CASE NO.:
Appeal (crl.) 701 of 1999

PETITIONER:
State of T.N. & Anr.

RESPONDENT:
Kethiyan Perumal

DATE OF JUDGMENT: 11/10/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

[With Crl. A. No.702 of 1999]

ARIJIT PASAYAT, J.

These two appeals involve identical issues. The impugned judgment in Criminal Appeal No. 702 of 1999 has its foundation on the judgment impugned in Criminal Appeal No. 701 of 1999. Therefore, the factual position involved in Criminal Appeal No. 701 of 1999 is described.

The State of Tamil Nadu and District Magistrate & Collector, Vellore District (hereinafter referred to as the 'detaining authority') call in question legality of the judgment rendered by a Division Bench of the Madras High Court quashing the order of detention dated 29.3.1988 passed by the Detaining Authority.

A Habeas Corpus Petition was filed by the wife of Kethiyan Perumal (hereinafter described as "the detenu") who was detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short the 'Act'). The High Court allowed the Habeas Corpus Petition primarily on the ground that the Detaining Authority took into consideration extraneous matters while recording the finding about unlawful activities of the detenu or that it was highly dangerous to the public order. The High Court distinguished the decision of this Court in Mrs. U. Vijayalakshmi v. State of Tamil Nadu and Anr. (AIR 1994 SC 165) which was relied upon by the detaining authority. Primary stand of the writ petitioner (present respondent) before the High Court was that though reference was made to Forest Officer's report and the same virtually provided the foundation of the detention, yet there was no mention therein that activities of the detenu has been highly dangerous to public order. The State resisted the petition on the stand that in an identical matter reference was made to the said Forest Officer's report. This Court in Mrs. U. Vijayalakshmi's case (Supra) dealt with the matter in detail and upheld the detention. Reliance was placed on Section 5A of the Act to contend that the grounds are separable and even if one ground indicated in the order of detention fails, on the residual grounds also a detention can be maintained.

The High Court found that though the decision in Mrs. U. Vijayalakshmi's case (supra) was with reference to the same report of the Forest Officer, yet points which were presently urged were not

taken before the High Court in the earlier case.

Stand of the appellants is that the High Court accepted the prayer of the detenu on the ground that the Forest Officer's report did not specifically refer to the alleged unlawful activities aspect or that the impugned acts were highly dangerous to public order. It is submitted that the conclusion is factually incorrect. It was pointed out that there was a confession of respondent No. 1 where there was clear admission about the unlawful activities. In any event the effect of Section 5A of the Act has not been kept in view by the High Court.

There is no appearance on behalf of the respondent in spite of service of notice.

The High Court did not take note of the fact that the factual distinction sought to be brought about by the detenu is not supportable. In both Mrs. U. Vijayalakshmi's case (supra) and the present case the Forest Officer's report was common. Effect of the confessional statement and the background facts have not been taken note of.

Before we go to the legal aspects involved it would be necessary to sort out confusion entertained by the High Court. Interference was done with the order of detention primarily on the ground that the Forest officer's report did not anywhere indicate about the effect on public order aspect. In fact, it clearly mentions that activities of the detenu prejudicially affected public order. It was specifically stated as follows:

"The human life is dependent on water, clean air and healthy agriculture for providing food. Destruction of sandalwood trees in Vellore District will seriously affect the availability of these essential things and cause threat to public life at large due to destruction of Natural Forest Eco-system.

Hence I feel that we should stop by all means the indiscriminate felling of trees in Vellore District in the interest of public because the ecological system is affected in a manner prejudicial to the public order."

The factual mistake, committed by the High Court by observing that there was no mention regarding activities being highly dangerous to public order, is not sustainable, in view of the details indicated and clear mention. It was categorically stated that the destruction of ecological system would be highly dangerous to public order. In any event the effect of Section 5A of the Act cannot be lost sight of. The High Court was clearly in error in holding that decision in Mrs. U. Vijayalakshmi's case (supra) was distinguishable. The decision in Mrs. U. Vijayalakshmi's case (supra) clearly applies to the facts of the case. It is to be noted that in D. Vijayalakshmi case (supra) this court categorically held that in view of Section 5A of the Act an extraneous and irrelevant ground does not affect validity of the detention order as Section 5A was introduced precisely to take care of such a situation. This Court, inter alia, held as follows:

"The second contention is based on the facts stated in paragraph 4 of the grounds of detention. It is manifest from the facts stated in paragraph 4 of the grounds of detention that the emphasis is twofold: (1) that to profit from the high price fetched by sandal wood in the open

market, illicit felling of sandal wood trees is on the increase, thereby causing widespread danger to the ecological system and loss of revenue to Government and (2) that the huge money falling into the hands of tribals makes them susceptible to drinking and gambling, thereby converting the poor and innocent tribals into anti-socials. So far as the first aspect is concerned we find from the grounds of detention that the detenu was involved in two similar cases in the past and the impugned order of detention was passed after he was found to have indulged in similar activity on 1st May, 1992. As is clear from the explanation to Section 2(a)extracted earlier, widespread danger to the ecological system must be deemed to affect public order adversely within the meaning of that expression in Section 2(a) of the Act. Counsel submitted that although it is asserted in paragraph 4 of the grounds of detention that the illicit cutting and removal of sandal wood trees from the reserved forest area causes widespread danger to the ecological system and disturbs the delicate equilibrium thereof, there is nothing on record to show that this assertion is well founded. We are afraid we cannot accept this submission made by the learned counsel for the detenu. It is manifest from paragraph 4 of the grounds of detention that this view was founded on the opinion of the District Forest Officer, Vellore. Once it is found that the ground of detention is one recognized by sub-section (1) of Section 3 of the Act, it is not for this Court to probe into the correctness of the alleged facts since this Court has a limited role in the matter of examining the validity of the detention order.

Counsel for the detenu next contended that the second aspect of paragraph 4 shows that extraneous considerations weighed with the detaining authority in passing the impugned detention order. He submitted that it is too remote to think that tribals resort to drinking, gambling and turn anti-socials merely because some extra money falls into their hands. Assuming without deciding that this contention is well founded, we are of the opinion that Section 5A of the Act takes care of it. Even if we were to hold that this ground is extraneous or irrelevant, that would not affect the validity of the detention order as Section 5A was introduced precisely to take care of such a situation. We, therefore, do not see any merit in the second contention also."

The order of the High Court is accordingly set aside.

The impugned judgment in Criminal Appeal No. 702 of 1999 involves identical issues.

On both aspects factual as well as legal, in both the appeals, the High Court’s judgments are not sustainable and are, therefore, set aside.

The residual question is whether it would be appropriate to direct the respondent in each case to surrender for serving remaining period of detention in view of passage of time. As was noticed in Sunil Fulchand Shah v. Union of India and Ors. (2000 (3) SCC 409), it is for the appropriate State to consider whether the impact of the acts, which led to the order of detention still survives and whether it would be desirable to send back the detenu for serving remainder period of detention. Necessary order in this regard shall be passed

within two months by the appellant \026 State. Passage of time in all cases cannot be a ground not to send the detenu to serve remainder of the period of detention. It all depends on the facts of the act and the continuance or otherwise of the effect of the objectionable acts. The State shall consider whether there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained and the date when the detenu is

required to be detained pursuant to the appellate order.

Appeals are allowed.