
(1991) 02 MAD CK 0098

In the Madras High Court

Case No : Writ Petition No. 16379 of 1990

S. Subash Babu and Dharman

APPELLANT

Vs

State by Secretary to Govt., Home Prohibition and Excise
Dept., Madras-9 and District Magistrate-Cum-District
Collector, Trichirapalli

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (1991) LW(Cri) 463

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

Bench : Division Bench

Advocate : P. Venkatasubramaniam, for the Appellant; Shanmugasundaram, for the Respondent

Judgement

Mishra, J.—The detenu Dharman, who has filed a supporting affidavit (hereinafter called the Petitioner") 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 No. 14 of 1982) (hereinafter called "the Act") on the basis of the three cases cited viz., (1) Cantonment P.S. Crime No. 288/87, Cantonment P.S. Crime No. 415/89 and Cantonment P.S.Cr. No. 800/89 he has been described as a "Goonda" and then for the ground case cited in the Grounds of detention served upon him, it is said:

One Thiru Thaniyarasu, son of Thiru Manian, is a resident of Williams Road, near Sevasangam, Thiruchirapalli Town and running a tea shop. Thiru Dharman of Mudukkupatti came frequently to his shop, threatened him and took tea without giving the cost of tea. On 24-6-90, at about 09.30 P.M. near Periyar statue at Central Bus stand of Thiruchirapalli, Thiru Dharman demanded Rs. 10/- from Thiru Thaniyarasu to Drink arrack in an authoritative tone. Thiru Thaniyarasu replied that he has no money to give him. Suddenly Thiru Dharman stated

and cut him with an aruval which was kept in his back, and caused injuries and swelling on his left fore feet. One Thiru Arumugham who was witnessing the scene tried to catch hold of him. Thiru Dharman said

Thiru Arumugham, out of fear, did not catch him. He also threatened the public showing the aruval and shouted

and ran away. Due to this atrocious incident on Thaniyarasu, the free flow of the buses in the Central bus stand were frozen. The peace and tranquillity in the area got disturbed. Thiru Thaniyarasu appeared at Cantonment P.S. and preferred a complaint. On the complaint of Thiru Thaniyarasu, a case in Cantonment P.S.Cr. No. 975/90. u/s 341, 324, 506(ii) I.P.C. was registered. Thiru Thaniyarasu was sent to the Government Head quarters Hospital, Tiruchirapalli, for medical treatment. The Inspector of Police (L and O), Cantonment took up further investigation in this case. The investigation is not yet completed.

Cantonment Police Station Crime No. 288/87 was a case of assault by the Petitioner upon certain persons at the midnight of 18-2-1987, for which a case u/s 324 and 326 I.P.C. was registered and it is said "was pending trial" at the time of making of the detention order. Cantonment Police Station Crime No. 415/89 again was a case of assault by the Petitioner individually due to previous enmity for which a case u/s 341 and 325 IPC was registered, and it is said at the time of making of the detention order, "pending trial before the Judicial Magistrate". Cantonment Police Station Crime No. 800/89 again was a case of certain overt acts causing simple injuries with knife in the forehead and right thumb of the victims. It is said, at the time of making of the detention order, this also was pending trial in the Court of Judicial Magistrate. The Ground case has already been extracted above. It shows, first that the Petitioner was in the habit of taking tea without paying for its price to a tea shop and secondly, on 24-6-1990 at about 9-30 P.M. he demanded Rs. 10/- from a certain person at Central Bus stand of the Town allegedly for drinking arrack and when demanded money was not paid to him, stated:

2) He then took out arrival ,the weapon and caused injuries and swelling on the left fore foot of the victim. When someone wanted to catch hold of him, he threatened him shouting

as a result of which that man could not muster courage to catch hold of him.

3) Threafter he is said to have shouted:

The words of threat used by him would go to show that when someone made an attempt to catch hold of him, he threatened him saying "if you come near me, I would murder you and then threatened all and sundry saying "if you have courage, approach me". From this it is sought to be inferred that the free flow of the buses in the Central bus stand stood frozen, that peace and tranquillity in the area got disturbed and that is why it is said "the Petitioner acted in a manner prejudicial to the maintenance of public order.

4) The Supreme Court of India, in the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, has made an elaborate consideration of the meaning that could be given to the expression "public order". Hidayatullah, J., (as he then was) in his lending judgment has said:

District is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "Law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lend to public disorder. Even, (Sic) each of the peace does not lead to public disorder—When two drunkards quarrel and right there is disorder, they can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder, other examples can be imagined. The contravention of law, always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.

A similar view has been expressed by the Supreme Court in the case of Mrs. T. Devaki Vs. Government of Tamil Nadu and others, in which a detention order had been issued u/s 3(1) of the Tamil Nadu Act of 1982 with which we are concerned. Reiterating the law as above, the Supreme Court has said in Devaki's case:

In substance the ground of detention states that while a Seminar was going on the detenu incited his men saying "Finish Durai Murugan's Chapter to-day" and after saying that he threw a dagger aiming at Thiru Durai Murugan, Minister but the dagger missed the target and fell down on the stage. Thereafter, the detenu took out a bottle containing petrol and a match box out of a hand bag which he carried in his hand. Meanwhile, the Sub Inspector of Police, caught hold of the detenu, seized the bottle and the match box. It is further stated that the detenu and those who accompanied him attempted to attack the Minister with Knives in their hands but they were over-powered by the Police and the members of public. As a result of the incident those present in the hall panicked and got scared and ran helter skelter, causing obstruction to traffic on Aruppukottai Road. The Seminar also came to an abrupt halt for a while. Paragraph 4 of the detention order further states that the detenu by committing the aforesaid grave offence in public, in broad day light created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby he acted in a manner prejudicial to the maintenance of the public order.

Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent affect the peace prevailing in the locality and it

may also affect law and order problem but the same need not affect maintenance of public order. There is basic difference between "law and order" and "public order". This aspect has been considered by this Court in a number of decisions. See *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, *Pushkar Mukherjee and Others Vs. The State of West Bengal*, and *Shyamal Chakraborty Vs. The Commissioner of Police, Calcutta and Another*, . In these cases it was emphasised that an act disturbing public order is directed against individuals which does not disturb the society to the extent of causing a general disturbance of public peace and tranquillity. It is the degree of disturbance and its effect upon the life of the community in the locality which determines the nature and character of breach of public order.

In the instant case the detenu was placed under detention on the sole incident which took place on 29-7-89 and in respect of which the detenu is facing criminal trial before a court of law.

The incident did not and could not affect public peace and tranquility nor it had potential to create a sense of alarm and insecurity in the locality.

We do not think any further examinations of the contentions that have been raised in the instant case is necessary for we have no hesitation in concluding that the ground cited was not one creating any disturbance of public order. It is indeed, a case in which Petitioner's detention u/s 3(1) of the Act cannot be sustained.

5) For the reasons aforesaid, the detention order in C.O.C. No. 20.90 dated 8-7-1990 is quashed and the Respondents are directed to release the Petitioner forthwith, if not wanted in connection with any other case.