

A STATE OF MAHARASHTRA & ORS.

v.

BALU S/O WAMAN PATOLE

(Criminal Appeal No.1681 of 2019)

B NOVEMBER 13, 2019

[INDIRA BANERJEE AND M. R. SHAH, JJ.]

- Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 – ss.3(1), (2) & 13 – Detention order of the Respondent—detenu passed by the detaining authority—Approved by the State Government – Challenged by the respondent – Set aside by the High Court – On appeal held: Impugned judgment passed by the High Court quashing the detention order on merits, confirmed – However, one of the grounds on which the detention order is set aside, namely, that in the detention order the detaining authority prescribed the period of detention for 12 months and the same is in breach of s.3, is set aside – High Court wrongly relied upon and mis-interpreted s.3(2) with respect to the period of detention – Sub-section (2) of s.3 relates to the period for which the order of delegation issued by the State Government is to remain in force – It has no relevance to the period of detention – Legislature has entrusted the power of detention to the State Government – However, those powers can be delegated to the Jurisdictional District Magistrate or the Commissioner of Police, as provided in sub-sec.(2) of s.3 – As per s.13 of the Act, a person can be detained under the Act for such period not exceeding the maximum period of 12 months from the date of detention – Order of detention passed by the authorities mentioned in sub-sec.(2) of s.3 is required to be confirmed by the State Government – As per s.13, once the order of detention is confirmed by the State Government, the maximum period for which the detenu shall be detained cannot exceed 12 months from the date of detention – Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained – Further, the directions issued by the High Court contained in Clauses (IV)-(VI) of the operative portion of the impugned judgment are also quashed – Constitution of India – Art.136.*

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Disposing of the appeal, the Court

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HELD: 1.1 One of the grounds on which the detention order is set aside, namely, that in the detention order the detaining authority prescribed the period of detention for 12 months and the same is in breach of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 is concerned, considering the provisions of Section 3 read with Section 13 of the Act, the same cannot be sustained. On fair reading of Section 3 of the Act, more particularly, sub-section (2) of Section 3 of the Act, upon which much reliance has been placed by the High Court, 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. It has no relevance to the period of detention. The Legislature has entrusted the power of detention to the State Government. However, those powers can be delegated to the Jurisdictional District Magistrate or the Commissioner of Police, as provided in sub-section (2) of Section 3 of the Act. As per Section 13 of the Act, a person can be detained under the Act for such period not exceeding the maximum period of 12 months from the date of detention. The order of detention passed by the authorities mentioned in sub-section (2) of Section 3 of the Act is required to be confirmed by the State Government. As per Section 13 of the Act, once the order of detention is confirmed by the State Government, the maximum period for which the detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. [Para 5.1][1158-D-E; 1159-E-G]

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1.2 The High Court wrongly relied upon and mis-interpreted Section 3 (2) of the Act with respect to the period of detention. Sub-section (2) of Section 3 of the Act relates to the period for which the order of delegation issued by the State Government is to remain in force and does not relate to the period of detention. [Para 5.4][1161-A-B]

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- A 1.3 Though the impugned Judgment and Order passed by the High Court quashing and setting aside the detention order on merits is confirmed, the finding in the impugned Judgment and Order passed by the High Court is set aside by which the High Court has set aside the order of detention on the ground that as in the detention order the period of 12 months is mentioned, the same is contrary to sub-section (2) of Section 3 of the Act, more particularly the observations made by the High Court in paragraph 33 of the impugned Judgment and Order. The directions issued by High Court contained in Clauses (VI), (V) and (VI) of the operative portion of the impugned Judgment and Order, are also quashed and set aside. Disposed of in the aforesaid terms. [Para 6][1161-F-G]
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T. Devaki v. Government of Tamil Nadu (1990) 2 SCC 456 : [1990] 1 SCR 836 – relied on.

<u>Case Law Reference</u>	D
[1990] 1 SCR 836 relied on Para 4	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1681 of 2019.

- E From the Judgment and Order dated 26.03.2019 of the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Writ Petition No. 155 of 2019.

Anoop Kandari, Nishant Ramakantrao Katneshwarkar, Advs. for the Appellants.

- F The Judgment of the Court was delivered by
M. R. SHAH, J.

- G 1. Delay condoned. Leave granted.
- G 2. Feeling aggrieved and dissatisfied with the impugned Judgment and Order dated 26.03.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad, in Criminal Writ Petition No. 155 of 2019, by which the High Court has quashed and set aside the order dated 15.10.2018 passed by the Commissioner of Police, Aurangabad under Sections 3(1) and (2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-
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Marketing of Essential Commodities Act, 1981 (hereinafter referred to as the Act) and also the order of confirmation of the order of detention made by the State Government, the detaining authority has preferred the present appeal.

3. That in exercise of powers under Sections 3(1) and (2) of the Act, the Commissioner of Police, Aurangabad passed an order to detain the respondent herein treating and considering the respondent as a ‘dangerous person’. The respondent herein was served with the grounds of detention. The order of detention was approved by the State Government. The matter was referred to the Advisory Board. The Advisory Board gave the opinion that there was sufficient cause for preventive detention of the respondent-detenu. That, thereafter the detention order was approved by the State Government. The detention order passed by the detaining authority, approved by the State Government, came to be challenged by the respondent herein before the High Court. That, by the impugned Judgment and Order, the High Court has set aside the detention order on merits as well as on the ground that the order of detention prescribing the detention for 12 months is in breach of Section 3 of the Act. Feeling aggrieved with the impugned Judgment and Order passed by the High Court, the detaining authority has preferred this appeal.

4. Though served, nobody has remained present on behalf of the respondent-detenu. Shri Nishant Ramakantrao Katneshwarkar, learned counsel appearing on behalf of the State-detaining authority has vehemently submitted that so far as one of the grounds on which the High Court has set aside the detention order, namely, that the detention order prescribing the detention for 12 months is contrary to Section 3 of the Act, is not sustainable at law. It is submitted that the said finding is contrary to the law laid down by this Court in the case of *T. Devaki v. Government of Tamil Nadu* (1990) 2 SCC 456.

4.1 It is vehemently submitted by Shri Katneshwarkar, learned counsel appearing on behalf of the State that while holding that the detention order is in breach of Section 3 of the Act, the High Court has not properly appreciated and/or considered the scope and ambit of Section 3 and Section 13 of the Act. It is submitted that the High Court has not considered Section 3 of the Act in its proper perspective. It is submitted that Section 3(2) of the Act refers to delegation of powers to the District Magistrate or the Commissioner of Police to detain a person under Section

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- A 3(1) of the Act and not with respect to the period of detention to be mentioned in the detention order. It is submitted that, as per Section 13 of the Act, a person can be detained for such period not exceeding the maximum period of 12 months from the date of detention. It is submitted that neither Section 3 nor Section 13 of the Act mandates the detaining authority to specify the period for which the detenu is required to be detained. In support of his above submissions, Mr. Katneshwarkar, learned counsel appearing on behalf of the State has heavily relied upon para 10 of the decision of this Court in *T. Devaki* (supra).

5. We have heard learned counsel appearing on behalf of the State at length.

- C 5.1 Now, so far as the impugned Judgment and Order passed by the High Court quashing and setting aside the order of detention is concerned, having gone through the impugned Judgment and Order passed by the High Court, we are of the view that the same is not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India. However, at the same time, one of the grounds on which the detention order is set aside, namely, that in the detention order the detaining authority prescribed the period of detention for 12 months and the same is in breach of Section 3 of the Act is concerned, considering the provisions of Section 3 read with Section 13 of the Act, the same cannot be sustained. Sections 3 and 13 of the Act read as under:

“3. Power to make orders detaining certain persons.—

- F (1) The State Government may, if satisfied with respect to any person 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.
- G (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 said sub-section:

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Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed six 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 six months at any one time.

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(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."

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"**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 13, shall be twelve months from the date of detention."

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On fair reading of Section 3 of the Act, more particularly, sub-section (2) of Section 3 of the Act, upon which much reliance has been placed by the High Court, 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. It has no relevance to the period of detention. The Legislature has entrusted the power of detention to the State Government. However, those powers can be delegated to the Jurisdictional District Magistrate or the Commissioner of Police, as provided in sub-section (2) of Section 3 of the Act. As per Section 13 of the Act, a person can be detained under the Act for such period not exceeding the maximum period of 12 months from the date of detention. The order of detention passed by the authorities mentioned in sub-section (2) of Section 3 of the Act is required to be confirmed by the State Government. As per Section 13 of the Act, once the order of detention is confirmed by the State Government, the maximum period for which the detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained.

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A 5.2 An identical question came to be considered by this Court in the case of *T. Devaki* (supra). In paragraph 10, this Court has observed and held as under:

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

H 5.3 Applying the law laid down by this Court in the aforesaid decision and, even otherwise, considering the provisions of Section 3 read with Section 13 of the Act, the High Court has committed a grave error in holding that as the period of detention of 12 months was mentioned in the order of detention, the same is contrary to Section 3 of the Act and, therefore, the same is liable to be quashed and set aside.

5.4 The High Court has wrongly relied upon and mis-interpreted Section 3 (2) of the Act with respect to the period of detention. As observed hereinabove, sub-section (2) of Section 3 of the Act relates to the period for which the order of delegation issued by the State Government is to remain in force and does not relate to the period of detention. Under the circumstances, the observations made by the High Court in paragraph 33 of the impugned Judgment and Order and one of the grounds on which the order of detention is set aside, namely, that as in the detention order the period of detention for 12 months is mentioned, the same is illegal, the same is contrary to sub-section (2) of Section 3 of the Act, cannot be sustained and deserves to be quashed and set aside.

5.5 Even the directions issued by the High Court in Clauses (IV), (V) and ((VI) of the operative part, namely,”*(i) A copy of this decision to be sent to each District Legal Services Authority and also to the High Court Legal Services Authority at places like Aurangabad, Mumbai, Nagpur and Goa for providing legal aid in cases of preventive detention; (ii) A copy of this decision to be sent to Home Department for circulation, sending to detaining authority. After executing detention order a copy of detention order and grounds of arrest need to be supplied by detaining authority to District Legal Services Authority of that district within 48 hours of the detention; and(iii)District Legal Services Authority to give legal aid to detenu on the day when the copy of detaining authority is received. A copy of this decision to be supplied to the counsel appointed through legal aid.*”, are absolutely unwarranted and not required and the same deserve to be set aside.

6. In view of the above and for the reasons stated above, though we confirm the impugned Judgment and Order passed by the High Court quashing and setting aside the detention order on merits, we set aside that part of the impugned Judgment and Order passed by the High Court by which the High Court has set aside the order of detention on the ground that as in the detention order the period of 12 months is mentioned, the same is contrary to sub-section (2) of Section 3 of the Act, more particularly the observations made by the High Court in paragraph 33 of the impugned Judgment and Order. The directions issued by High Court contained in Clauses (VI), (V) and (VI) of the operative portion of the impugned Judgment and Order, reproduced hereinabove, are also quashed and set aside. Disposed of in the aforesaid terms.