative speeches inciting communal hatred between Hindus and Sikhs, inciting Sikhs to armed violence against the Government established by law both in the State and in the Central and making the offer of monetary and other assistance to the terrorists. The detention order was passed when Sukhpal Singh, the detenu was in jail and was taking a step to get himself released. The Supreme Court found in that case that it was necessary to make a conjoined reading of the detention order and the grounds of detention and infer from the prior events, the tendencies or inclinations of a man to know whether in further he would act in a prejudicial manner or not. In this case, the Supreme Court also pointed out that the power of preventive detention is precautionary power exercised reasonably in anticipation and may or may not relate to an offence. It is on the basis of the anticipated behaviour of the person based on his past conduct in the light of surrounding circumstances that it has to be seen whether there were sufficient grounds for detention or not. Even if we, however, when attempt to do it, find it difficult to correlate the subsequent activities of the petitioner with his inclination or tendency to provoke the caste or communal passion. If there was any such communal or caste passion provoked by him by his act in Sivakasi Town P.S. Cr. No. 466 of 1990, in remained confined to his committing the atrocious act of damaging the statue of Dr. Ambedkar.

5. Having considered the case as above, we are of the opinion that the ratio of the case in *Mrs. T. Devaki Vs. Government of Tamil Nadu* and others, will apply to the facts of this case. The order of detention of the petitioner in Cr.M.P. No. 15/90 dated 21-9-1990 is accordingly quashed.

The writ petition is allowed. The respondents are directed to release the petitioner forthwith unless wanted in connection with any other case.

6. Petition allowed.