

In Re: Devata Lakshminarayana

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Court : Chennai

Decided On : Oct-19-1949

Reported in : AIR1950Mad266

Judge : Satyanarayana Rao, ;Horwill and ;Balakrishna Ayyar, JJ.

Acts : Madras Maintenance of Public Order Act, 1947 - Sections 2 and 3; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 491; [Explosive Substances Act, 1908](#)

Appeal No. : Criminal Misc. Petn. No. 1536 of 1949

Appellant : In Re: Devata Lakshminarayana

Advocate for Def. : N.T. Raghunathan, Adv. for ;Public Prosecutor

Advocate for Pet/Ap. : S. Krishnamurthy, Adv.

Judgement :

Horwill, J.

1. The petitioner is said to have transported explosive substances, such as potassium chlorate, potassium nitrate, and sulphur from Bezwada to Jeggayapet. He was arrested on 1st January 1949 for having committed an offence punishable under the Explosive Substances Act (Act VI [6] of 1908); but instead of being brought to trial for this offence, he was served on 30th January 1949, with an order of detention under Act, I [1] of 1947. Grounds of detention were served on 1st

March 1949; and nine days later a charge-sheet was filed against the petitioner and two other. On 17th March 1949, the petitioner made the usual representations, denying that he had any connection with communists, saying that he had always been a staunch supporter of the Congress Party, and had contributed to their funds. These representations were sent to the District Magistrate by the Government for report; and three months elapsed before the District Magistrate sent in his report on 21st June 1949. The matter was referred to the Advisory Council on 4th July 1949, and no final orders have been passed; nor, we understand, has the petitioner or his co-accused been brought to trial.

2. In the grounds of detention only one ground is given for the detention of the petitioner, and that is the one with which he has been charged. It is said in the second paragraph:

'Due to the disturbed conditions in the Hyderabad State and the subversive activities carried on by Hyderabad State Communists, the Communists have infiltrated into Indian Union villages and contracted villagers, especially those on the border and engaged them to make surreptitious purchases of explosive substances useful for manufacture of gunpowder, country bombs, and other explosives of similar nature for furtherance of their acts of sabotage.'

In the following paragraph it is said:

'In particular he (the petitioner) has been clandestinely purchasing locally and importing from outside sulphur, graphite, salt petre, and potassium and smuggling them to Communist camps in Hyderabad State.'

The following short paragraph is much to the same effect:

'There is information that he is clandestinely importing sulphur, graphite, and other explosive substances and smuggling them for Hyderabad State communists.'

Perhaps the succeeding sentence may also be quoted:

'He is communist-sympathiser and is actively assisting the State Communists in supplying ammunition.'

The gravamen of the charge is thus that the petitioner was transporting explosive substances to the Communist camps in the Hyderabad State for the manufacture of gunpowder, country bombs and other explosives in furtherance of acts of sabotage. The grounds of detention served on the detenu are intended to be of the nature of a charge, to which he can write an answer that is sent to the Government for their consideration as well as that of the statutory Advisory Committee. He cannot be expected to answer what is not in the charge; and he is entitled to rely on any defects in that charge, such as that it does not show how the acts committed by him endanger the peace and security of this Presidency. The grounds served on the petitioner do not show in what way the furtherance of Communist activities in the Communist camps of the Hyderabad State supplied by the petitioner would endanger the peace and security of this Presidency. The learned Public Prosecutor has asked us to read into the charge sheet something that is not there and which can only be furnished by observations found in newspapers and from gossip and rumours of which he says we can take judicial notice, Speaking for myself, I have no personal knowledge, either from newspapers or otherwise, of the interrelations between the Communists of Hyderabad and the Communists in the neighbouring Krishna District. Moreover, it would prima facie be very unlikely, from a reading of the grounds in the charge, even if all the allegations made therein were true, that the explosive substances were intended for use in the Krishna District. The articles, as above indicated, were transported from Bezwada; and it would have been the easiest thing in the world for the Communists in Krishna District, strong as they are said to be by the learned Public Prosecutor, to have supplied the explosives direct to the Communists in Bezwada and in other parts of the district. I cannot see the purpose of supplying the communist camps in Hyderabad with materials for use in Krishna district, and I am not at all satisfied that the Government meant to imply in their grounds of detention that the explosives were sent to Hyderabad for use in Krishna district. The defect in the charge is not therefore altogether a technical one.

3. Moreover, I think from the circumstances and from the manner in which this order of detention was served -- if what has been said from the Bar is true -- that there has been lack of good faith on the part of the Government. The petitioner, it

is alleged, has committed an offence under the Explosive Substances Act which is punishable very severely, the maximum sentence being transportation for life; and since it would appear from what the learned Public Prosecutor has said that the Government have no intention of prosecuting this charge against the petitioner, it means that the Government have no trustworthy evidence on which to base their allegations.

4. For these reasons, in particular for the first reason, I am of opinion that the petitioner should be set at liberty forthwith.

5. Balakrishna Ayyar J. -- This is a petition under Section 491, Criminal P. C. by one Devata Lakshminarayana, a detenu under Madras Act, I [1] of 1947. The substance of the allegations against him as set out in the grounds of detention is that

'he has been clandestinely purchasing locally and also importing from outside sulphur, graphite, saltpetre, and potassium and smuggling them to Communist camps in Hyderabad State'.

There is a further allegation that he is a Communist-sympathiser and 'is actively assisting the State communists in supplying ammunition'. The detenu denied these allegations.

6. The principal argument urged on behalf of the petitioner may be put in this form. Assuming for the moment that the allegations made in the grounds of detention are true, the export of these articles to Hyderabad might probably prejudice the maintenance of public order in that State; but disturbances in Hyderabad State would be of no concern to us here and would not affect or be prejudicial to the maintenance of public order within the limits of this Province. Madras Act, I [1] of 1947, is intended to deal only with the maintenance of public safety and the preservation of tranquillity in this province. The Provincial Legislature cannot enact a law for the preservation of peace outside the limits of the Province. The Act applies only to this province, and the preamble makes that clear. The allegations against the petitioner, therefore, fall outside the purview of the Act. This reasoning has one weak spot. It assumes that conditions in those areas of Hyderabad which

border this province and to which State these articles are said to have been intended have no effect on the public tranquillity or the public safety in this province, and that the Communists in Hyderabad do not cross over and create disturbances here. I do not feel that such an assumption would be right. There have been so many reports of disturbances in Krishna district which are attributed to the Communists of that district and of Hyderabad that I think we may take judicial notice of the existence of disturbed conditions there. As the Public Prosecutor pointed out, Krishna has been notified to be a disturbed area. Law-breakers who use explosives are not likely to have much respect for formal political frontiers. It is true that the grounds of detention do not make specific reference to these features; but that is possibly because it may have been assumed that the facts were too well-known to need mention. The argument urged on behalf of the petitioner might have been accepted if the consignment had been to a destination, so far away that the disturbances there would have no effect on the tranquillity of this province; but regard being had to the geographical proximity of Hyderabad State with this province and that the boundary line between Krishna district and Hyderabad is one which is easily passed and re-passed, it would be impracticable to deal with questions of public safety and public order in Krishna district in complete isolation from conditions immediately beyond the border. Articles of the nature in which the petitioner is alleged to have been trafficking, might first travel across the border into Hyderabad and there be converted into more handy forms of explosives and be brought back for use here.

7. I perfectly agree that when there is a specific charge against an individual he ought normally to be prosecuted under the ordinary law, and that it would be dangerous to encourage the practice of simultaneously keeping a charge under the ordinary law pending over his head and also proceeding against him under one of these special acts. The scope for abuse would be large and very often such a procedure may in itself be evidence of want of good faith. Here, we have the specific allegation that the petitioner was transporting explosives for delivery to the communists in Hyderabad, and I do not think that the contention of the Public Prosecutor that the case can be brought within the scope of Madras Act, I [1] of 1947 can be rejected. I do not therefore consider that the petitioner can legally claim that he should be released from his detention under this Act. I would dismiss

the petition.

8. Horwill and Balakrishna Ayyar JJ. -- As we differ in our opinion as to whether we should issue directions under Section 491 (1) (b) that the petitioner be set at liberty, it is necessary that this point should be referred to a third Judge for his opinion; and we direct that the papers be placed before Chief Justice for that purpose. OPINION.

9. Satyanarayana Rao J. -- As there is a difference of opinion between my learned brothers Horwill J., and Balakrishna Ayyar J. this matter was placed before me under of 36 of the Letters Patent. The matter arises out of an application under Section 491, Criminal P. C. by one Devata Lakshminarayana who was detained under the Madras Maintenance of Public Order Act, 1947, The relevant dates and the grounds on which the detention was sought to be justified are set out in the judgment of my learned brother Horwill J. and therefore it is not necessary for me to repeat them in this judgment. The learned Judges differed on two questions; Firstly, whether the grounds on which the order of detention is based are within the purview of the Act and even if true, are calculated to endanger the peace and security of this province; secondly, whether or not there is lack of bona fides on the part of the Government in resorting to the provisions of the Act when the petitioner could have been, if the case for the Government were true, prosecuted under Section 5, [Explosive Substances Act, 1908](#) (Act VI [6] of 1908).

10. After anxious consideration, I am of opinion that the view of Horwill J. on the two points is correct. I had occasion to consider the object of the provisions of the Madras Maintenance of the Public Order Act, 1947, requiring the Government to communicate to the detenu the grounds on which the order of detention has been made. I then said:

'Under the Act the liberty of the subject is curtailed without trial by Courts established by law and the only safeguard provided by the Act for the detenu is the right to make a representation to the Advisory Council through the Provincial Government. This right is a substitute for a trial under ordinary law. In order to enable the detenu to present his case properly he should know the grounds and the particulars of the grounds on the basis of which an order for detention is made

under Section 2(1). The duty of providing this information was laid by the Act on the Provincial Government. The power conferred upon the Provincial Government of curtailing the liberty of the subject by the Act should, in my opinion, be exercised subject to the conditions and limitations imposed by the Act. It is the function of the Court to see whether the conditions laid down by the statute are properly carried out or not. If they are not duly observed and fulfilled, the very foundation of the power to continue to detain the person comes to an end and the further detention becomes illegal. If the grounds furnished are no grounds at all in the sense that they convey no information to the person detained, or even if they are grounds outside the purview of the Act, the continuance of the detention cannot be justified. It may not be necessary that the Provincial Government should furnish legal evidence or proof of the accusations against the detenu, as in cases where he is charged with a crime, but the information furnished must be such which enables the detenu to present his case effectively'. (Vide *Mani v. District Magistrate Mathuri* : AIR1950 Mad162).

11. The gravamen of the charge against the petitioner is, as pointed out by Horwill J. that he had been clandestinely purchasing and importing from outside sulphur, graphite, saltpetre and potassium and smuggling them to communist camps in Hyderabad State. If the object of the detenu is to supply the explosives to the communists in Hyderabad State, it is difficult to see how this activity of his is calculated to endanger the public safety and maintenance of public order in this Presidency. It is not permissible in a case of this description, in my opinion, to enlarge the scope of the grounds by inferences or by implications as it is in the nature of a charge which the detenu is called upon to meet. It should specifically and definitely be stated in the grounds the activity of the petitioner which is calculated to endanger public peace so as to justify an order of detention under the Act. I cannot import into the case my knowledge of facts and events acquired by me through other channels and it is not open to me to interpret the grounds in the light of such knowledge. The ground therefore is entirely outside the purview of the Act. No attempt is made in the grounds to show how supply of the explosives to the communists in Hyderabad State would endanger the tranquillity of this Province. In the light of the principles laid down in the judgment of myself and Viswanatha Sastri J. already referred to I have no hesitation in holding that the

order of detention on this ground cannot be justified.

12. I also agree with Horwill J. that the fact that the Government had abandoned the intention of prosecuting the case initiated against the petitioner under the Explosive Substances Act is undoubted proof that the Government did not believe in the truth of the allegation now made. If the Government were really serious in the charge levelled against the detenu, they could have easily prosecuted him under the Act and his liberty would have been deprived not merely for a period as under the Madras Maintenance of Public Order Act but for a longer period, as under the Explosive Substances Act the maximum sentence which could be awarded, if the guilt is established, is transportation for life. This conduct of the Government in my opinion affords a basis for inferring lack of good faith on the part of the Government. This Madras Maintenance of Public Order Act is not intended to enable the Government to deprive the liberty of a subject by first putting forward a case which they know fully well could not be substantiated in a Court of law and then take advantage of the provisions of the Madras Act, I [1] of 1947, and detain the person in jail, as it is a settled fact that it is not open to this Court in a proceeding under Section 491, Criminal P. C. to go into the truth of the grounds on which the order of detention is made. I agree, therefore, in the order proposed by my learned brother Horwill J. that the petitioner should be set at liberty forthwith.

(On this petition coming on for final orders this day the Court made the following Order:)

By the Court. -- In accordance with the majority opinion, the immediate release of the petitioner is ordered.

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