T. Devaki

Vs

Government of Tamil Nadu and Others

Writ Petition (Criminal) No. 468 of 1989

(K. N. Singh, M. H. Kania, Kuldip Singh JJ)

07.03.1990

JUDGMENT

K. N. SINGH, J. -

1. This petition under Article 32 of the Constitution of India, by Mrs. P. Devaki wife of the detenu R. Thamaraikani, challenges the validity of her husband's detention under the order of the Collector and District Magistrate of Kamarajar District Virudhunagar, Tamil Nadu dated August 15, 1989 issued under Section 3(1) of the Tamil Nadu Prevention of, Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) (as amended by Act 52 of 1986 and Act 1 of 1988) (hereinafter referred to as 'the Act').

2. After hearing arguments of the learned counsel for the parties at length, we allowed the petition on November 10, 1989 and issued directions for the release of the detenu forthwith. We are now giving the reasons for our order dated November 10, 1989.

3. The detenu R. Thamaraikani is a member of the All India Anna Dravida Munnetra Kazhagam Party, briefly described as AIDMK. He has been an active social and political worker. He was elected Member of the Tamil Nadu Legislative Assembly from Srivilliputhur Constituency in the General Election held in 1977, 1980 and 1984. In the General Elections held in January 1989 to the Tamil Nadu Legislative Assembly, he was defeated by the Dravida Munnetra Kazhagam Party candidate. He continues to be the Joint Secretary of the AIDMK Party for Kamrajar District in Tamil Nadu and he has been taking active part in social and political activities in the District of Kamarajar. The petitioner has stated that there has been personal and political animosity between the detenu and Thiru Durai Murugan, Minister for Public Works and Highways in the present DMK government. The District Magistrate issued the impugned order for the detention of her husband at the behest of Thiru Durai Murugan, the aforesaid Minister, respondent 3. The petitioner has referred to a number of incidents and to the proceedings of the Tamil Nadu Legislative Assembly in support of her submission that there was political and personal animosity between the aforesaid Minister and her husband and the order of detention was made mala fide at the instance of the Minister, respondent 3.

4. The facts leading to the making of the impugned detention order are necessary to be noted. On July 29, 1989 a seminar on Irrigation was held at Virudhunagar at the Dry Chilly Merchants' Association Kalai Arangam, Aruppukkotai Road, which was by Thiru Durai Murugan and by Pon. Muthuramulingam, Minister of Labour and District Magistrate, Kamarajar and other important personalities. A number of political and social workers and agriculturists attended the seminar.

According to the petitioner the detenu was invited to attend the seminar although it is denied by the respondents but there is no dispute that the detenu was present in the hall where the seminar was held. The petitioner has asserted that the detenu wanted opportunity to address the gathering for placing the grievances to the local people before the gathering but he was not permitted to do so. He insisted for placing the grievances of his Party before the audience whereupon he was forcibly removed away by the police and later a false criminal case was registered against him under Section 147, 148, 307 read with Section 149 of the Indian Penal Code and Section 27 of the Indian Arms Act at the Virudhunagar East Police Station. These allegations have been denied by the respondents. According to the respondents the detenu was not invited, even then he entered the hall where seminar was being held along with a number of persons and created disorderly scene in the hall which disturbed the seminar. He threw a knife towards the Minister respondents 3, with an intention to kill him but he missed the target, later on, he was overpowered by the police. The violent activities of the detenu and his men caused panic in the hall, the audience raised alarm and ran outside the auditorium and outside the hall also people got scared, they ran helter skelter, causing obstruction to traffic. The proceedings of the seminar came to an abrupt halt for a while. The detenu was taken into custody and he was enlarged on bail by the Session Judge on August 3, 1989. Thereafter the District Magistrate and Collector Kamarajar, respondent 2, issued the impugned detention order after 17 days of the aforesaid incident under Section 3(1) of the Act, as he was satisfied that it was necessary to detain the detenu under the Act with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Pursuant to the aforesaid order of the District Magistrate the detenu was kept in detention.

5. Mr. R. K. Garg learned counsel for the petitioner assailed the validity of the detention order on two grounds. Firstly, he urged that the order of detention was illegal since it did not specify the period of detention. Secondly, the sole ground of detention has no relevance to the maintenance of 'public order' as the facts set out in the grounds do not make out any case of violation of public order, at best, it may be a case of law and order only.

6. This petition was heard by a Division Bench consisting of two learned Judges of this Court. After hearing counsel for the parties at length the learned Judges referred the matter to a three Judge bench, in view of the conflict of decisions of this Court in Commissioner of Police v. Gurbux Anandram Bhiryani (1988 Supp SCC 568 : 1988 SCC (Cri) 914) and Ashok Kumar v. Delhi Administration ((1982) 2 SCC 403 : 1982 SCC (Cri) 451) on the question of validity of detention order on its failure specify period of detention. That is how the petition was heard by this bench.

7. The first contention is founded on the provisions of Section 3 of the Act which read as under :

> "3. Power to make orders detaining certain persons. - (1) The State Government may, if satisfied with respect to any bootlegger or drug offender (or forest offender) or goonda or immoral traffic offender or slum grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
>
> (2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-Section (1), exercise the powers conferred by the said sub-section :

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-Section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

8. Placing reliance on Section 3(2) Mr. Garg urged that since the impugned detention order did not specify the period for which the detenu was required to be detained, the order was rendered illegal. On an analysis of Section 3 of the Act as quoted above, we find no merit in the submission. Section 3(1) confers power on the State Government to detain a bootlegger or drug offender, or forest offender or goonda or an offender in immoral traffic or a slum grabber with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Section 3(2) empowers the State Government to delegate its power as conferred on it under sub-section (1) to District Magistrate or a Commissioner of Police, if it is satisfied that the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate or the Commissioner of Police, make it necessary to delegate the power to them. It further provides that the order of delegation shall be in writing and it shall also specify the period during which the District Magistrate or the Commissioner of Police, are authorised to exercise the powers of the State Government under sub-section (1) of Section 3. Proviso to sub-section (2) lays down that the delegation should not be for an unlimited period, instead it should not be for a period of more than three months. If the State Government is satisfied that it is necessary to extend the period of delegation it may amend its order, extending such period from time to time but at no time the extension shall be for a period of more than three months. Once the State Government's power under Section 3(1) is delegated to the District Magistrate or the Commissioner of Police, they are authorised to exercise that power on the grounds, specified in Section 3(1) of the Act. Neither sub-section (1) nor sub-section (2) of Section 3 of the Act require the detaining authority to specify the period of detention for which a detenu is to kept under detention.

9. Section 3(3) requires that where detention is made by the delegate of the State Government, namely, the District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matte. A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. Section 8 requires the detaining authority to communicate to the detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government. Section 10 requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made along with the representation made by the detenu as well as the report of the officers made under Section 3(3) of the Act within three weeks from the date of detention. Under Section 11 the Advisory Board is required to consider the materials placed before it and after hearing the detenu, to submit its report to the State Government

within seven weeks from the date of detention of the person concerned. In a case where the Advisory Board forms opinion, that there was no sufficient cause for the detention the State Government shall revoke the detention order but if in its opinion sufficient cause was made out, the State Government may confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period as specified in Section 13 of the Act. Section 13 provides the maximum period for which a person can be detained in pursuance of any detention order made and confirmed under the Act. According to this provision the maximum period of detention shall be twelve months from the date of detention. The State Government has, however, power to revoke detention order at any time it may think proper.

10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered to, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order "occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.

11. Mr. R. K. Garg placed strong reliance on the decision of this Court in Gurbax Bhiryani case (1988 Supp SCC 568 : 1988 SCC (Cri) 914) to support his submission. In that case the detenu had been detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act 55 of 1981. The High Court quashed the detention order on the ground that the detenu had been released in criminal prosecution under Section 8(c) read with Section 21 of the Narcotic Drugs and Psychotropic Sub-stances Act, 1985 and he had been released on bail, but that fact had not been placed before the detaining authority. On appeal by special leave a Division Bench of this Court consisting of two Judges, dismissed the appeal without going into the merits of the case on the sole ground that the detention order was bad as the period of detention was not specified in the detention order. The court observed as under : (SCC p. 569, para 1)

> "The order is bad on another ground, namely, the period of detention has not been indicated by the detaining authority. The scheme of this Act differs from the provisions contained in similar Acts by not prescribing a period of detention but as Section 3 of the Act indicates, there is an initial period of detention which can extend up to three months and that can be extended for periods of three months at a time. It was open to the detaining authority to detain the detenu even for a period of lesser

> duration than three months. That necessitated the period of detention to be specified and unless that was indicated in the order, the order would also be vitiated. In scores of decisions this Court has been emphasising the necessity of strict compliance with the requirements of the preventive detention law; yet authorities on whom the power is conferred have not been complying with the requirements and even if there be merit to support the order of detention, the procedural defects lead to quashing thereof as a result of which the purpose of the Act if frustrated and the suffering in the community does not abate."

With great respect we do not agree with the view expressed by the learned Judges.

12. Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 is identical in terms to Section 3 of the Tamil Nadu Act. Section 3 of Maharashtra Act does not require the State Government, District Magistrate or a Commissioner of Police to specify period of detention in the order made by them for detaining any person with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. Section 3(1) which confers power on the State Government to make order directing detention of a person, does not require the State Government to specify the period of detention. Similarly, sub-section (2) or (3) of Section 3 do not require the District Magistrate or the Commissioner of Police to specify period of detention while exercising their powers under sub-section (1) of Section 3. The observations made in Gurbux Bhiryani case (1988 Supp SCC 568 : 1988 SCC (Cri) 914) that the scheme of the Maharashtra Act was different from the provisions contained in other similar Acts and that Section 3 of the Act contemplated initial period of detention for three months at a time are not correct. The scheme as contained in other Acts providing for the detention of a person without trial, is similar. In this connection we have scrutinised, the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, 1971, COFEPOSA Act, 1974, National Security Act, 1980, but in none of these Acts the detaining authority is required to specify the period of detention while making the order of detention against a person.

13. This Court has consistently taken the view that an order of detention is not rendered illegal merely because it does not specify the period of detention. A Constitution Bench of this Court in Ujagar Singh v. State of Punjab ((1952) 3 SCR 756 : AIR 1952 SC 350 : 1953 Cri LJ 146), while considering validity of detention order made under Section 3 of the Preventive Detention Act, 1950 held that non-specification of any definite period in a detention order made under Section 3 of the Act was not a material omission rendering the order invalid. In Suna Ullah Butt v. State of Jammu & Kashmir ((1973) 3 SCC 60 : 1973 SCC (Cri) 138 : (1973) 1 SCR 870), validity of detention order made under Jammu and Kashmir Preventive Detention Act, 1964 was under challenge on the ground that the State Government while confirming the detention order under Section 12 of the Act had failed to specify the period of detention. The court held that since the State Government had power to revoke or modify the detention order at any time before the completion of the maximum period prescribed under the Act, it was not necessary for the State Government to specify the period of detention. In Suresh Bhojraj Chelani v. State of Maharashtra ((1983) 1 SCC 382 : 1983 SCC (Cri) 202), while considering the validity of the detention order made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 this Court rejected similar submission made on behalf of the detenu that order of detention was vitiated as the government had failed to mention the period of detention while confirming the order of detention. The court held that the COFEPOSA Act did not require the detaining authority to mention the period of detention in the order of detention. When no period is mentioned in an order, the implication is that the detention is for the maximum period prescribed under the Act.

14. In A. K. Roy v. Union of India ((1982) 1 SCC 271 : 1982 SCC (Cri) 152) a Constitution Bench of this Court considered the validity of the National Security Act (65 of 1980) Chandrachud, C.J. (as he then was) speaking for the bench rejected the arguments made on behalf of the petitioner that the absence of provision requiring the detaining authority to provide for maximum period of detention was illegal. The learned Chief Justice, observed : (SCC pp. 324-25, para 77)

> "There is no substance in this grievance because, any law of preventive detention has to provide for the maximum period of detention, just as any punitive law like the Penal Code has to provide for the maximum sentence which can be imposed for any offence. We should have thought that it would have been wrong to fix a minimum period of detention, regardless of the nature and seriousness of the grounds of detention. The fact that a person can be detained for the maximum period of 12 months does not place upon the detaining authority the obligation to direct that he shall be detained for the maximum period. The detaining authority can always exercise its discretion regarding the length of the period of detention. It must also be mentioned that, under the proviso to Section 13, the appropriate Government has the power to revoke or modify the order of detention at any earlier point of time."

On the basis of the above observations validity of a detention order passed under Section 3 of the National Security Act was challenged before this Court in Ashok Kumar v. Delhi Administration ((1982) 2 SCC 403 : 1982 SCC (Cri) 451) on the ground that the Commissioner of Police, as well as the Administrator of Delhi Administration who confirmed the detention order failed to specify the period of detention while making the order of detention. A three Judge bench of this Court rejected the detention and upheld the validity of the detention order. A. P. Sen, J. observed : (SCC pp. 408-09, para 11)

> "It is plain from a reading of Section 3 of the Act that there is an obvious fallacy underlying the submission that the detaining authority had the duty to specify the period of detention. It will be noticed that sub-section (1) of Section 3 stops with the words "make an order directing that such person be detained", and does not go further and prescribe that the detaining authority shall also specify the period of detention. Otherwise, there should have been the following words added at the end of this sub-section "and shall specify the period of such detention". What is true of sub-section (1) of Section 3 is also true of sub-section (2) thereof. It is not permissible for the courts, by a process of judicial construction, to alter or vary the terms of a section. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case i.e. the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extend to the maximum period of 12 months as laid down in Section 13 of the Act."

15. It is thus clear that the view taken in Gurbax Bhiryani case (1988 Supp SCC 568 : 1988 SCC (Cri) 914) on the interpretation of Section 3 of the Maharashtra Act is incorrect. This Court has while considering the question of the validity of the detention order made under different Acts, consistently taken the view that it is not necessary for the detaining authority or the State Government to specify the period of detention in the order. In the absence of any period being specified in the order the detenu is required to be under detention for the maximum period prescribed under the Act, but it is always open to the State Government to modify or revoke the order even before the completion of the maximum period of detention. We are, therefore, of the opinion that the impugned order of detention is not rendered illegal on account of the detaining

authority's failure to specify period of detention in the order.

16. Mr. R. K. Garg then urged that the sole ground on which the detention order is founded does not relate to maintenance of public order, and it exhibits non-application of mind by the detaining authority. While considering this submission it is necessary to reproduce the detention order as well as the grounds in support thereof. The detention order is as under :

> "Detention Order
>
> Whereas, I, Thiru T. S. Sridhar, IAS, Collector and District Magistrate, Kamarajar District, Virudhunagar, am satisfied with respect to the person known as Thiru Thamaraikani son of Ramasamy Nader, residing at Singammalpuram Street, Srivilliputhur Town and Taluk that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make the following order.
>
> 2. Now therefore in exercise of the powers conferred by sub-section (1) of Section 3 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) read with orders issued by the government in G.O. Ms. No. 230, Prohibition and Excise Department, dated March 23, 1985 and subsequently amended in C.O. Ms. No. 815, Home Prohibition and Excise Department dated July 13, 1989 under sub-section (2) of Section 3 of the said Act, I hereby direct that the said Thiru R. Thamaraikani son of Ramasamy Nader be detained and kept in Central Prison, Madurai.
>
> # Sd/- Collector and District Magistrate, Kamarajar, District Virudhunagar."##

The ground of detention supplied to the detenu stated that the detenu was a habitual criminal, a goonda and his activity had come to adverse notice in some cases reference to which was made by referring to some FIRs lodged against the detenu at the police station. But the incidents referred in those FIRs have not been made ground for detention instead facts stated in paragraphs 3, 4, 5, and 6 of the grounds constitute material on which the District Magistrate formed the requisite opinion under Section 3(1) of the Act in making the order of detention. These are as under :

> "(3) The ground on which the said detention order has been made as follows :
>
> On July 29, 1989, the Kamarajar District Irrigation Seminar was held at "Dry Chilly Merchants" Association Kalai Arangam" at Aruppukottai Road, Virudhunagar Town. Hon'ble Minister for PWD Thiru Durai Murugan and Hon'ble Minister for Labour Thiru Pon. Muthuramulingam attended the seminar which was presided over by the District Collector. At about 12.30 p.m. while the proceedings of the seminar were on, suddenly there was a commotion in front of the dias. Thiru Murali, Sub-Inspector of Police, Vembakottai along with posse of men who were on bandobust duty there, rushed up Thiru R. Thamaraikani inducing his henchmen saying "Finish Durai Murgan's chapter today". The same time he (Thamaraikani) also threw a dagger aimed at Hon'ble Minister Thiru Durai Murugan shouting "Finish Durai Murgan's chapter today". But the dagger missed the target and fell down on the stage. At once Thiru R. Thamaraikani took out a bottle containing petrol and a match box out of a

hand bag which he carried in his hand. Instantly Thiru Murali, Sub-Inspector of Police, Vembakottai and the P.C. 168 Murugesan pounced and caught hold of Thiru R. Thamaraikani. The former seized the bottle and the match box. At the instigation of Thiru R. Thamaraikani, his henchmen viz. Thiru Valargal Kenna, son of Thangaraj Nader of Kammapatti, Nareeswaran, son of Smaraj Nader of Kammapatti, Kalipandian, son of Krishna son Thevar of Mall and Nagarajan, son of Paramasive Thevar of Mangeseri who accompanied him also attempted to attack the Hon'ble Minister for PWD, with knives in their hands. H.C. 829 Thiru Subbiah P.C. 231 Thiru Subbiah and P.C. 469 Thiru Manraj duly assisted by some agriculturists surrounded and over-powered them and seized their knives. Seeing the violent activities of Thiru R. Thamaraikani and his men, the gathering in the hall panicked. They raised an alarm and ran outside the auditorium and the crowd outside also got scared and ran helter skelter, causing obstruction to traffic along Aruppukottai Road. The proceedings of the seminar also came to an abrupt halt for a while. The Sub-Inspector of Police arrested Thiru R. Thamaraikani and his four associates at about 1300 hrs. and brought them out with the help of the Deputy Superintendent of Police, Virudhunagar and other police officials who were then on duty there. On seeing this about 10 other henchmen of Thiru R. Thamaraikani who were waiting outside the auditorium escaped, leaving behind an Ambassador Car IDR 667 and a van TCM 7797. On searching the car, the Sub-Inspector of Police found lethal weapons viz. 1 sword, 4 koduvals and also 4 torch sticks, the cloths of which were doused in kerosene. The said two vehicles along with the lethal weapons, hand bag containing bottle with petrol, Rs. 1000, match box, papers etc. were seized under an attache at 1330 hrs. Then the Sub-Inspector of Police, handed over the accused persons and the properties seized under a special report at Virudhunagar East Police Station. A case was registered in Cr. Appeal No. 180/89 under Sections 147, 148, 307 read with Section 149 IPC and Section 27 Indian Arms Act at the Virudhunagar East Police Station. The Inspector of Police, Law and order, Virudhunagar Rural Circle took up the investigation. On production before the Judicial Magistrate Court No. 1, Thiru R. Thamaraikani was remanded to judicial custody in Central Prison, Madurai on July 30, 1989 and released on bail with condition to stay at Madurai on August 3, 1989. The case properties were deposited in the court. The case is still under investigation.

(4) The offence under Section 307 IPC is punishable under Chapter XVI of the IPC. By committing the above described grave offence in public, in broad daylight, Thiru R. Thamaraikani has created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order. His unlawful, disorderly and dangerous activities on July 29, 1989 are prejudicial to the maintenance of public order and have affected the even tempo of life of the community.

(5) I am aware that Thiru R. Thamaraikani is now on bail with condition to stay at Madurai since August 3, 1989. I am satisfied that his unlawful activities warrant his detention under the Tamil Nadu Act 14 of 1982.

(6) I am satisfied that on the materials mentioned above, if Thiru R. Thamaraikani is left to remain at large, he will indulge in further activities prejudicial to the maintenance of public order and further recourse to normal law would not have the desired effect of effectively preventing him from indulging in activities prejudicial to

> the maintenance of public order and therefore I consider that it is necessary to detain him in custody with a view to preventing him from acting in any manner prejudicial to the maintenance of public order."

17. In substance the ground of detention states that while a seminar was going on the detenu incited his men saying "Finish Durai Murgan's chapter today" and after saying that he threw a dagger aiming at Thiru Durai Murgan, Minister but the dagger missed the target and fell down on the stage. Thereafter, the detenu took out a bottle containing petrol and a matchbox 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 overpowered 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 daylight created a sense of alarm, scare and a feeling of insecurity in the minds of public of the area and thereby he acted in a manner prejudicial to the maintenance of the public order. His unlawful, disorderly and dangerous activities on July 27, 1989 were prejudicial to the maintenance of public order which affected the even tempo of life of the community. On the aforesaid facts, the District Magistrate was satisfied that if the detenu was left to remain at large he would indulge in further activities prejudicial to maintenance of public order and recourse to normal law would not have the desired effect to preventing him from indulging in activities prejudicial to the maintenance of public order.

18. The question which falls for consideration is whether single incident of murderous assault by the detenu and his associates on the Minister at the seminar held at Dry Chilly Merchants' Association Kalai Arangam Hall was prejudicial to the maintenance of 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 basis 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 v. State of Bihar ((1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608); Pushkar Mukherjee v. State of West Bengal ((1969) 1 SCC 10 : (1969) 2 SCR 635 : 1970 Cri LJ 852) and Shymal Chakraborty v. Commissioner of Police, Calcutta ((1969) 2 SCC 426 : (1970) 1 SCR 762). 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 Arun Ghosh v. State of West Bengal ((1970) 1 SCC 98 : 1970 SCC (Cri) 67 : (1970) 3 SCR 288), the court held that the question whether a man has only committed a breach of law and order, or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. This view was reiterated in Nagendra Nath Mondal v. State of West Bengal ((1972) 1 SCC 498 : 1972 SCC (Cri) 227); Sudhir Kumar Saha v. Commissioner of Police, Calcutta ((1970) 1 SCC 149 : 1970 SCC (Cri) 71 : (1970) 3 SCR 360); S. K. Kedar v. State of West Bengal ((1972) 3 SCC 816 : 1973 SCC (Cri) 1); Kanu Biswas v. State of West Bengal ((1972) 3 SCC 831 : 1973 SCC (Cri) 16); Kishori Mohan Bera v. State of West Bengal ((1972) 3 SCC 845 : 1973 SCC (Cri) 30) and Amiya Kumar Karmakar v. State of West Bengal ((1972) 2 SCC 672 : 1973 SCC (Cri) 68).

19. In the instant case the detenu was placed under detention on the sole incident which took place

on July 29, 1989 and in respect of which the detenu is facing criminal trial before a court of law. The alleged attempted murderous assault made by the detenu and his associates on Thiru Durai Murgan, Minister of Public Works Department may have been made on account of political rivalry. In fact, in his affidavit Thiru Durai Murugan has admitted that in the past the detenu had misbehaved with him even on the floor of the legislative Assembly of Tamil Nadu while participating in discussion. The attempted assault took place in the hall of Dry Chilly Merchants' Association Kalai Arangam where two Ministers, a number of officials including the District Magistrate, as well as members of the public were present. It is alleged that the attempted murderous assault on Thiru Durai Murgan created scare and a feeling of insecurity in the minds of the persons present in the hall and the detenu's action interrupted the "proceedings of the seminar for a while". This shows that the detenu's activity disturbed the proceedings of the seminar for a while but the seminar appears to have continued later on. The incident did not and could not affect public peace and tranquillity nor it had potential to create a sense of alarm and insecurity in the locality. How could a single murderous assault on the Minister concerned at the seminar prejudicially affect the even tempo of the life of the community ? No doubt in paragraph 4 of the grounds the detaining authority has stated that by committing this grave offence in public, in broad daylight, the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community. Repetition of these words in the grounds are not sufficient to inject the requisite degree of quality and potentiality in the incident in question. A solitary assault no one individual can hardly be said to disturb public peace or place public order in jeopardy so much as to bring the case within the purview of the Act. Such a solitary incident can only raise a law and order problem and no more. Moreover, there is no material on record to show that the reach and potentiality of the aforesaid incident was so great as to disturb the normal life of the community in the locality or it disturbed general peace and tranquillity. In the absence of such material it is not possible to hold that the incident at the seminar was prejudicial to the maintenance of public order. In Manu Bhusan Roy Prodhan v. State of West Bengal ((1973) 3 SCC 663 : 1973 SCC (Cri) 469), this Court held that a solitary assault on one individual, which may well be equated with an ordinary murder which is not an uncommon occurrence, can hardly be said to disturb public peace and its impact on the society as a whole cannot be considered to be so extensive, widespread and forceful as to disturb the normal life of the community, thereby shaking the balanced tempo of the orderly life of the general public. The court held that the detention order which had been made for preventing the petitioner from acting in a manner prejudicial to the maintenance of public order, was not sustainable in law. On a careful consideration of the matte in all its aspects and having regard to the circumstances in which the alleged incident took place on July 29, 1989, we are of the opinion that the solitary incident as alleged in the ground of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order.

20. The detaining authority, namely, the District Magistrate of Kamarajar District who was admittedly present at the seminar, has filed his own affidavit stating that he was sitting on the dias along with the Minister for Public Works Department. Thus the incident which is the basis for detention of the detenu took place in the presence of the detaining authority. In his affidavit the District Magistrate has, however, stated that he made the detention order against the detenu on perusal of the materials, facts and documents placed before him by the police as he was satisfied that detenu's detention was necessary for the purposes of maintenance of public order. He has denied the allegation that the detention order was passed by him under the influence of the Minister. Since the District Magistrate was present on the dias along with the Minister and the alleged murderous

assault is alleged to have been made by the detenu in the presence of the detaining authority, one would expect him to have witnessed the occurrence himself. But it is interesting to note that in paragraph 23 of his affidavit, the District Magistrate has stated that though he was present on the dias but did not witness the incident as he was concentrating on the proceedings of the seminar and preparing replies to the queries raised by speakers at the seminar. It is difficult to believe the District Magistrate that he could not see the occurrence although he was seated on the dias along with the Minister, on whom murderous assault was allegedly made by the detenu. He is not ready to corroborate the occurrence as presented to him by the sponsoring authority, namely, the police. If the detaining authority was himself present and was an eye-witness to the occurrence on the basis of which detention order was made, it was imperative for the detaining authority to have honestly and bona fide formed the requisite opinion in making the order of detention on the basis of his own knowledge and perception instead of relying more on the version of the incident as placed before him by the sponsoring authority. In a case where the detaining authority may not be present at the place of the incident or the occurrence, he has to form the requisite opinion on the basis of materials placed before him by the sponsoring authority but where the detaining authority was himself present at the scene of occurrence he should have relied more on his own observation and knowledge than on the report of the sponsoring authority. In the instant case the detaining authority though present at the scene of occurrence does not support the incident as presented to him by the sponsoring authority. In the circumstances, we are of the opinion that there was non-application of mind by the detaining authority in making the impugned order of detention.

21. In view of the above discussion the detention order is rendered illegal and it is accordingly quashed.

</html