

LAHU SHRIRANG GATKAL

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v.

STATE OF MAHARASHTRA, THROUGH THE SECRETARY
AND ORS.

(Criminal Appeal No. 1185 of 2017)

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JULY 17, 2017

[N.V. RAMANA AND PRAFULLA C. PANT, 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: s.3(2) – Detention order – Period of detention not specified in detention order – Held: It is well settled that a presumptive legislation such as the present Act needs to be given a strict interpretation – Proviso to sub-section (2) of s.3 envisages a period to be specified in the order with a maximum cap of six months at the first instance – Therefore authorities could not have passed such a blanket order of detention without specifying the period of detention, as was done in this case – The order of preventive detention accordingly set aside – Interpretation of statutes – Strict interpretation.

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Cherukuri Mani v. Chief Secretary (2015) 13 SCC 722
– referred to.

Case Law Reference

(2015) 13 SCC 722 referred to Para 4

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1185 of 2017.

From the Judgment and Order dated 18.04.2017 of the High Court of Judicature at Bombay Bench at Aurangabad in Criminal Writ Petition No. 132 of 2017.

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Devadatt Kamat, Rajesh Inamdar, Javedur Rahman, Mehtaab Singh Sandhu, Ms. Devina Sharma, Gautam Talukdar, Advs. for the Appellant.

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A Mahaling Pandarge, Nishant Katneshwarkar, Advs. for the Respondents.

The following Order of the Court was delivered

ORDER

B 1. Leave granted.

C 2 The appellant had been detained under Section 3(1) of 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 [*hereinafter 'Act' for brevity*] by order dated 10.10.2016 passed by the Commissioner of Police (Respondent No. 3), which came to be challenged before the High Court of Bombay, bench at Aurangabad in Criminal Writ Petition No. 132 of 2017, wherein the High Court has dismissed the Writ Petition filed by the appellant. Aggrieved by the aforesaid order passed by the High Court, appellant is before this Court challenging the detention order.

D 3. Brief facts which are necessary for disposal of this case are that the appellant herein is a constable in the Maharashtra Police Department. He is alleged to have been involved in various criminal activities and at least seven complaints/FIRs are said to have been registered against him. On 10.10.2016, respondent no. 3 passed a detention order under Sub-section (1) of Section 3 of the Act on being satisfied that appellant was acting in a manner prejudicial to the maintenance of the public order and with a view to prevent him from acting in a prejudicial manner. It is important to note that the detention order does not specify the period of detention.

F 4. Assailing the judgment of the High Court, the learned counsel for the appellant mainly challenges the order of detention of the appellant on the ground that the order of the detention as passed by the respondent no. 3 does not mention the period of detention. Further he places reliance on ratio of the judgment of this Court in *Cherukuri Mani v. Chief Secretary*, (2015) 13 SCC 722 [*hereinafter 'Cherukari Mani Case' for brevity*]. Learned counsel for appellant submits that the Act as well as the Andhra Pradesh enactment, which was subject matter of *Cherukuri Mani Case* (supra), is similar except to the extent that the initial period of preventive detention is six months under the Act while under Andhra Pradesh enactment it is for three months.

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5. On the other hand the learned counsel for the respondent-State has fully supported the reasoning of the High Court in entirety. A

6. Having heard the learned counsels for parties, it would be necessary to reproduce Section 3 of the Act-

Power to make orders detaining certain persons.

(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. B

...

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 three months at any one time. C D

(emphasis added)

7. This Court has already construed a *pari materia* provision under Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, in *Cherukuri Mani Case* (supra), in the following manner- E

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. 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 F G

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A 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.

B **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
C 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.

D 8. It is well settled that a presumptive legislation such as the present Act needs to be given a strict interpretation. As noted above *proviso* to Sub-section (2) of Section 3 prescribes a thing to be done in a particular manner following a particular procedure. Therefore, the *proviso* to Sub-section (2) of Section 3 envisages a period to be specified in the order with a maximum cap of six months at the first instant. From the above
E analysis it is clear that respondent no. 3 could not have passed such a blanket order of detention without specifying the period of detention, as has been done in this case.

F 9. In light of the above discussion the appeal is allowed and the order of preventive detention dated 10.10.2016 is held to be unsustainable and accordingly set aside. The detenu is ordered to be set at liberty forthwith unless wanted in any other case.