

A SECRETARY TO GOVERNMENT OF TAMIL NADU PUBLIC
(LAW AND ORDER) REVENUE DEPARTMENT & ANR.

v.

KAMALA & ANR.

B (Criminal Appeal No. 507 of 2018)

APRIL 10, 2018

**[DIPAK MISRA CJI, A. M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]**

C *Conservation of Foreign Exchange and Prevention of
Smuggling Activities Act, 1974 – s.3(1)(ii) – Detention order – Period
of detention not specified in detention order – Non-specification
would not vitiate detention order.*

Disposing of the appeal, the Court

D **HELD:** The High Court was not justified in quashing the
order of detention on the basis that no period of detention was
provided in the order. The High Court has proceeded on the
basis of the decision of this Court in *Bhiryani* which is no longer
good law in view of the subsequent decision of a larger Bench in
Devaki. The decision of the High Court in *Santhi*, to the extent
E that it adopts the same position as in *Bhiryani*, will not reflect the
correct legal position. [Para 5][856-G]

Commissioner of Police v. Gurbux Anandram Bhiryani
(1988) Supp SCC 568 – Not correct law.

F *S Santhi v. The Secretary to Government, Home,
Prohibition and Excise Department, Secretariat,
Chennai 2010 (3) MWN (Cr.) 42 (DB) – Partly
disapproved.*

*T Devaki v. Government of Tamil Nadu (1990) 2 SCC
456 – relied on.*

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Case Law Reference

(1988) Supp SCC 568 not correct law Para 1

(1990) 2 SCC 456 relied on Para 4

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. A
507 of 2018.

From the Judgment and Order dated 24.02.2016 of the High Court
of Judicature at Madras in HCP No. 2442 of 2015.

Mrs. Sujatha Bagadhi, M. Yogesh Kanna, Advs. for the Appellants. B

T. Harish Kumar, Navneet Dugar, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. D. Y. CHANDRACHUD, J. 1. The High Court has set
aside an order of detention issued under Section 3(1)(ii) of the
Conservation of Foreign Exchange and Prevention of Smuggling
Activities Act 1974¹ on the ground that the period of detention was not
specified. In arriving at this conclusion, the High Court has relied upon a
decision of this Court in **Commissioner of Police v Gurbux Anandram
Bhiryani**², and on a judgment of the High Court in **S Santhiv The
Secretary to Government, Home, Prohibition and Excise
Department, Secretariat, Chennai**³. D

2. The Government of Tamil Nadu is in appeal.

3. The submission which has been urged is that though the period
of detention has come to an end, it is necessary for the Court to correct
the statement of legal position contained in the decision of the High
Court. Learned counsel has drawn the attention of the Court to the fact
that the earlier decision of a Bench of two judges in **Bhiryani**
(*supra*) was overruled by a Bench of three judges in **T Devaki v
Government of Tamil Nadu**⁴. E

4. In **T Devaki v Government of Tamil Nadu**, a Bench of this
Court has held that since the legislation does not require the detaining
authority to specify the period for which a detenu is required to be
detained, the order of detention is not rendered invalid or illegal in the
absence of such specification. This Court held thus: F

“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 G

¹The COFEPOSA Act 1974

²1988 (Supp) SCC 568

³2010 (3) MWN (Cr.) 42 (DB)

⁴(1990) 2 SCC 456 H

A in *Ujagar Singh v. State of Punjab* [(1952) 3 SCR 756: AIR 1952 SC 350: 1953 Cri LJ 146] , 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) 3 SCC 60: 1973 SCC (Cri) 138: (1973) 1 SCR 870] , 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 BhojrajChelani v. State of Maharashtra* [(1983) 1 SCC 382: 1983 SCC (Cri) 202] , 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.”(Id at page 464)

F The decision in **Bhiryani**’s case has been overruled.

G 5. In the circumstances, the High Court was not justified in quashing the order of detention on the basis that no period of detention was provided in the order. The High Court has proceeded on the basis of the decision of this Court in **Bhiryani** which is no longer good law in view of the subsequent decision of a larger Bench in **Devaki**. The decision of the High Court in **Santhi**, to the extent that it adopts the same position as in **Bhiryani**, will not reflect the correct legal position.

H 6. Accordingly, the impugned judgment of the High Court of Judicature at Madras dated 24 February 2016 in H.C.P. No. 2442/2015

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is set aside. As a consequence, the detention order dated 31 August 2015 bearing G.O. No. SR.1/63-5/2015 Public (SC) Department shall stand revived. However, since the period of detention has come to an end, nothing further remains except for this Court to clarify the true legal position as we have done in the above terms. A

7. The criminal appeal is accordingly disposed of. B

Devika Gujral

Appeal disposed of.