

Abdul Razak Vs. The State of Karnataka

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Court : Karnataka

Decided On : Oct-07-2017

Judge : Subhro Kamal Mukherjee (Cj) and B.V.Nagarathna and Aravind Kumar

Appeal No. : WPHC 149/2015

Appellant : Abdul Razak

Respondent : The State of Karnataka

Judgement :

-:

1. :- R IN THE HIGH COURT OF KARNATAKA, BENGALURU DATED THIS THE7H DAY OF OCTOBER, 2017 PRESENT THE HON'BLE MR.SUBHRO KAMAL MUKHERJEE, CHIEF JUSTICE AND THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA AND THE HON'BLE MR.JUSTICE ARAVIND KUMAR W.P.(HC).No.149/2015 c/w W.P.(HC).No.152/2015 & W.P.(HC).No.159/2015 IN W.P.(HC).No.149/2015 BETWEEN: ABDUL RAZAK S/O. HANEEF, AGED ABOUT36YEARS, OCC: BAKERY WORK, ANWAR COLONY, KHALANDAR NAGAR, 2ND CROSS, BHADRAVATHI, SHIVAMOGGA DISTRICT - 577 301. ... PETITIONER (BY SRI: R.B. DESHPANDE, ADVOCATE) AND:

1. THE STATE OF KARNATAKA BY ITS SECRETARY, DEPARTMENT OF HOME, VIDHANA SOUDHA, BENGALURU - 560 001. THE DISTRICT MAGISTRATE AND DEPUTY COMMISSIONER, SHIVAMOGGA DISTRICT,

SHIVAMOGGA - 577 201. 2.-.:

2. :- 3.

4. THE JAILOR, CENTRAL PRISON, BELGAUM DISTRICT, BELGAUM - 590 001. THE SUPERINTENDENT OF POLICE, SHIVAMOGGA DISTRICT, SHIVAMOGGA - 577 201. (BY SRI: E.S. INDRESH, ADDITIONAL GOVERNMENT ADVOCATE FOR R-1 & R-4) ... RESPONDENTS ***** THIS W.P.H.C. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA IS FILED BY THE ADVOCATE FOR THE PETITIONER PRAYS THAT THE HON'BLE COURT BE PLEASED TO ISSUE: A) A WRIT IN THE NATURE OF HABEAS CORPUS BY QUASHING OF THE

ORDER

OF DETENTION DATED 14.04.2015 PASSED BY RESPONDENT NO.2 IN NO.MAG(1)CR.05/45855/15-16 VIDE ANNEXURES-A AND A1; AND ETC., IN W.P.(HC).No.152/2015 BETWEEN: SRI AMJADULLA S/O. LATE SHAFFIULLA, MAJOR, R/AT NO.287, NEW NO.45, SHARIF NAGAR, YESHWANTHAPUR, BANGALORE - 560 022. ... PETITIONER (BY SRI: V. LAKSHMI KANTH RAO, ADVOCATE AND SRI L.S. MANJUNATH, ADVOCATE) AND:

1. STATE OF KARNATAKA BY SENIOR SECRETARY DEPARTMENT OF LAW AND

ORDER

, VIDHANA SOUDHA, BANGALORE - 01.-.:

3. :- 2. 3.

4. THE COMMISSIONER OF POLICE BANGALORE CITY, INFANTRY ROAD, BANGALORE - 01. ASST. COMMISSIONER OF POLICE YESHWANTHPURA SUB-DIVISION, BANGALORE - 560 022. SENIOR SUPERINTENDENT, CENTRAL PRISON, BANGALORE CENTRAL JAIL, PARAPPANA AGRAHARA, BANGALORE - 560 103. ... RESPONDENTS (BY SRI: E.S. INDRESH, ADDITIONAL GOVERNMENT ADVOCATE FOR R-1 & R-4) ***** THIS W.P.H.C. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO

DECLARE THE DETENTION OF THE DETENUE SMT.FAREEDA PASSED BY
SECOND RESPONDENT VIDE

ORDER

NO.CRM(4)/DTN/17/2015 DATED1803/2015 AT ANNEXURE A WHICH IS
CONFIRMED BY RESPONDENT NO.1 VIDE

ORDER

HD184SST 2015 DATED0405/2015 AT ANNEXURE-B AND SUBSEQUENT

ORDER

S VIDE

ORDER

HD184SST 2015 DATED1706/2015 AT ANNEXURE C AND SUBSEQUENT

ORDER

IN HD184SST 2015 DATED0709/2015 AT ANNEXURE-D OF CONFIRMATION
OF DETENTION AS ILLEGAL AND VOID ABINITIO. IN W.P.(HC).No.159/2015
BETWEEN: SRI ABUSALI S/O. ABDUL KHADRI, AGED ABOUT29YEARS,
R/AT38, GUJJADI VILLAGE, KUNDAPURA - 576 247. ... PETITIONER (BY SRI:
S. VISHWAJITH SHETTY, ADVOCATE) -:

4. :- AND:

1.

2. STATE OF KARNATAKA REP. BY ITS SECRETARY TO DEPARTMENT OF
HOME, VIDHANA SOUDHA, DR. AMBEDKAR VEEDHI, BANGALORE - 560 001.
THE DEPUTY COMMISSIONER AND DISTIRICT MAGISTRATE, UDUPI
DISTRICT - 576 104. ... RESPONDENTS (BY SRI: E.S. INDRESH, ADDITIONAL
GOVERNMENT ADVOCATE FOR R-1 & R-2) ***** THIS W.P.H.C. IS FILED
UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA IS FILED BY
THE ADVOCATE FOR THE PETITIONER PRAYS THAT THE HON'BLE COURT
BE PLEASED TO QUASH THE

ORDER

ANNEXURE 'A' DATED 28.10.2015 MADE IN NO.MAG(2)/CR3572015-16/98438 BY THE 2^D RESPONDENT UNDER SECTION 32 OF THE KARNATAKA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DRUG-OFFENDERS, GAMBLERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND SLUM-GRABBERS ACT, 1985 AND DIRECT THE RESPONDENTS TO FORTHWITH RELEASE THE DETENUE. THE

ORDER

IN THESE PETITIONS HAVING BEEN RESERVED ON 15/09/2017 AND BEING LISTED FOR PRONOUNCEMENT TODAY, NAGARATHNA J., MADE THE FOLLOWING: -:

5. :-

ORDER

Pursuant to an order of reference, dated 03/12/2015 made by Honble Billappa and Phaneendra JJ., these Writ Petitions have been referred to this Full Bench.

2. We have heard learned counsel for petitioners and learned Additional Government Advocate for the State and carefully perused the order of reference.

3. The order of reference arises under the provisions of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drugs Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum- Grabbers Act, 1985 (hereinafter, referred to as the Act for the sake of brevity. The same reads as under:- WPHC No.149/2015 c/w WPHC Nos.152/2015 & 159/2015 HBJ & KNPJ:

03. 12.2015

ORDER

In WP(HC) No.149/2015 the petitioner has challenged the detention order dated -:

6. :- 14.04.2015 passed by the 2nd respondent and confirmed by the 1st respondent vide order dated 14.05.2015 and subsequent extension dated 24.09.2015 as per Annexure-F. In WP(HC).No.152/2015 the petitioner has challenged the detention order dated 18.03.2015 vide Annexure-A and confirmed

by the 1st respondent vide Annexure-B dated 04.05.2015 and subsequent extensions dated 17.06.2015 and 07.09.2015. In WP(HC).No.159/2015 the petitioner has challenged the detention order dated 28.10.2015 on the ground that no period of detention has been mentioned in the detention order and there are no sufficient grounds to pass the detention order. The petitioner in WP(HC).No.149/2015 had approached this Court in WP(HC). No.74/2015. The Division Bench of this Court by order dated 09.07.2015 has dismissed the writ petition holding that the detention order dated 14.04.2015 and its confirmation is justified. The petitioner in WP(HC).No.152/2015 had approached this Court in WP(HC) No.94/2015. The Division Bench of this Court by order dated 17.07.2015 has dismissed the -:

7. :- writ petition holding that the detention order dated 18.03.2015 and its confirmation is justified. In WP(HC).No.149/2015 and WP(HC). No.152/2015 the petitioners have filed these writ petitions for the second time contending that the detention order and its extension are illegal. Further, the detention order can be passed only for a period of three months and not twelve months at a stretch. In W.P.No.159/2015 the petitioner has contended that no period of detention is mentioned in the detention order and it is without any basis. The learned Government Advocate raised preliminary objection contending that the writ petitions in WP(HC).No.149/2015 and WP(HC). No.152/2015 are not maintainable as the detention orders were already challenged in the earlier writ petitions WP(HC).No.74/2015 and WP(HC).No.94/2015. The learned counsel for the parties in the above writ petitions have placed reliance on the following decisions:

1. ILR 2006 KAR page 898 2. W.P.No.164/2007 (disposed of on 16.04.2008) -:

8. :- 3. W.P.No.105/2014 (disposed of on 04.08.2014) 4. W.P.No.200004/2015 (disposed of on 09.04.2015) 5.

6. 1990(2) SCC page 456 2014(3) AICLR page 348 We have carefully considered the submissions made by the learned counsel for the parties and also perused the judgments relied upon by the learned counsel for the parties. There are conflicting views regarding maintainability of the second writ petition and interpretation of section 3(2) of the Karnataka Prevention of Dangerous Activities of Bootleggers,

Drug Offenders, Gamblers, Goondas, Immoral Traffic offenders and Slum Grabbers Act, 1985. In Srikant vs. District Magistrate, Bijapur and others reported in ILR 2006 KAR page 898 and in WP(HC).No.200004/2015 between Sangeeta Vs. State of Karnataka and others disposed of on 09.04.2015, the Division Benches of this Court have taken a view that second writ petition is not maintainable. In WP(HC).No.164/2007 disposed of on 16.04.2008 the Division Bench of this court -:

9. :- has held that second writ petition is maintainable on fresh grounds. Thus, there are conflicting views regarding maintainability of the second writ petition. In T.Devaki vs. Government of Tamilnadu & others reported in (1990)2 SCC page 456 the Honble Supreme Court while interpreting section 3 of Tamilnadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Immoral Traffic Offenders and Slum Grabbers Act, 1982 which is similar to Section 3 of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985, has observed at para 10, Once the order of detention is confirmed by the State Government, maximum period for which a detainee 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 detainee 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 -:

10. :- by the State Government is to remain in force and it has no relevance to the period of detention. It is further observed, 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 detainee is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification. In Cherukuri Mani vs. The Chief Secretary, Government of A.P. and others reported in 2014(3) AICLR Page 348, the Honble Supreme Court has held that passing of a detention order for a period of twelve months at a stretch, without

proper review, is deterrent to the rights of the detainee. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time. The Government order directing detention for a maximum period of twelve months is not sustainable in law. The Honble Supreme Court has taken different views in the above cases. In WP(HC). No.105/2014, the Division bench of this Court -:

11. :- following the decision in Cherukuri Manis case reported in 2014 (3) AICLR348 has quashed the detention order. Another Division Bench of this Court in WP(HC) No.74/2015 following the decision of the Honble Supreme Court in T.Devakis case reported in (1990)2 SCC456 has sustained the detention order. There are conflicting views regarding maintainability of the second writ petition and applicability of the decisions of the Honble Supreme Court reported in (1990)2 SCC page 456 and 2014(3) AICLR page 348 referred to above. Therefore, the matter requires consideration by a Larger Bench. Therefore, place these matters before the Honble Chief Justice for necessary orders for placing the matter before the Larger Bench. 4. On a reading of the aforesaid order of reference, we find that an authoritative pronouncement of the Full Bench is sought on three points. First, is with regard to the maintainability of a second writ petition challenging an order of detention. The second point is, whether non-mentioning of the period of detention in the order of detention would -:

12. :- vitiate the same and the third point is, with regard to the interpretation to be made to Section 3(2) of the Act, having regard to the divergent opinion of the Honble Supreme Court in the case of Cherukuri Mani vs. Chief Secretary, Government of Andhra Pradesh and Others reported in [(2015) 13 SCC722 (Cherukuri Mani) and Mrs.T.Devaki vs. Government of Tamil Nadu and Others [AIR 1990 SC1086 (Mrs.T.Devaki)]. The above points shall be considered in seriatim.

5. Re. Point No.1:- Whether a second writ petition challenging an order of detention is maintainable?. (a) In W.P.(H.C.).No.149/2015, the petitioner has challenged the order of detention dated 14/04/2015 passed by the second respondent therein and confirmed by the first respondent therein vide order dated

14/05/2015 and subsequently, extended by order dated 24/09/2015 as per Annexure F -:

13. :- therein, under Article 226 of the Constitution of India. The said petitioner had earlier approached this court in W.P.(H.C.).No.74/2015 under the very same provision. A Division Bench of this Court by order dated 09/07/2015 dismissed the writ petition holding that the detention order dated 14/04/2015 and its confirmation were justified. A preliminary objection has been raised on behalf of the State to the effect that W.P.(H.C.)No.149/2015 is not maintainable as the detention order was challenged earlier and the same has been dismissed. (b) A similar contention has been raised in W.P.(H.C.)No.152/2015 as earlier the detention order was assailed in W.P.(H.C.)No.94/2015 and the Division Bench of this Court by order dated 17/07/2015 dismissed the said writ petition by holding that the detention order dated 18/03/2015 and its confirmation was justified. (c) In the order of reference, the following two cases have been referred to: the first is, -:

14. :- Smt.Sangeeta vs. State of Karnataka and Others reported in [ILR 2015 KAR92 (Sangeeta) and Srikanth vs. District Magistrate and others [ILR 2006 KAR898 (Srikanth). In the first of the aforesaid cases, a Division Bench of this Court (Kalaburagi Bench) has held that when once a petition under Article 226 of the Constitution of India has been dismissed by a Division Bench, a subsequent petition is not maintainable and that a subsequent Division Bench cannot set aside the order made in a habeas corpus petition in an earlier case by another Division Bench. However, despite the dismissal of a petition for habeas corpus by a Division Bench of a High Court, an independent petition under Article 32 of the Constitution could be maintained before the Honble Supreme Court and the principles of res judicata would not apply. While saying so, the Division Bench in the aforesaid case has relied upon three judgments of the Honble Supreme Court namely, Ghulam Sarwar vs. Union of India and Others [AIR 1967 SC1335; Kirit Kumar Chamanlal Kundaliya vs.-.:

15. :- Union of India and Others [AIR 1981 SC1621 and T.P.Moideen Koya vs. Govt. of Kerala and Others [(2004) 8 SCC106. In the aforesaid three cases, doctrine of finality of judgment or the principles of res judicata have been

discussed and it has been held that the same would not apply to a case where a writ petition is filed under Article 32 of the Constitution after the dismissal of a writ petition under Article 226 thereof. This is because Article 32 itself is a fundamental right under the Constitution. In the circumstances, it has been held that a person cannot re-agitate by filing a second writ petition under Article 226 of the Constitution, if an earlier writ petition has been dismissed. (d) The second case referred to in the order of reference under consideration is that of Srikant wherein, it has been observed that a subsequent petition to challenge preventive detention on fresh grounds has been approved by the Honble Supreme Court in case of Lallubhai Jogibhai Patel vs. Union -:

16. :- of India [(1981) 2 SCC427. But the Division Bench of this Court has held that a subsequent petition which can be filed only on fresh grounds does not mean that it could be filed on any inadvertently missed out, forgotten or abandoned ground which was already available when the first petition was filed and not raised for the reasons best known to the petitioner. But it must be a ground which was not available when the first petition was filed or there should be a change in the circumstances of the case. Therefore, in the absence of the aforesaid conditions, a subsequent petition before the same forum against the very same detention order even though on a different set of grounds is not maintainable. On the above reasoning the Division Bench dismissed the said petition as not maintainable. (e) Further, in the case of Smt.Meenaxi vs. Additional District Magistrate and Police Commissioner, Hubli-Dharwad City and Others, in W.P.(H.C.)No.164/2007, disposed of on -:

17. :- 16/04/2008 (Smt.Meenaxi) reported in 2008 (2) KLJ712(DB), referred to in the order of reference, has been held by another Division Bench of this Court that a second writ petition is maintainable on fresh grounds. (f) The apparent conflict that has been noticed in the order of reference is that in the case of Sangeeta and Srikant (supra), the Division Benches took a view that the second writ petition after a dismissal of an earlier writ petition is not maintainable, unless the ground/s on which it is filed was or were not available when the first petition was filed or that there may be change in circumstances in the case. Whereas, in Smt.Meenaxi, it is observed that a second writ petition is maintainable on new grounds. The

expression, fresh grounds or new grounds must mean, grounds which were previously not available when the first petition was filed, and not the grounds which were already available when the first petition was filed but were not raised or, on a -:

18. :- different set of grounds which were available and not raised when the first writ petition was filed. On facts the Division Bench in W.P.(H.C.).No.164/2007 in the case of Smt.Meenaxi, found that the said writ petition was maintainable as new grounds to challenge the order of detention were raised. (g) Therefore, the quintessence of the reasoning in the aforesaid judgments is one and the same i.e., a second writ petition challenging the same order of detention is maintainable on fresh grounds or new grounds, which were not available when the first writ petition was filed or, that there is a change in the circumstance of the case, warranting the filing of a fresh petition. In other words, if the grounds were available when the first writ petition was filed and were not, taken or raised by the petitioner, then it would not enable him to raise the said grounds by filing a second writ petition. Therefore, we do not find any real conflict or difference of opinion in the case of Sangeeta, Srikant or Meenaxi. In view of the -:

19. :- aforesaid clarification, the Court would have to consider whether the grounds raised in the second writ petition are fresh or new grounds, which were not available when the earlier writ petition was filed and to come to a conclusion that the principle of res judicata would not be applicable to the second writ petition and on holding that the said writ petition is maintainable, the Court would have to proceed and consider the same on merits. (h) In fact, against the order passed by the Division Bench of this Court in Srikants case, Special Leave Petition was filed before the Honble Supreme Court, which was converted into Criminal Appeal No.1201 of 2006 and the same was disposed on 22/11/2006. The said judgment is reported in 2006 AIR SCW6355 wherein it has been observed as under:- 8. Whether any new ground has been taken, has to be decided by the Court dealing with the application and no hard and fast rule can be laid down in that regard. But one thing -:

20. :- is clear, it is the substance and not the form which is relevant. If some surgical changes are made with the context, substance and essence remaining the same, it cannot be said that challenge is on new or fresh grounds. The reason that a second writ petition based on the very same grounds which were raised in the first writ petition or which could have been raised, as they were available but not raised in the first writ petition and subsequently raised in the second writ petition is on account of the applicability of the principles of res judicata and constructive res judicata. But having regard to the fact that a writ of habeas corpus touches upon the life and liberty of a person, a second writ petition on fresh grounds i.e., grounds that were previously not available when the first writ petition was filed, is in our view, maintainable. We, accordingly, answer point No.1.

6. Re. Point No.2:- Whether non- mentioning of the period of detention in the order of detention would vitiate the same?. -:

21. :- (a) Section 13 of the Act deals with maximum period of detention which is twelve months from the date of detention. Section 13 of the Act reads as under:-
13. Maximum period of detention.- The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12 shall be twelve months from the date of detention. (b) Learned counsel for the petitioners has placed reliance on Cherukuri Mani, while, learned A.A.G. has relied upon T.Devaki and the latest decision of a Division Bench of this Court (of which one of us, Nagarathna J., was a member) in Sri.Yallappa vs. The State of Karnataka, represented by its Under Secretary (Law & Order), Home Department and Others, reported in ILR 2017 KAR1130(Sri.Yallappa), in support of their respective contentions. Hence, it is necessary to consider those judgments of the Honble Supreme Court and this Court in detail.-:

22. :- Cherukuri Mani: (i) In Cherukuri Mani, the facts were that the Collector and District Magistrate, East Godavari District, Andhra Pradesh, had issued a preventive detention order on 30/09/2013 under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, the Andhra Pradesh

Act), stating that the husband of the appellant (detenu) therein, had all the attributes to be called as a goonda as envisaged under Section 2(g) of the Act. It was also mentioned that he was involved in several cases of theft of Government and private properties as well as cases of destruction of public properties and his anti- social activities were harmful to the society and general public and eleven cases had been registered against him. After having served a copy of the order along with the grounds of detention, the detenu was taken into custody and from 05/10/2013, he was detained. On the basis of the recommendation of the -:

23. :- Collector and after obtaining a report from the Advisory Board, the Government of Andhra Pradesh by its Order dated 06/11/2013, directed detention of the detenu for a period of twelve months from the date on which he was detained i.e., 05/10/2013. The said detention was unsuccessfully challenged by the detenus wife before the High Court of Andhra Pradesh. Being aggrieved by that order, the matter arose before the Honble Supreme Court. The question for consideration before the Honble Supreme Court was whether the State Government had the power to pass a detention order to detain a person at a stretch, for twelve months under the provisions of the said Act. (ii) Section 3 of the Andhra Pradesh Act was considered and interpreted. The said section empowers the detention of certain category of persons as defined under the Act. It also relates to the manner of passing the order of detention as well as the duration. The proviso to sub-section (2) of -:

24. :- Section 3 of the Andhra Pradesh Act was interpreted by the Honble Supreme Court. Section 3 of the Andhra Pradesh Act reads as under:- 3. Power to make orders detaining certain persons: (1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber that with a view to preventing 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 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, 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 Government under this sub- section shall not in the first instance, exceed -:

25. :- three months, but the 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 the section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the 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 Government. On a reading of Section 3 of the Andhra Pradesh Act, the Honble Supreme Court held that when the State Government or when the District Magistrate or Commissioner of Police or the authorities are conferred with the power to pass an order of detention, the only difference is that the order of detention passed by the State Government would remain in force only for a period of three months in the first instance, whereas similar orders passed by -:

26. :- the District Magistrate or Commissioner of Police would be in force for an initial period of twelve days only. The continuance of detention beyond twelve days would depend upon the approval to be accorded by the Government in that regard, vide sub-Section (3) of Section 3 of the said Act. Section 13 of the said Act mandates that the maximum period of detention under that Act is twelve months. (iii) While considering the proviso to sub- section (2) of Section 3 of the said Act, the Honble Supreme Court has observed as under:- 12. Proviso to Sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act for the maximum -:

27. :- period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard.

13. The requirement to pass order of detention from time to time in the manner referred to above, has got its own significance. It must be remembered that restriction of initial period of detention to three months, is nothing but implementation of the mandate contained in Clause (4)(a) of Article 22 of the Constitution of India. It reads as under: 22.(4): No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless- (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its -:

28. :- opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub-clause (b) of Clause (7); or (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of Clause (7). 14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the Government Order in the present case, directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law.-.:

29. :- The Government cannot direct or extend the period of detention up to the maximum period of twelve months in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while

passing orders of detention or extending the detention period from time to time.

15. Normally, a person who is detained under the provisions of the Act is without facing trial which in other words amounts to curtailment of his liberties and denial of civil rights. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time. Taking into consideration these factors, the Legislature has specifically provided the mechanism Advisory Board to review the detention of a person. Passing a detention order for a period of twelve months at a stretch, without proper review, is deterrent to the rights of the detenu. Hence, the impugned Government Order directing detention for the maximum period of twelve months straightaway cannot be sustained in law.

16. Even though, learned senior counsel appearing for the State sought for an -:

30. :- adjournment beyond summer vacation, we are unable to accept his prayer for the simple reason that maximum part of the period of detention of the detenu is going to complete by the end of summer vacation. Undisputedly, the detenu was detained on 5-10-2013 which means that he remained under detention for about seven months at a stretch without any periodical review as envisaged by law. We are, therefore, of the considered opinion that the detention order passed by the Government of Andhra Pradesh in this case is in contravention to the provisions of law. On this ground alone, without going into other issues, we thought this appeal has to be allowed and the order of detention has to be quashed.

17. We accordingly allow the appeal quashing the detention order issued by the Government of Andhra Pradesh and setting aside the impugned judgment of the High Court. The detenu shall be set at liberty forthwith. T.Devaki: (i) In T.Devakis case, a three Judge Bench of the Honble Supreme Court was considering a petition filed under Article 32 of the Constitution of -:

31. :- India, challenging the validity of the detention of the petitioners husband under the order of the Collector and District Magistrate of Kamarajar District, Virudhunagar, Tamil Nadu, dated 15/08/1989, 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 (hereinafter, referred to as the Tamil Nadu Act). The detention was pursuant to an incident which took place on 29/07/1989, on which date a Seminar on Irrigation was held at Virudhunagar. The proceedings of the seminar came to an abrupt halt for a while. The detenu was taken into custody and was enlarged on bail by the Sessions Judge on 03/08/1989. Thereafter, the District Magistrate and Collector of Kamarajar, issued the impugned detention order after 17 days of the aforesaid incident under Section 3(1) of the Tamil Nadu Act. The petition filed under Article 32 was heard by a Division Bench of two Honble Judges of the Supreme Court. They found that there was a -:

32. :- conflict of decisions of the Supreme Court in Commissioner of Police vs. Gurubux Anandram Biryani [1988 (Supp) SCC568 (Gurubux Biryani) and Ashok Kumar vs. Delhi Administration [AIR 1982 SC1143 (Ashok Kumar) on the question of validity of detention order on its failure to specify the period of detention and the matter was referred to and heard by a Bench of three Honble Judges. (ii) Section 3 of the Tamil Nadu Act was considered particularly, sub-Section (2) along with the proviso. The contention in that case was that the impugned detention order did not specify the period for which the detenu was required to be detained and hence, the order was illegal. Refuting the said contention, the Honble Supreme Court analyzed Section 3 of the Tamil Nadu Act. For the sake of immediate reference, it is extracted as under:-

"3. Power to make orders detaining certain persons- (1) The State Government may, if satisfied with respect to any bootlegger or -:

33. :- 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 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, 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.-.:

34. :- (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."

(iii) According to the Honble Supreme Court, Section 3(1) of the aforesaid Act confers power on the State Government to detain a person under that Act 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) of Section 3 to a 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 him. Section 3(3) requires that -:

35. :- 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 matter. 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 3 requires the detaining authority to communicate to the detenu the 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 of the Tamil Nadu Act 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 -:

36. :- report of the officers made under Section 3(3) of the said 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 an 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 for the maximum period 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 -:

37. :- has, however, power to revoke the detention order at any time, it may think proper. (iv) While analyzing the aforesaid provisions at Paragraph No.10 of the judgment, the Hon'ble Supreme Court has observed as under:- 10. Provisions of the aforesaid Sections are inbuilt safe guards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered, 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 can not 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 -:

38. :- 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 for 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. (emphasis by us) -:

39. :- (v) In that case, it is further held that the Bench did not agree with the observations made by the Honble Supreme Court in Gurubux Biryani case (supra). That case pertained to Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Act, 1981 (hereinafter, referred to as the Maharashtra Act). The Honble Supreme Court held that Section 3 of the Maharashtra Act was identical with 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 the 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 an order directing detention of a person, does not require the State Government to specify the period of detention. Similarly, sub-Sections (2) or (3) of Section 3 do not require the District Magistrate or the Commissioner of -:

40. :- Police to specify the period of detention while exercising their powers under sub-Section (1) of Section 3. According to the Honble Supreme Court, the observations made in Gurbux Biryani case 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, the Honble Supreme Court scrutinized, the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, COFEPOSA Act, National Security Act and according to the Honble Supreme Court, 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. (vi) The Honble Supreme Court further held that the order of detention is not rendered illegal -:

41. :- merely because it does not specify the period of detention. It is also held as under:- 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 vs. The State of Punjab, [1952]. 3 SCR756(AIR 1952 SC350 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]. 1 SCR870(AIR 1972 SC2431 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 vs. State -:

42. :- of Maharashtra, [1983]. 1 SCC382(AIR 1983 SC181, 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. On the basis of the observations made in the aforementioned decisions, the Honble Supreme Court referred to the detention order passed under Section 3 of the National Security Act, in the case of Ashok Kumar and held that it is not necessary for the detaining authority to specify the period of detention while making the order of detention.-.:

43. :- (vii) While holding that the observations in Gurubux Biryani case were incorrect and that the observations in Ashok Kumars case were correct, the Honble Supreme Court held that in the absence of any period being specified in the order of detention, 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. In that case, it was held that the order of detention was not illegal on account of the detaining authority's failure to specify the period of detention in the order. (c) Further, there have been divergent views expressed by various Benches of this Court on this aspect of the matter: some, following the ratio laid down in T.Devaki, while others applying the dictum in Cherukuri Mani.-.:

44. :- Sri Yallappa: (d) Further, in the case of Sri. Yallappa, a Division Bench of this Court (of which, one of us, Nagarathna J., was a member) has held that there is a dichotomy of opinion in the two decisions of the Honble Supreme Court namely, Mrs. T. Devaki and Cherukuri Mani. Having regard to the dictum of three Honble Judges of the Supreme Court in T.Devaki's case, the same has been followed in the said case by observing that in Cherukuri Mani being a decision of two Honble Judges, has not noticed the decision in T. Devaki. (e) Thus in our view, it is not necessary that the period of detention must be mentioned in the order of detention; even if no period is mentioned in the order of detention, having regard to Section 13 of the Act, which prescribes the maximum period of detention to be twelve months, the detention order would operate only till then and no

further. Therefore, the second point of reference is accordingly answered.-.:

45. :- 7. Re. Point No.3:- Regarding interpretation of Section 3(1) and Section 3(2) of the Act. (a) This concerns the interpretation to be given to Sections 3(1) and 3(2) of the Act. The said Section pertains to passing of order of detention against certain person. The points to be considered is, firstly, does the power of detention, which could be exercised by the State Government under Section 3(1) of the Act have any nexus with the delegation of that power to an Officer as stipulated in Section 3(2) of the Act?. Secondly, does proviso to Section 3(2) of the Act have any nexus with Section 3(1) of the Act?. In this regard we would also consider as to whether the power of detention has any nexus with the period of delegation. (b) Before considering the judicial dicta of the Honble Supreme Court as well as this Court and before applying them to the State Act, in light of the order of reference and rival contentions, at the outset, it would be useful to extract Section 3 of the Act which reads as under: -:

46. :- 3. Power to make orders detaining certain persons:- (1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or gambler 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 persons 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, it 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 sub-section: Provided that the period specified in the order made by the 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 -:

47. :- 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. It is also useful to refer to Sections 10 to 12 which read as under: 10. Reference to Advisory Board:- In every case where a detention order has been made under this Act the State Government shall within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made against the order, and in case where the order has been made by an officer, also the report by such officer under sub- section (3) of section 3.-:

48. :- 11. Procedure of Advisory Board:- (1) The Advisory Board shall after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desire to be heard, after hearing him in person, submit its report to the State Government, within seven weeks from the date of detention of the person concerned. (2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned. (3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board. (4) The proceedings of the Advisory Board and its report, excepting that part of the -:

49. :- report in which the opinion of the Advisory Board is specified, shall be confidential. (5) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board.

12. Action upon report of Advisory Board:- (1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in section 13, as they think fit. (2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith. (c) Section 3 of the Act is in pari materia with the Andhra Pradesh Act as well as the Tamil Nadu Act, which are extracted above. Under Section 3(1) of the :-

50. :- Act, the State Government in order to prevent any bootlegger or drug-offender or goonda or an immoral traffic offender, or slum grabber with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, can make an order directing that such a person be detained. The power of State Government to detain such a person can also be delegated to the District Magistrate of a District or to Commissioner of Police. Such a delegation can be made if the State Government is satisfied that it is necessary to do so, by an order in writing, directing such District Magistrate or Commissioner of Police, to exercise power conferred under Section 3(1) of the Act, if such District Magistrate or Commissioner of Police is satisfied to do so. Therefore, while Section 3(1) of the Act empowers the State Government to pass an order of detention, under Section 3(2), the State Government can delegate its power to a District Magistrate or to a Commissioner of Police, as the case may be.-.:

51. :- (d) Proviso to Section 3(2) is relevant for the purpose of this case. The proviso states that the period specified in the order made by the Government under Section 3(2) i.e., the order of delegation, in the first instance, shall not exceed three months. Therefore, the initial order of delegation can be in operation for a maximum period of three months, but if the State Government is satisfied that it is necessary to amend the initial order of delegation, it can extend it, but the period of extension from time-to- time cannot exceed three months at a time. In other words, the initial order delegating the authority to detain a person mentioned in Section 3(1) of the Act to any District Magistrate or Commissioner of Police, can

hold good only for a maximum period of three months; the order of delegation beyond that period is illegal. However, if the order of delegation requires extension, then such extended period can be for a period of three months at a time. Therefore, the initial order delegating a District Magistrate or Commissioner of Police to exercise power under Section 3(1) of the Act, can be -:

52. :- extended from time-to-time, but the period of extension cannot exceed three months at a time. (e) At this stage, it is necessary to delineate on two aspects: One, is with regard to the distinction between Section 3(1) and Section 3(2) of the Act. Second, is with regard to the prescription of the period of detention in the order of detention in the context of delegation of power under Section 3(2) of the Act. (f) We find that Section 3 enables an order of detention to be passed by any of the two authorities specified therein. One, by the State Government under Section 3(1) and, the other, by an Officer mentioned under Section 3(2) on being delegated to do so by the State Government. Exercise of the power of detention under the aforesaid provisions is mutually exclusive. When the order of detention is passed by the State Government, the Section does not prescribe that it should be for a specified period or that the period of detention should be specified in the order of detention. But, Section 9 of the Act -:

53. :- prescribes that the State Government must refer the matter to the Advisory Board constituted under Section 9 of the Act within a period of three weeks from the date of detention of a person. The Advisory Board has to submit its report to the State Government within seven weeks from the date of detention of the person concerned. If the Advisory Board reports that in its opinion there is sufficient cause for the detention of the person, then the State Government can confirm the detention order. Once again no period of detention need to be specified. On the other hand, if the order of detention is passed under Section 3(2) of the Act by an officer referred to under the said sub-section, then the said order of detention can remain in force only for a period of twelve days, within which it has to be approved by the State Government. The order of detention passed under Section 3(2) of the Act is pursuant to delegation being made by the State Government to the officer concerned. Such a delegation can be for a period of three months at a time and not beyond that. In either -:

54. :- case, i.e., whether the order is passed under Section 3(1) of the Act or under Section 3(2) of the Act (which has been approved by the State Government within twelve days thereof), the State Government has to refer the matter to the Advisory Board, which should give its opinion within seven weeks from the date of order of detention of the person concerned. Therefore, in our view, the power exercised by the State Government either under Section 3(1) or under Section 3(2) of the Act is distinct and there is no nexus between the two. The proviso to Section 3(2) deals with the period of delegation and not with the period of detention. Moreover, in our view, the proviso to Section 3(2) has no nexus to exercise of power under Section 3(1). (g) Further, under Section 3(1), which empowers the State Government to pass an order of detention no period of detention is stipulated. Therefore, when the State Government passes an order of detention under Section 3(1) of the Act - :

55. :- without stipulating any period of detention, it is implied that the maximum period of detention is twelve months from the date of order of detention as mandated in Section 13 of the Act subject to confirmation by the Advisory Board within a period of three months from the date of approval as mandated in Article 22(4)(a) of the Constitution of India. But, when the District Magistrate or Commissioner of Police exercises power under Section 3(2) of the Act pursuant to a delegation by the State Government then, in such a case, the order of detention can be only for a period of twelve days, in the first instance, unless in the meantime, it has been approved by the Government. This is stipulated in Section 3(3) of the Act. In fact, Section 3(3) states that when the order is made by the Officer under sub-section (2) of Section 3, then he shall forthwith report to the 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. Thus, the order of detention passed under Section 3(2) of -:

56. :- the Act can remain in force for not more than twelve days after the making thereof, unless in the meantime the Government approves it. The stipulation in Section 3(3) of the Act is identical with the stipulation prescribed in the Andhra Pradesh Act as well as in the Tamil Nadu Act. Maximum Period of Detention vs. Period of Delegation:

8. At this stage, it is also relevant to consider the scheme of the Act, which is in pari materia with the Andhra Pradesh Act as well as the Tamil Nadu Act. (a) Section 2 of the Act is the definition clause; Section 3 deals with the power to make orders detaining certain persons. The order of detention is executed in terms of Section 4, in the manner provided for the execution of warrants of arrest under Code of Criminal Procedure, 1973. The power to regulate the place and conditions of detention are delineated in Section 5; As per Section 6 of the Act, the detention orders cannot be invalid or inoperative -:

57. :- on certain grounds; Section 6-A states that the grounds of detention are severable; Section 7 stipulates the power in relation to absconding persons. The grounds of the order of detention have to be disclosed to the affected persons, as stipulated in Section 8. The aforesaid aspects are applicable prior to the consideration and approval of the order of detention by the Advisory Board. (b) Section 9 deals with the constitution of Advisory Boards. In every case where a detention order is made under the Act, whether under Section 3(1) or Section 3(2), as the case may be, the State Government has to place before the Advisory Board constituted by it under Section 9, the grounds on which the order has been made and the representation, if any, made and in case where the order has been made by the officer, also the report by such officer under Section 3(3) of the Act. The said reference has to be made within three weeks from the date of detention of a person. The procedure of the -:

58. :- Advisory Board is dealt with in Section 11 of the Act. The Advisory Board has to submit its report to the State Government within seven weeks from the date of detention of the person concerned under Section 11(1). The report of the Advisory Board has to also specify, in a separate part thereof, the opinion of the Advisory Board, as to whether or not there is sufficient cause for the detention of the person concerned. If the Advisory Board reports that in its opinion there is sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in Section 13 as it thinks fit. The maximum period for which any person may be detained in pursuance of any detention order made under the Act which has been confirmed under Section 12

shall be twelve months from the date of detention. If the Advisory Board reports that in its opinion there is no sufficient cause for the detention of the person concerned then the State Government has to revoke -:

59. :- the detention order and release the detenu forthwith. Thus, the order to be passed by the State Government at this stage would depend on the report of the Advisory Board. (c) Section 14 stipulates that the detention order may at any time be revoked or modified by the State Government notwithstanding that the order has been made by Advisory Board mentioned in Section 12. The revocation of the detention order would not come in the way of making a fresh detention order under Section 3 against the same person provided, where no fresh facts have arisen after revocation, the maximum period for which such person may be detained in pursuance of the detention order cannot extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order. Section 15 deals with temporary release of detained person.

9. Thus, on a conjoint reading of the provisions of the Act, we find that there is no stipulation that -:

60. :- the order of detention must specify the period of detention. But there is a safeguard in favour of the detenu under Section 3(3) of the Act, which stipulates that the order of detention shall be in force for a period of twelve days only when it has been made under Section 3(2) of the Act unless in the meantime it has been approved by the State Government. Therefore, if there is no approval of the order of detention made by the Officer under Section 3(2) of the Act by the State Government within twelve days, then the said order automatically lapses. But if there is an approval of such an order, then the detention would continue in terms of the period specified in the order of approval till the end of that period or if no such period is specified, then subject to the report of the Advisory Board and the subsequent order to be passed under Section 12 of the Act by the State Government or for the maximum period of twelve months from the date of detention. Thus, the State Government has to refer an order of detention which is made by it under Section 3(1) of the Act or by an -:

61. :- officer specified in Section 3(2) of the Act to the Advisory Board within a period of three weeks from the order of detention and the Advisory Board must give its opinion within three months from the date of detention as mandated under Article 22(4)(a) of the Constitution. If the Advisory Board reports that there is sufficient cause for the detention of the person concerned, then the State Government may confirm the detention order under Section 12 and continue the detention of the person concerned. But the period need not be specified in the confirmatory order also. If no such period is specified, then the maximum period of detention would be in terms of Section 13 of the Act i.e., for a period of twelve months from the date of detention. But if the period of detention is specified in the confirmatory order passed under Section 12 of the Act, then the detention would continue till such period. In any case, the period of detention cannot exceed the maximum period of twelve months stipulated in Section 13 of the Act. But where the Advisory Board in its opinion reports that -:

62. :- there is no sufficient cause for the detention of the person concerned, the State Government has to revoke the detention order and release the person forthwith.

10. What emerges from the aforesaid discussion is that the maximum period of detention prescribed under the Act is twelve months from the date of detention. Thus, when a detention order is made under Section 3(1) by the State Government or under Section 3(2) by an officer mentioned therein, which order has been approved within twelve days by the State Government, under no circumstance, can it extend beyond twelve months from the date of detention. Therefore, it is not necessary that the order of detention must specify the period of detention. It could however, specify a period lesser than twelve months. Thus, an order of detention, either under Section 3(1) or Section 3(2) of the Act or a confirmatory order passed by the State Government subsequent to the report of the Advisory Board under -:

63. :- Section 12(1) of the Act, need not specify the period of detention. But if it specifies the period of detention then, care must be taken to ensure that the said period of detention does not exceed twelve months from the date of detention.

11. In light of the above provisions and the interpretation thereof, in our view, the following expression in proviso to Section 3(2) of the Act, period specified in the order made by the 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 has no nexus to the period of detention. The expression "period in proviso to Section 3(2) refers to the expression period in Section 3(2). Section 3(2) deals with delegation of the power of detention by the State Government to a District Magistrate or a :-

64. :- Commissioner of Police to exercise the power of detention. That delegation must be by an order in writing after the State Government being satisfied that it is necessary to delegate its power to such Officer. Under the proviso, period specified in the order of delegation made by the Government under Section 3(2) in the first instance, should not exceed three months, but if the State Government is satisfied that it should extend such period of three months then, it could do so from time to time by any period, but the extended period of delegation should not exceed three months at a time. Therefore, the State Government can in the first instance delegate the power of detention to the District Magistrate or Commissioner of Police for a period of only three months initially and if satisfied can extend such period of delegation, but every extended period should not exceed a period of three months. Thus, there can be any number of extensions of the period of delegation but it should always be for a maximum period of three months at a time. But the Honble Supreme Court in :-

65. :- Cherukuri Mani, has interpreted the proviso to mean that when an order of detention is made by the State Government under Section 3(1) of the Act, then the period of detention can be only for a period of three months in the first instance. A similar order made under Section 3(2) would be for an initial period of twelve days unless approved by the State Government. According to the Honble Supreme Court, if the State Government intends to detain an individual under the Act for the maximum period of twelve months, there must be an initial order of detention for a period of three months and at least three orders of extension for a period not

exceeding three months each. In support of such an interpretation, reliance has been placed on Article 22(4)(a) of the Constitution, which is extracted as under for immediate reference: 22. Protection against arrest and detention in certain cases:-
X X X -:

66. :- (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless- (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or 12. A reading of Article 22(4)(a) would clearly indicate that no law providing for preventive detention shall authorize the detention of a person for a period beyond three months. Thus, an order of detention cannot be for a period longer than three months unless, the Advisory Board has reported before the expiration of the said period of three months that there is, in its opinion such sufficient cause for detention. Article 22(4)(a) clearly indicates that even -:

67. :- if the order of detention does not prescribe any period of detention, such an order of detention cannot be in force for a period beyond three months, unless the Advisory Board before the expiration of three months opines that there is sufficient cause for detention. In other words, if the Advisory Board does not give its opinion within a period of three months from the date of detention, in such a case, the order of detention beyond the period of three months would become illegal and not otherwise. If within the period of three months, the Advisory Board opines that there was no sufficient cause for such detention then, the State Government would have to release the detenu forthwith.

13. Hence, Article 22(4)(a) in substance deals with the order of detention and has nothing to do with the delegation of the power of detention by the State Government to an Officer as stipulated under Section 3(2) of the Act. In fact, under Section 9 of the Act, the State Government has to refer the matter to the -:

68. :- Advisory Board within three weeks from the date of detention, irrespective of whether the detention order is passed under Section 3(1) or Section 3(2) of the Act and the Advisory Board has to give its opinion within seven weeks from the date of detention. That would totally make it ten weeks. As stipulated in Article 22(4)(a) of the Constitution, if in a given case, once the Advisory Board gives its opinion within the stipulated period of three months, then in our view, Article 22(4)(a) would no longer be applicable. Thus, Article 22(4)(a) applies at the initial stage of passing of the order of detention by the State Government or by an officer who has been delegated by the State Government and whose order has been approved by the State Government within a period of twelve days from the date of detention and not at the stage subsequent to the report of the Advisory Board. Depending upon the opinion of the Advisory Board, under Section 12 of the Act, the State Government can revoke the order of detention and release the detenu forthwith or may confirm the detention order -:

69. :- and continue the detention of the person concerned for any period not exceeding the maximum period of twelve months, which is stipulated in Section 13 of the Act. Therefore, when the State Government passes a confirmatory order under Section 12 of the Act after receipt of the report from the Advisory Board then, such a confirmatory order need not be restricted to a period of three months only. It can be beyond a period of three months from the date of initial order of detention, but up to a maximum period of twelve months from the date of detention.

14. We reiterate that the period of three months stipulated in Article 22(4)(a) of the Constitution is relatable to the initial period of detention upto the stage of receipt of report of the Advisory Board and does not have any bearing on the period of detention, which is continued subsequent to the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board. The continuation of the detention pursuant to -:

70. :- the confirmatory order passed by the State Government need not also specify the period of detention; neither is it restricted to a period of three months only. If any period is specified in the confirmatory order, then the period of

detention would be upto such period, if no period is specified, then it would be for a maximum period of twelve months from the date of detention. The State Government, in our view, need not review the orders of detention every three months after it has passed the confirmatory order.

15. Thus, in our view, the period of three months specified in Article 22(4)(a) of Constitution of India is relatable to the period of detention prior to the report of the Advisory Board and not to the period of detention subsequent thereto. Further, the period of detention in terms of Article 22(4)(a) cannot be in force for a period beyond three months, if by then, the Advisory Board has not given its opinion holding that there is sufficient cause for such detention. Therefore, -:

71. :- under Article 22(4)(a), the Advisory Board would have to give its opinion within a period of three months from the date of detention and depending upon the opinion expressed by the Advisory Board, the State Government can under Section 12 of the Act, either confirm the order of detention or continue the detention of the person concerned for a maximum period of twelve months as specified in Section 13 of the Act or release the detenu forthwith, as the case may be. If the order of detention is confirmed, then the period of detention can be extended up to the maximum period of twelve months from the date of detention. With respect, we observe that it is not necessary that before the expiration of three months, it is necessary for the State Government to review the order of detention as has been expressed by the Honble Supreme Court in Cherukuri Mani. The Act does not contemplate a review of the detention order once the Advisory Board has opined that there is sufficient cause for detention of the person concerned and on that basis, a confirmatory order is passed by -:

72. :- the State Government to detain a person for the maximum period of twelve months from the date of detention. On the other hand, when under Section 3(2) of the Act, the State Government delegates its power to the District Magistrate or a Commissioner of Police to exercise its power and pass an order of detention. The delegation in the first instance cannot exceed three months and the extension of the period of delegation cannot also be for a period exceeding three months at any one time.

16. Also having regard to the aforesaid discussion, we are inclined to follow the judgment of the Honble Supreme Court in T.Devakis case, which is also a decision of three Honble Judges, as discussed in detail above to hold that the period specified in Section 3(2) of the Act does not relate to the period of detention, but to the period of delegation made by the State Government in favour of the District Magistrate or the Commissioner of Police.-.:

73. :- 17. On a careful reading of the recent judgment of the Honble Supreme Court in Cherukuri Mani, in light of the previous decision in T.Devaki, it becomes clear that there is a dichotomy or conflict of opinion between the two decisions. It is clear that in Cherukuri Mani, there is no reference made to the judgment of the Honble Court in T.Devaki. Further, T.Devaki is a dictum of three Judge Bench while Cherukuri Mani is a decision of the two Judge Bench. Obviously, the decision in T.Devaki has not been brought to the notice of the two Judge Bench, which rendered the decision in Cherukuri Mani. Significantly, the provision of law under consideration in the aforesaid cases namely, Section 3 of the Andhra Pradesh Act, the Tamil Nadu Act and the Karnataka Act, are in pari materia.

18. We also observe as has been done in the case of Yallappa, that the judgment of this court in the case of Smt.Meenaxi (supra) and Hanamantha vs. State of Karnataka and Others -:

74. :- [W.P.(H.C.)No.200012/2014]. disposed of on 16/09/2014 and Smt. Mamtaz vs. The State of Karnataka and Others [W.P.(H.C.)No.74/2015]. disposed of on 09/07/2015 (Mamtaz) are in line with the dictum of Honble Supreme Court in T.Devaki. So also the judgment of this court reported in case of Vimala Bai vs. District Magistrate [ILR 1988 KAR648(DB)]. (Vimala Bai), which is prior to the decision in T.Devaki, is also in line with the reasoning of the Honble Supreme Court in case of T.Devaki. But the judgments of this court in Earanna vs. The State of Karnataka and Others in W.P.(H.C.)No.200005/2016 disposed on 15/06/2016, Basavarajaiah Swamy vs. State of Karnataka in CrI.A.No.267/2016 dated 05/04/2016 and Chandrappa N. vs. State of Karnataka and Others in W.P.(H.C.)No.79/2015 disposed on 07/07/2015 and Smt. Padmavathi C. Karkera vs. State of Karnataka and Others in W.P.(H.C.)No.105/2014 disposed of on

04/08/2014 (Padmavathi Karkera) referred to -:

75. :- in the reference order, have followed the decision of the Honble Supreme Court in Cherukuri Mani. In fact, in the case of Vimala Bai, a Division Bench of this Court has held that it is not a statutory requirement that the period of detention should be specified in the order of detention. In the absence of such a specification, Section 13 of the Act would operate, which states that the period of detention is twelve months from the date of detention when the detention order is confirmed by the Advisory Board under Section 12. However, the State Government can revoke the detention order if the Advisory Board opines that there was no sufficient cause for the detention of the detenu or for other justifiable reasons. Regarding Section 3(2), it has been held in the case of Vimala Bai also that the period of three months referred to in the proviso to Section 3(2) has nothing to do with the period of detention. The said period only governs the entrustment or the competence of District Magistrate to make an order of detention.

19. In the circumstances, we are of the view that the decisions rendered by respective Division Benches of -:

76. :- this court in Earanna, Basavarajaiah Swamy, Chandrappa and Padmavathi Karkera are not binding precedent, being contrary to the dictum of the Honble Supreme Court in the case of T.Devaki and the observations of the Division Bench of this court in the case of Vimala Bai, Smt.Meenaxi, Hanamantha and Mamta.

20. Thus, in our view, the period of three months mentioned in Section 3(2) of the Act refers to the period of delegation and has no nexus to the period of detention.

21. In the result, we answer the points for reference as under: Re. Point No.1: That a second writ petition based on the very same grounds which were raised in the first writ petition assailing an order of detention is not maintainable on the principles of res judicata. However, a second writ petition assailing the very same detention order based on fresh grounds or new grounds that were not available when the first writ petition was filed, is maintainable.-.:

77. :- Re. Point No.2: That non mentioning of the period of detention in the order of detention would not vitiate the same, even if no period of detention is mentioned in the order of detention. Having regard to the Section 13 of the Act, the maximum period for which any person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 shall be twelve months from the date of detention vide, Section 13 of the Act. Therefore, an order of detention cannot be quashed per se for the reason that it does not mention the period of detention. Re. Point No.3: That Section 3 enables an order to be passed by two authorities: one, by the State Government under Section 3(1) of the Act and, the other, by the officer -:

78. :- mentioned under Section 3(2) on being delegated to do so by the State Government. The power exercised under the aforesaid provisions of the Act is distinct and there is no nexus between the two as the said provisions are mutually exclusive. The proviso to Section 3(2) of the Act deals with the period of delegation and not with the period of detention. Thus the following expression in proviso to Section 3(2) of the Act period specified in the order made by the 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 has no nexus to the period of detention. The expression period in proviso to -:

79. :- Section 3(2) refers to the expression period in Section 3(2). In so opining we have followed the dictum of the Honble Supreme Court in the case of T.Devaki. In view of the above opinion expressed by us, we direct the registry to place these writ petitions before the Division Bench having the roster to dispose of the Writ Petitions in accordance with law. CHIEF JUSTICE Sd/- Sd/- JUDGE Sd/- JUDGE
*mvs