

APPELLATE CRIMINAL

Before Mr. Justice Bavdekar and Mr. Justice Vyas.

1951
June 11

PRALHAD KRISHNA KURNE v. THE STATE OF BOMBAY.*

Preventive Detention Act (IV of 1950), ss. 4, 9, 10, 11, 12—Preventive Detention (Amendment) Act (IV of 1951), s. 11—Section 12 of Act IV of 1950 is intra vires the Legislature—Order of detention—Omission to mention place of detention—Validity of order—Effect of subsequent issue of order mentioning place—Confirmation of order by Government on receipt of Advisory Board's report—Period of detention not mentioned in order of confirmation—Detenu not given opportunity to make representation to Advisory Board—Order of confirmation not directed to be communicated to detenu—Whether subsequent detention rendered invalid—Whether amended s. 11 of Act IV of 1950 contravenes art. 20 (1) of the Constitution of India.

Section 12 of the Preventive Detention Act, 1950, as amended by s. 11 of the Preventive Detention (Amendment) Act, 1951, is *intra vires* the Legislature.

There is nothing in the Preventive Detention Act, 1950, which requires that the order of detention passed under s. 3 thereof should mention the place of detention, and the detention order cannot be said to be vague or invalid on the ground that it does not so mention the place. Even assuming that such an order is invalid, the absence of a valid order directing detention in a particular place will not compel the Court to release the detenu if a valid order directing that he be detained in a particular place is passed by a proper authority before his release.

Basant Chandra Ghose v. Emperor,⁽¹⁾ relied upon.

Sunil Kumar v. West Bengal Government,⁽²⁾ not followed.

The original order of detention passed under s. 3 of the Preventive Detention Act, 1950, need not state the period for which a detenu is to be detained. Nor is it necessary when subsequently the case of the detenu has been referred to the Advisory Board under s. 9 of the Act and the State Government acting upon the report of the Advisory Board confirms the order of detention under s. 11 that they must mention the period during which the detenu would be detained further.

Pangarkar v. State,⁽³⁾ followed.

Liversidge v. Sir John Anderson,⁽⁴⁾ referred to.

* Criminal Application No. 253 of 1951.

⁽¹⁾ (1945) 47 Bom. L. R. 396, F. C. ⁽²⁾ [1950] A. I. R. Cal. 274.

⁽³⁾ (1951) Cri. Appli. No. 235 of 1951, decided by Rajadhyaksha ⁽⁴⁾ [1942] A. C. 206. and Dixit JJ. on April 17, 1951 (Unrep.).

Section 11 of the Preventive Detention Act, 1950, as amended by the Preventive Detention (Amendment) Act, 1951, does not contravene art. 20 (1) of the Constitution of India, in so far as it permits further detention after receiving the report of the Advisory Board.

There is nothing in s. 9 (1) or s. 10 (1) of the Preventive Detention Act, 1950, which requires the Government to give an opportunity to the detenu to make a representation to the Advisory Board. Nor can a detention which was already in force at the commencement of the Preventive Detention (Amendment) Act, 1951, and which has been continued by that Act be regarded as a new detention in the sense that the detenu is to be given another opportunity to make a representation to the Government.

Section 11 of the Preventive Detention Act, 1950, does not contain any words which would compel the State Government whenever after receiving the report of the Advisory Board it confirms the order of detention to communicate its decision to the detenu.

The detaining authority can direct the detention of a person in its own jurisdiction where the local Government has, by a general order, specified that the detenu should be detained in a jail which is within the jurisdiction of the detaining authority.

An order of detention under s. 2 (1) (a) of the Bombay Public Security Measures Act, 1947, was passed against one Pralhad Krishna Kurne (petitioner) on April 1, 1948, by the Commissioner of Police, Greater Bombay. The petitioner was arrested in pursuance of that order on February 13, 1950, and detained in the House of Correction, Byculla, Bombay. On February 26, 1950, the Preventive Detention Act, 1950, was passed, overriding the provisions regarding detention as embodied in the Bombay Public Security Measures Act. On the same day the Government of Bombay passed the following order :—

“No. S. D. III/671-XXII-A.—In exercise of the powers conferred by the Preventive Detention Act, 1950, the Government of Bombay is pleased to authorise the Commissioner of Police in Greater Bombay and the District Magistrate elsewhere to detain in any prison in the State of Bombay a person in respect of whom an order directing his detention has been made by them under the said Act.”

On the very day, i.e. February 26, 1950, the Commissioner of Police, Greater Bombay, passed another order of detention against the petitioner under s. 3 of the Preventive Detention Act, 1950. The grounds of detention were furnished to the petitioner on March 17, 1950, and on March 31, 1950, he was removed from the House of Correction, Byculla, to the District Prison, Thana, under the orders of the Inspector General of Prisons, and detained there.

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Thereafter the petitioner filed an habeas corpus application under s. 491 of the Criminal Procedure Code, 1898, in the Bombay High Court but it was summarily rejected on June 12, 1950. The petitioner then tried to get that order reviewed and also filed a fresh application for a writ of habeas corpus under s. 226 of the Constitution of India, but both the applications were dismissed by a full bench of the High Court. On December 12, 1950, the petitioner made two applications to the Supreme Court, one under art. 32 of the Constitution and the other an appeal against the judgment of the full bench of the High Court.

In the meantime on June 26, 1950, the previous order of the Government of Bombay dated February 26, 1950, was superseded and a new order was passed in its place which ran as follows :—

“No. S. D. III-1042-A/9628.—In exercise of the powers conferred by s. 4 of the Preventive Detention Act, 1950 (IV of 1950), and in supersession of Government Order, Home Department (Political), No. S. D. III/671-XXII-A, dated February 26, 1950, the Government of Bombay is pleased to direct that a person in respect of whom a detention order is in force shall, save as otherwise provided by any special order of the Government of Bombay be liable to be removed to and detained in any of the places specified hereunder—

The Thana District Prison, Thana.

The House of Correction, Bombay.”

The Preventive Detention Act, 1950, was amended on February 22, 1951, by Act IV of 1951. On February 27, 1951, the Government of Bombay passed another Order No. S.D.III/1042-(N)-1, superseding their earlier Order No. S.D.III-1042-A/9628 dated June 26, 1950. The new order also provided that a person in respect of whom a detention order was in force was liable to be detained in any of the various places specified therein, the Thana District Prison and the House of Correction, Bombay, again being among the places so specified.

On February 28, 1951, the Commissioner of Police, Greater Bombay, passed the following order :—

“The person known as P. K. Kurne, detained under my order No. 9 dated February 26, 1950, (a) shall be detained in Thana District Prison, Thana; and (b) shall for the purposes of the Bombay Conditions of Detention Order, 1951, be treated as a class II prisoner.”

On March 15, 1951, the petitioner applied from the Thana District Prison to the High Court under art. 226 of the Constitution for a writ in the nature of habeas corpus and for an

order of immediate release. He also sent a representation to the Advisory Board set up under s. 8 of the Preventive Detention Act, 1950, but the Board reported on April 30, 1951, that in its opinion there was sufficient cause for his detention. Acting on that report the Government confirmed the detention order on May 8, 1951.

On May 10, 1951, the Assistant Secretary to the Government of Bombay, Home Department, passed the following order :—

"In exercise of the powers conferred by s. 4 of the Preventive Detention Act, 1950 (No. IV of 1950), the Government of Bombay is pleased to direct that the person known as Shri. P. K. Kurne, who has been detained under Order dated February 26, 1950, made by the Commissioner of Police, Greater Bombay, shall be removed from the Thana District Prison to the House of Correction, Byculla, Bombay, and detained therein."

In pursuance of this order the petitioner was brought back to the House of Correction, Byculla, and detained there. On May 18, 1951, the Commissioner of Police, Greater Bombay, communicated the said order passed by the Government on May 8, 1951, confirming and continuing the petitioner's detention till further orders.

The petitioner's application to the High Court dated March 15, 1951, was heard by the division bench consisting of Bavdekar and Vyas JJ. on June 11, 1951.

K. T. Sule, with *K. K. Sanghvi*, for the petitioner.

H. M. Choksi, Government Pleader, for the State.

BAVDEKAR J. This is an application under art. 226 of the Constitution of India by a person, who was originally detained under an order dated April 1, 1948, under the Bombay Public Security Measures Act. It appears that the applicant detenu was arrested in pursuance of the order on February 13, 1950, and detained in the House of Correction at Byculla under the authority of the order. On February 26, 1950, the Preventive Detention Act, 1950, came into force, and there was consequently passed against the applicant an order under that Act detaining him under s. 3 of the Act. Subsequently by an order passed by the Assistant Inspector General of Prisons for the Inspector General of Prisons the applicant was transferred from the House of Correction at Byculla to the Thana Jail, and he was detained there until the applicant made the present application. Under the Preventive Detention Act, 1950, as it stood originally, an order of detention would have remained in force

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only for a period of one year from the date of the order; but on February 22, 1951, the Preventive Detention Act was amended by an amending Act, and s. 12 of the amending Act provided:

“For the avoidance of doubt it is hereby declared that—

(a) every detention order in force at the commencement of the Preventive Detention (Amendment) Act, 1951, shall continue in force and shall have effect as if it had been made under this Act as amended by the Preventive Detention (Amendment) Act, 1951; and

(b) nothing contained in sub-s. (3) of s. 1, or sub-s. (1) of s. 12 of this Act as originally enacted shall be deemed to affect the validity or duration of any such order.”

The effect of this section was to continue the order of detention under which the applicant was detained up to the commencement of the amending Act, provided, of course, the order was a valid order at the date of the commencement. The point of cl. (b) was that merely because s. 12 of the original Act provided a maximum period of detention for one year, the order which was continued by virtue of cl. (a) of s. 12 of the amending Act was not to be deemed to be invalid as having continued the detention for more than one year. It was the contention of the applicant that the order of detention which was in force at the time of the commencement of the amending Act was not a valid order, and for that reason as well as for certain other reasons to be detailed below, there is no valid order of detention against the applicant now.

The learned Government Pleader, who appears for the State, does not, at any rate, seriously dispute the proposition that the order which would be continued by virtue of s. 12 of the amending Act would be a valid order and an invalid order for detention would not be continued because of the provisions of that section. It is quite true that the words which are used in cl. (a) of s. 12 are “every detention order in force.” Now, a detention order may be valid in its inception, but may not be in force at the commencement of the amending Act for various reasons, one such reason being, of course, that the order had expired either because the original order stated that the detention would be for any particular period, or because s. 12 of the old Act directed that there could not be any detention for a period greater than one year. But cl. (a) of s. 12 foresees two requirements before a detention can be said to be continued: not only that the order should be in force in the sense that the period during which it was to continue had not yet expired at the date of the commencement of the amending Act, but also that that order must be a valid order.

The first contention of the learned Government Pleader, however, is that prior to the coming into force of the amending Act the applicant had made an application to this Court for release from detention under art. 226 of the Constitution and that application was dismissed by this Court. The applicant made an application for review of that order, but that application was also dismissed, and so far as this Court is concerned, it is not in dispute that the applicant's detention before the coming into force of the amending Act has been held by this Court to be valid, at any rate, up to the date upon which this Court dismissed his first application for release from detention. The learned Government Pleader says that if the applicant now seeks to challenge his detention as invalid, that must be on some fresh grounds accruing to the applicant after his first application for release from detention was dismissed by this Court. Now, one could understand such an argument, in case an appeal from the decisions of this Court was not pending before the Supreme Court, not to mention an original application for release from detention made to that Court. It has got to be remembered that the question which is before this Court now is whether the detention of the applicant now is a valid detention. In order that that detention should be pronounced to be valid, there must be a valid detention order, and the contention on behalf of the State being that there was originally a valid order for detention in force against the applicant at the time of the coming into operation of the amending Act and that order was continued by s. 12 of the amending Act, the question resolves itself into the question of the validity of the order under which the applicant was being detained just before the amending Act came into force. Now, I have no doubt that when the previous application of the applicant was dismissed, it was held by this Court that the order under which the applicant was detained, which, as a matter of fact, is the same order under which the applicant was being held in detention on February 21, 1951, was a valid order. But the principal question before this Court was not the validity of the order under which the applicant was being detained but the validity of the applicant's detention at the time of the disposal of his application, the question of the validity of the order under which the applicant was being detained being gone into because the detention could not possibly be held to be valid if the order was bad; but that does not affect the fact that the validity of the order of detention had to be gone into incidentally. Now, had this case been a civil case and the principles of *res judicata* had to be applied, it is obvious that the

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applicant could have a reply to the non-application of the doctrine, because he could say that there is no final order passed against the applicant holding his prior detention valid, because his appeal to the Supreme Court is still pending, but inasmuch as we find that it is possible for us to dispose of this application without going into the question as to whether the applicant is precluded from taking up the contention that the order under which the applicant was being detained was not a valid order at its inception, it is not necessary to express a final opinion upon this point.

Now, the applicant challenges the order under which he was being detained prior to the coming into force of the amending Act because of several reasons. The first of them is that s. 12 of the amending Act is *ultra vires*, inasmuch as it continues detention which it is claimed, is an executive act by an Act passed by the Legislature. The applicant says that prior to the coming into force of the amending Act the Commissioner of Police, Bombay, purported to say that he was satisfied that it was necessary for certain reasons to detain the applicant. No person applied his mind to the question as to whether it was necessary to detain the applicant after the coming into force of the amending Act. The amending Act specifically provided, without any fresh application of the mind by anybody, that if there was against any person detained an order for detention which was both valid and in force at the time when the amending Act came into force, that order should be continued; and it is contended on behalf of the applicant that, therefore, the Legislature had taken upon itself to do an executive act. The argument is exactly the opposite of that which was addressed to the Supreme Court in *A. K. Gopalan v. The State*.⁽¹⁾ In our view, there is no substance in this contention. It is quite true that the Legislature has continued for a further period, which was to be regulated by certain procedure mentioned in the amending Act, the detention of the persons who had already been detained by a valid order of detention in force at the date of the coming into force of the amending Act; but that does not render the Act invalid. It is true that it may often be found that orders of detention are passed by executive officers whom the Legislature empowered by suitable legislation; but that does not come in the way of the Legislature legislating that, if there was in respect of any person a valid order of

⁽¹⁾ [1950] S. C. R. 88.

detention in force, the person shall be continued to be detained for a period to be stated or for a period to be regulated. It is not the question of an encroachment by Legislature upon the powers of the executive. The executive gets its powers to direct detention, because the Legislature has by passing a suitable Act empowered it to do so. The executive has got no original powers of detention, and consequently if the Legislature passes an Act saying that any detention in force at the time of the coming into force of the Act shall be continued, it is not encroaching upon a subject which has been reserved by the Constitution to the executive. Such an argument may be possible where the Constitution gives certain specific powers to the executive. Some powers may, for example, have been specifically given to the President of the Republic, who is the head of the executive, and in such a case it would be permissible to argue that any legislation which interferes with the execution by the President of that power is *ultra vires* of the Constitution; but where an executive officer is empowered to do an act by a legislation enacted by Parliament, it cannot be said that Parliament encroaches upon the power of the executive if subsequently it passes legislation continuing the orders of detention already in force. Even if there is any interference with the powers of executive given by Parliament, Parliament gave them and consequently was in a position to interfere with them.

Mr. Sule, who appears on behalf of the applicant, contends, however, that if that is our view, there was, in the first instance, no valid order of detention at the time of the coming into operation of the amending Act. He does not deny that the Commissioner of Police passed what was a valid order for detention originally on February 26, 1950, and under that order there was a valid detention of the applicant at the House of Correction in Byculla. He says, however, that the detention ceased to be valid after the Assistant Inspector General of Prisons passed an order on March 15, 1950, transferring the applicant from the House of Correction at Byculla to the Thana jail. It appears that the Inspector General had got power to direct the removal of prisoners from one jail to another, but the exercise of those powers is open to challenge in this case on the ground that the petitioner was a detenu and not a prisoner. It appears further that the Inspector General of Prisons has been empowered under the powers conferred by s. 21 of the Bombay Public Security Measures Act to transfer

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from one jail to another detenus who were originally detained under the provisions of that Act; but such delegation can obviously not validate a transfer if it is made of a detenu detained under the provisions of the Preventive Detention Act, 1950. That is why Mr. Sule, who appears on behalf of the applicant, contends that there was no valid order for detaining the applicant in the Thana jail.

Now, assuming that the order of March 15, 1950, of the Assistant to the Inspector General of Prisons (it may be mentioned here that under paragraph 37 of the Jail Manual the Personal Assistant to the Inspector General of Prisons is placed in immediate charge of the Inspector General's office in all its branches and is empowered to conduct all routine work, signing communications relating to routine matters) was not a valid order, the detention of the applicant in Thana jail would be illegal as regards the place. The place had to be determined, however, by an order passed under the provisions of s. 4 of the Preventive Detention Act, 1950, as it stood before the amending Act came into operation and after the amending Act under the provisions of new s. 4. Assuming that the place of detention is not in accordance with s. 4 whether of the original Act or the amending Act, what would be rendered invalid is the detention of the detenu in the particular place in which he happened to be when the application under art. 226 was made. Section 4 whether of the original Act or the amending Act does not, however, empower the detention of the petitioner as distinguished from his detention in a particular place. The order of detention actually is passed under the provisions of s. 3 and s. 12 of the amending Act makes it quite clear that what is continued after the coming into operation of the amending Act is the detention order. A detention order is specifically defined by s. 2, cl. (b), as an order made under s. 3, and consequently the failure to detain a detenu in a place determined in accordance with the provisions of s. 4 of the original Act or the Act as amended would not render the detention order, that is the order passed under s. 3, an invalid order. It is contended, however, on behalf of the applicant that the place of a detention is a part and parcel of the order of detention. It is said that in case the detention order does not mention the period for which the detenu is to be detained, the order is vague. That is the view which has appealed to the Pepsu and the Madras High Courts as will be mentioned below when dealing with another contention advanced on behalf of the detenu. Mr. Sule argues on that analogy that if the

detention order does not mention the place of detention, it is a vague order, and he says that in case the order is a vague order, it is bad.

Now, whether the order of detention is rendered vague or not because of the failure of the detaining authority to mention in the order the period of detention, the argument that it is rendered vague because of the failure to mention in it the place of detention cannot stand. Section 4 of the old Act, as a matter of fact, specifically mentions :—

Every detenu in respect of whom there was in force an order of detention made under s. 3 is liable to be removed to and detained in such place as the Central Government or as the case may be the State Government may from time to time by general or special order specify.

There was, for example, nothing to prevent the State Government from stating that all detenus shall be liable to be detained in one Central jail, and if in such a case the detention order did not mention the place where he was to be detained, the detenu would obviously have to be detained in one Central jail where the State Government had by a suitable general order directed that all the detenus should be detained. I fail to understand how then it could possibly be argued that the failure to mention in the detention order the place where he is going to be detained renders the order vague. As a matter of fact, the place where a detenu is to be detained will be determined in accordance with s. 4. The Local Government may provide that the detenu may be detained in one of a specified number of prisons, the actual prison where he is going to be detained being left by a general order to the choice of the detaining authority. In such a case, the detaining authority might have to pass an order stating what was its choice. But the detaining authority could do this by another order passed under s. 4. In my view, considering the wording of s. 3 and s. 4, there is nothing in the Preventive Detention Act which requires that the order passed under s. 3 should mention the place of detention. If the place of detention is mentioned either because it is necessary to mention it the appropriate Government not having directed that all detenus shall be detained in one jail, or even if it is not necessary to mention it but the detaining authority chose to do so, that is not done under s. 3. No detention order can, therefore, be said to be invalid or vague on the ground that it does not mention the place of detention.

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There is a slight difference between the wording of s. 4 of the original Act and s. 4 of the amending Act, but they both permit a detenu being detained in a place provided by a general or special order issued by an appropriate Government. The difference in the wording would not make any difference to the argument even if we were to regard the matter under the provisions of s. 4 of the new Act. It would be just as well to mention, however, that what we are at the present moment concerned with is whether there was a valid order of detention immediately before the coming into force of the amending Act when the wording of the amending Act would not be relevant.

If this be correct, then the original order for detention which was valid in its inception was continued by s. 12 of the amending Act. It is true that it appears from the record that from February 22, 1951, till February 27, 1951, there was no fresh order passed with regard to the place where the applicant was to be detained. Assuming that the detention prior to February 22 was, therefore, not valid on account of the defect with regard to the place not being determined in accordance with s. 4 of the original Act, the detention would be invalid between February 22 till February 27. On February 27, 1951, the Commissioner of Police passed an order directing the detention of the applicant in the Thana jail. This order was passed by him apparently in exercise of a general order passed by the Government of Bombay on the same date. That order is published at page 71 of the *Bombay Government Gazette (Extraordinary)* dated February 27, 1951. It says:

"In exercise of the powers conferred by s. 4 of the Preventive Detention Act, 1950 (IV of 1950), and in supersession of Government Order Home Department (Political) No. S. D. III-1042-A/9628, dated the 26th June 1950, the Government of Bombay is pleased to direct that a person in respect of whom a detention order is in force, shall, save as otherwise provided by any special order of the Government of Bombay, be liable to be detained in any of the places specified hereunder:—

The Yeravda Central Prison, Poona.

The Ahmedabad Central Prison, Ahmedabad," and so on.

The Thana District Prison, Thana, follows.

It is contended on behalf of the petitioner detenu that this order merely determines the places where a detenu is liable to be detained. The order is in terms of the new s. 4. But the learned advocate, who appears for the petitioner, says that that order would not be enough for warranting the detention of

the detenu in any particular prison. Counsel contends that it is necessary further for someone who has got authority to pass an order saying in which of the prisons the detenu is to be detained, and in the absence of any notification by Government giving its own powers of mentioning a particular prison to the Commissioner of Police, it is contended that the order of the Commissioner of Police that the detenu should be detained in the Thana jail is an invalid order.

In our view, it is not necessary to go into this contention for the reason that it is not in dispute that subsequently on May 10, 1951, the State Government has passed an order directing the removal of the petitioner from the Thana jail to the House of Correction at Byculla and his detention there. It is true that this order was passed by the State Government after the petitioner presented his application under art. 226 of the Constitution to this Court; but the learned Government Pleader says that if the original order for detention is valid, but there is any invalidity with regard to the detention on account of the fact that even though the applicant was originally properly detained in the House of Correction at Byculla, there was no order passed for his removal and detention in the Thana jail by an authority having power to direct his removal and detention in the latter place, the defect can be cured by an order passed by an appropriate authority, and he says that the detenu cannot be released in case the defect is cured by an order passed before his release. In respect of his contention he relies upon the decision of the Federal Court in *Basant Chandra Ghose v. Emperor*.⁽¹⁾ In that case the validity of an order of detention dated March 19, 1942, was called into question. But the High Court held the detention valid basing its view upon an order of July 3, 1944. It was contended on behalf of the detenu that it was not open to the High Court to base its decision on the latter order. Spens C. J., who delivered the judgment of the Court in that case, observed (p. 399):

"This contention proceeds on a misapprehension of the nature of *habeas corpus* proceedings. The analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceedings cannot be invoked here. If at any time before the Court directs the release of the detenu, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the Court can direct the release of the petitioner."

⁽¹⁾ (1945) 47 Bom. L. R. 396, *q. c.*

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In our view, there having been all along a valid order for detaining the detenu, the absence of a valid order directing his detention in a particular place would not compel this Court to release the detenu if a valid order directing that he be detained in a particular place is passed by a proper authority before his release. There is, in our view, such an order passed by the State Government on May 10, 1951.

The learned advocate, who appears on behalf of the petitioner, draws our attention, however, to the case of the Calcutta High Court of *Sunil Kumar v. West Bengal Government*.⁽¹⁾ In that case certain persons who were detained under the provisions of the Bengal Criminal Law Amendment Act, 1930, and the West Bengal Security Ordinance, 1949, were held to have been invalidly detained. The Advocate General thereupon informed the Court that the orders under the Bengal Criminal Law Amendment Act and the West Bengal Security Ordinance, 1940, had been cancelled and the detention had been continued under the Preventive Detention Act, 1950, and suggested that the rules had become infructuous. The course which the Court took was not to go into the question as to whether the detention was valid in view of the new orders passed under the Preventive Detention Act but to say that the detention under the provisions of the Bengal Criminal Law Amendment Act and the West Bengal Security Ordinance, 1942, was invalid. It is not quite clear from the report whether the order appears to have been for release of the detenu, because paragraph 32 mentions (p. 286) :

“It may be that in spite of all our efforts the petitioner would be re-arrested and sent back to custody.”

But whatever the reasons which actuated the order for releasing in that case, in our view, in this case there having been a valid order for detention, and the invalidity, if any, having reference merely to the order as to where the detention was to take place, immediately our attention has been drawn to a valid order with regard to the place of detention also, we must hold that the detention at the present moment is valid whatever may have been the case with regard to the detention in the past. Mr. Sule contends that this order is not also a valid order, because he says that the order is merely an order directing the removal of the detenu from the Thana jail to the House of Correction at Byculla. The order specifically says that after

⁽²⁾ [1950] A. I. R. Cal. 274, S. B.

his removal from the Thana jail to the House of Correction at Byculla the detenu should be detained there, but Mr. Sule says that it was necessary, if the State Government wanted to bring about the result which it aimed at, namely, removal of the detenu from the Thana jail to the House of Correction at Byculla and his detention there, to pass in the first instance an order saying that the petitioner should be detained at the House of Correction at Byculla. It should have then stated that in order that he should be detained there he should be removed from the Thana jail, where he was, to the House of Correction at Byculla. We see no reason why instead of having two orders like that both the orders should not have been combined in one order, or why the combined order should not have first stated that the detenu should be removed from the prison at Thana to the House of Correction at Byculla before stating that he should be detained at the latter place.

It is contended, however, on behalf of the petitioner that the detention in this case is bad, because the original order for detention does not state the period during which the detenu is to be detained. It appears from the evidence that the case of the detenu was, after the passing of the amending Act, referred to the Advisory Committee and upon the Advisory Committee's report being received, the State Government has confirmed the order for detention. Mr. Sule contends that for certain reasons there is no proper order confirming the detention of the detenu, but that it will be convenient to consider later. He says that assuming even that the Government have confirmed the order of detention, that order is invalid, because Government have not stated while making the order how long the detenu should be detained. Now, the question whether when an original order for detention is passed under the provisions of s. 3 it is necessary to state therein the period of detention has been gone into by a division bench of this Court in the case of *Pangarkar v. State*⁽¹⁾ and the view which it took was that it is not necessary to state the period. An argument appears to have been addressed to them with regard to s. 11 of the Preventive Detention Act, 1950, as it stood before its amendment, and also to the wording of s. 11 as it stands now, and they said that it may be that after the report of the Advisory Committee is received and Government confirms the order, Government ought to state for what period the detenu is to be detained thereafter. But so far as the original detention

⁽¹⁾ (1951) Crim. Appln. No. 235 of 1951, decided by Rajadhyaksha and Dixit JJ., on April 17, 1951, (Unrep.).

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is concerned, the view which has appealed to this Court is that it is not necessary to state in the order of detention the period for which a detenu is to be detained, and with respect we are in entire agreement with this view. On the question as to whether the original order for detention should or should not mention the period during which a detenu is to be detained, there appears to have been a difference of opinion between the Allahabad High Court on the one hand and the Madras and the Pepsu High Courts on the other. A division bench of the Allahabad High Court took the view that it was not necessary to mention the period of detention in the order; while, on the other hand, the Pepsu and the Madras High Courts have taken the view that it is necessary to do so. Now, the original order of detention is passed under the provisions of s. 3. There is nothing in that section which requires that the detention order should state the period for which the detenu is to be detained. Under the Preventive Detention Act of 1950, as it stood before its amendment in 1951, there was a maximum prescribed for the detention, namely, one year; but the maximum, if we look to the words of the section, affected the detention, and there were no words in the section which would require that the original order for detention should mention that the detention was to be for any particular period not exceeding the maximum period. It has been contended that in case the detention order does not state for what period the detenu is to be detained, the Superintendent of the Jail or the jailor where he is detained would not know for what period the detenu is to be detained and the detenu may be detained indefinitely. Now, it is obvious that no detenu could be detained for a period longer than one year during the time s. 12 of the original Act was in force. A warrant of arrest and commitment to jail in regard to the detenu calling upon the jailor to detain him could be executed by him by detention of the detenu, but not beyond the period of one year from the date of the order. The warrant necessarily had to be interpreted by the Superintendent or the jailor concerned as a warrant authorising him to keep in his custody the detenu until further orders, provided, of course, in no case could the detenu be kept beyond one year. There were attempts made whenever an argument was addressed to the Court that if the order did not mention the period of detention the detention would be indefinite, to point out in reply that the detention could in no case exceed the maximum prescribed. Leaving aside for the moment the condition that the detention could not, in any case, exceed one

year, it is obvious that if the Act had stood with s. 3 without prescribing any maximum, there is nothing wrong with the order which, without stating the period for which the detenu is to be detained, stated that he should be detained. Reference may usefully be made to the case of *Liversidge v. Sir John Anderson*⁽¹⁾ where a detention order made under a similar enactment merely directed that the detenu be detained without mentioning any particular period during which the jailor was to detain the detenu. It is true that s. 12 of the Preventive Detention Act, 1950, as it stood before its amendment, made some difference, inasmuch as the detenu could in no case be detained for a period longer than one year; but that did not mean that the detention order had necessarily to state the period. It is true that the detention could not exceed one year, but the jailor would naturally know the requirement of the law that all detentions had to come to an end after the period of one year from the date of its commencement. In the second instance, even if it be held that if the jailor had got a warrant which asked him to detain the detenu without mentioning any particular period, that was a sufficient reply to any charge of false imprisonment which may be made against him on the ground that he had detained the detenu for more than one year, that again would not render a detention order invalid. It is true that the detention could not exceed one year. The detaining authority may well say to itself that it would keep a watch upon the period during which the detenu is detained and say 11 months after the passing of the order it would pass an order with regard to his release before the maximum period of one year was over. I fail to understand why it should be held merely because there could not be detention of a longer duration than one year from the date of the order, the detention order had to mention the period for which the detenu was to be detained by the jailor. The detaining authority could very well say 'until further orders,' and even if he did not use the words, but merely said that the detenu should be detained, the jailor knowing that the detention could only be for one year would naturally understand that before the expiry of one year orders would be received as to when the detenu was to be released. Some arguments have been addressed to us upon the analogy of a sentence in a criminal trial. It appears that when the argument that there would be indefinite detention if the period of detention was not mentioned

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⁽¹⁾ [1942] A. C. 206.

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in the order was addressed to other Courts, it was pointed out that the detention could in no case exceed the maximum prescribed by s. 12 of the Preventive Detention Act as it stood before its amendment, and this reply was repelled by reference to the analogy of a sentence. It was said that every penal section specified the maximum term of imprisonment which could be awarded; but that would not obviate the necessity of mentioning in the warrant of commitment to jail that the sentence was for any particular period. Now, it is quite true that whenever there was a conviction recorded by a Court, the Court has when imposing the sentence to mention the period of imprisonment and that too notwithstanding the fact that the penal section would prescribe the maximum term for which the convict would be sentenced. But this result is due to the wording of the sections concerned. Take, for example, s. 258 of the Code of Criminal Procedure. It directs that when an accused person is convicted the Court shall pass upon him a sentence in accordance with the law, and if we look to any penal section, it will say that the person convicted is liable to be sentenced to imprisonment for a term not exceeding a particular period. The penal section does not say how much the sentence would be but the section implies that a period of imprisonment must be mentioned. There is no corresponding section which compels in regard to a detention the period to be mentioned. The argument that in spite of a maximum being prescribed by a penal section the warrant committing a prisoner to jail upon being sentenced has got to mention what the sentence was cannot, therefore, be availed of in deciding as to whether when passing an order for detention it is necessary to mention any particular period. There was some argument addressed to us that if the original order for detention does not mention what is the period during which the detenu is to be detained, he would not know whether to make a representation or not. It is argued that sometimes if the detention was for a short period, say for three months or for the matter of that, 15 days during an emergency, a detenu may not worry to make a representation. We understand the force of the contention, but if a detenu were after all to make a representation, that would never spoil his case. In the second instance, knowing the provisions of the Detention Act a detenu would at the most wait for a period of three months before making a representation. After the period of three months has elapsed, he would not wait. That is apart from the

fact that the Preventive Detention Act requires that a detenu should be given an opportunity for making a representation.

It is said, however, that even if because of the wording of s. 3 of the Preventive Detention Act it is not necessary for the detaining authority to mention the period of detention when passing the original order of detention, when subsequently the case of the detenu is referred to the Advisory Committee and the State Government confirms the order of detention as they have purported to do in the present case, they must mention the period during which the detenu would be detained further, and it is contended that this result follows from the wording of s. 11 of the old Act as well as s. 11 of the new Act. Section 11 of the old Act stated:

“.....where the Advisory Board has reported that there is in its opinion sufficient cause for detention of the person concerned, the Central Government or the State Government, as the case may be, may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.”

The section as it stands after the amendment similarly provides, after saying that the appropriate Government may confirm the detention order, that the appropriate Government may “continue the detention of the person concerned for such period as it thinks fit.” It is said that in case there was no intention that a period should be mentioned, even at this time the section would have stopped with the words ‘confirm the detention order.’ But it seems to us that that is not the correct interpretation of the section. The section does undoubtedly say that the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thought fit; but that is obviously due to the fact that the Advisory Committee would not only opine as to whether there was sufficient cause for the detention of a person but in a proper case it may say that in its view detention for a longer period than that mentioned by it was not necessary. The Legislature obviously thought fit to provide that once the Advisory Committee was of the view that the detention at the time when it made its report was a valid detention and there was sufficient cause for it, what action should be taken subsequently was a matter which should be left to the appropriate Government. Under the old Act the Advisory Committee had not got much power. Under the Act after its amendment, if the Advisory Committee is of the view that there was no longer any cause for detaining him in custody,

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he must be released; but whether under the old Act or under the new Act once the Advisory Committee was of the view that there was sufficient cause for the detention of the detenu at the time when it made its report the Legislature thought that what was the period for which the detenu should be detained thereafter should be left not to the Advisory Committee but to the appropriate Government, and the word which should be final would be that of the latter Government. The words are exactly similar in effect to the words of a contract between two parties in which one said to the other that the latter should keep a cycle lent by the former for such period as he thought fit. There would be no necessity in such a case for the person to whom the cycle was lent to say how long he would keep the cycle, and in our view, if the Legislature had intended that the appropriate Government should make an order after receiving a report of the Advisory Committee as to how long the detenu should be detained, it would have said not that the detenu's detention should continue as long as the appropriate Government thought fit, but "pass an order for the detention of the person concerned for such further period as it deemed fit."

The learned advocate for the petitioner says next that in that case he would contend that s. 11 of the Act as amended and s. 12 of the amending Act are in contravention of art. 20 of the Constitution. It is contended by him that the petitioner was originally detained for a period of one year under an order passed under the Preventive Detention Act, 1950, as it stood originally. He says that the result of the applicant being detained under the same order because of the provisions of s. 12 of the amending Act is that the applicant is being penalised twice for what he did. Mr. Sule says that it is obvious that s. 12 of the amending Act directs that the old order of detention should continue after the amending Act came into force and should continue notwithstanding that a period of one year for which at the most the detenu could be detained under the original Act had expired. There has been no fresh application of the mind by anybody to the case of the detenu. That may be conceded. But it is impossible to accept the contention that in so far as s. 11 of the Act as it stands after its amendment permits further detention after receiving the report of the Advisory Committee, there has been any contravention of art. 20 of the Constitution. Article 20 of the Constitution says :

"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

Mr. Sule relies upon the words "nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." He says that the further detention is a penalty. That in itself is arguable because a penalty obviously envisages the idea of punishment and detention which is preventive is obviously not penal. Preventive detention, as a matter of fact, is contra-distinguished from penal detention; but leaving this apart for the moment, it is obvious that what sub-art. (1) of art. 20 prevents is the infliction of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of *the same offence*. The sub-article has, therefore, reference to a penalty to be imposed in respect of an offence, and where the question is one of preventive detention, the article has no application.

It is contended next that if we are of the view that the present detention cannot be challenged upon the ground that there is at present no valid order for detaining the detenu at any particular place, the detention must be regarded as invalid upon the ground that the applicant was not given any opportunity to make a representation to the Advisory Committee which has been constituted under the provisions of the Detention Act as it now stands after its amendment. It appears from the amending Act that where an order for detention is continued under the provisions of s. 12 of the Act the case of the detenu must be referred to an Advisory Board. That follows from s. 9, which runs as follows:—

"(1) In every case where a detention order has been made under this Act, the appropriate Government shall, within six weeks from the date specified in sub-s. 2 place before an Advisory Board constituted by it under s. 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report made by such officer, under sub-s. (3) of s. 3."

Section 10 (1) then goes on to say:

"(1) The Advisory Board shall, after considering the materials placed before it and after calling for such further information, as it may deem

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necessary, from the appropriate Government or from the person concerned, and if in any particular case it considers it essential, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date specified in sub-s. (2) of s. 9."

There is nothing in these two sub-sections which requires that the detenu should be given an opportunity to make a representation to the Advisory Committee. The only representation which the Act contemplates is the representation which is to be made upon receiving the grounds and such representation is to be made under the provisions of sub-s. (1) of s. 7 where the detention order has been made by a State Government or an officer subordinate to it to the State Government. It may be, of course, that the detenu might address a representation to the Committee, and if such a representation is made by the detenu, it may usefully be placed before them. But there is nothing either in s. 9 (1) or s. 10 (1) which requires that the Government should give the detenu an opportunity to make a representation to them. All that the Act contemplates is that what should be considered by the Advisory Committee is the representation which is made to the appropriate Government, and it is after considering such a representation that the Advisory Committee is to come to a conclusion. In such a case it is open to the Advisory Committee to call for such further information as it may deem fit either from the Government or from the detenu. It is also entitled, in case it considers it essential, to hear the detenu in person; but there is nothing whatever which requires the appropriate Government to give an opportunity to the detenu to make a representation to the Advisory Committee. The ground, therefore, that no such opportunity was given to the detenu must, therefore, fail.

Mr. Sule has made a further point that, in so far as the amending Act continued the detention which had already been ordered by the detaining authority, the detention from the commencement of the Act or from the expiry of the period of one year from the date of detention was a new detention, and he has got a right to make a representation against that detention to Government if not to the Advisory Committee and he must be given a new opportunity to make it. But so far as the amending Act is concerned, all that it contemplates is that, in the case of every order which has been continued, the case should be referred to the Advisory Committee, as the case of the petitioner has been referred. There is no such rule, as is claimed by Mr. Sule, under the

Preventive Detention Act. So far as the Constitution is concerned, the Constitution does undoubtedly give a petitioner a right to make a representation against his detention; but that cannot be construed to mean, where a Detention Act continues a detention which has already been made, the detenu has a fresh right to make a representation, and he must be given a fresh opportunity. It is true that in one of the Supreme Court's judgments there is a reference to the detention continued by the amending Act as a new detention; but it appears to us that in ascertaining whether the present contention is correct, we must look at the detention as a whole. The detention is continued by the new Act pending the examination of the question by an Advisory Committee; but we do not think that it can be regarded as a new detention in the sense that the detenu is to be given another opportunity to make a representation. The representation which he has already made in this case is placed before the Advisory Committee, and that is all that matters.

It is said finally that whenever after receiving the report of the Advisory Committee the State Government confirms the order of detention, such an order should be communicated to the detenu, and in case the confirmation of the order is not communicated to the detenu, then, in that case the detention is invalid. Now, I do not intend to suggest that it would not be proper for the State Government to inform the detenu after the report of the Advisory Committee is received that the State Government has confirmed the order. But we cannot find in s. 11 any words which would compel the State Government to communicate to the detenu its decision.

The rule will be discharged.

Re: Cri. Applications Nos. 265/51, 301/51, 302/51 and 306/51. These are applications for release from detention of persons who have been detained under the provisions of the Preventive Detention Act, 1950. We are told that they are governed by the decision in the case of *In re Prahlad Krishna*⁽¹⁾ and do not involve any new points. We find upon our view on the contentions which have been taken on behalf of that detenu the case of these detenus must also fail.

The rule will, therefore, be discharged.

⁽¹⁾ (1950) 53 Bom. L. R. 61.

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This is an application under s. 491 of the Code of Criminal Procedure and art. 226 of the Constitution of one Shah Bhogilal Ratilal who has been detained under an order dated February 2, 1951, passed by the District Magistrate of Ahmedabad under the Preventive Detention Act, 1950, the order having been passed on February 2, 1951, it was passed under the provisions of the Preventive Detention Act as it stood before its amendment on February 22, 1951. The order stated that the petitioner should be removed and detained in the Ahmedabad Central Prison and shall, for the purpose of the Bombay Conditions of Detention Act, 1950, be treated as class 2nd prisoner. Assuming that this order was a valid order to make, the order was continued by s. 12 of the amending Act. Then on February 27, 1951, the State Government passed an order in exercise of the powers conferred by s. 4 of the Preventive Detention Act, 1950, as it stood after its amendment directing that a person in respect of whom a detention order is in force shall unless otherwise provided by a special order of the Government of Bombay be liable to be detained in any of the places specified by the order. Among the places mentioned below was the Ahmedabad Central Prison at Sabarmati. The District Magistrate has on the same day passed an order directing that the petitioner shall be detained in the Ahmedabad Central Prison, Sabarmati, and that is where the petitioner continues to be detained to the present day. Mr. Chitale, who appears on behalf of the detenu, has first made a point that the grounds which were given are vague, inasmuch as all that they state is that during about two months immediately preceding the detention the petitioner was illegally selling rice at a rate higher than the controlled rate to persons in Ahmedabad City and that in all probability he would attempt to do so even thereafter. Mr. Chitale says that the grounds are vague for the reason that they do not state what were the exact dates upon which the applicant illegally sold rice. They do not say to whom he sold such rice; nor do they state what was the rate which was really charged, though they state that the rate was higher than the controlled one. We find, however, that the District Magistrate's order giving the grounds states that it is not in the public interest to disclose further facts, and we have got a similar affidavit filed before us stating that it was not in the public interest to disclose any further facts. When giving the grounds for detention, the District Magistrate may and indeed

usually should embody in the grounds the conclusions which are reached by him. But under the Constitution itself he is not required to disclose such facts as it is not in the public interest to disclose. It is true that he may not be the final authority in determining what facts it is not in the public interest and what fact it is in the public interest; it is not necessary to go into that for the purpose of the present application. The very object of the provision of the Constitution is that facts should not be disclosed when public interest requires that they should not be disclosed. It is obvious, therefore, that, in the first instance, at any rate, the authority which detains has to determine whether it is in the public interest to disclose a particular fact or not. Its decision can be challenged consequently only on the ground that it is a mala fide decision; that means that even though the officer says that it was not in the public interest to disclose any particular fact, he was not really of that opinion. There is nothing whatsoever in this case to show that the detaining authority, who has refused to disclose further facts, has been acting mala fide in keeping them back. That being so, we must take it that the grounds may be vague; but they are vague, because the detaining authority has not disclosed certain facts in the public interest. These he was entitled not to disclose.

The next point which is made by Mr. Chitale is that, even though in this case the State Government has issued a general order under s. 4 of the old Act mentioning the prisons where the detenus are liable to be detained, and the Ahmedabad Central Prison is one of those prisons, the order detaining the petitioner there was issued not by the State Government, but by the District Magistrate. Mr. Chitale says that the order which was issued by the State Government merely stated where the detenus were liable to be detained. It did not say where a particular detenu was to be detained, and inasmuch as the section says that the detenu will be liable to be detained in such place as the State Government which was concerned in the present case may, by a general or a special order, direct, the State Government not having directed the detention of the petitioner in any particular prison by a general order, a special order had to be issued by it as to where he was to be detained. An order which was passed by the District Magistrate would not do. But it appears to us that this contention cannot possibly be maintained. The detaining authority may not have power to operate beyond its jurisdiction; but we cannot

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understand how the detaining authority cannot direct the detention of a person in its own jurisdiction where the local Government has, by a general order, specified that the detenu can be detained in a jail which is within the jurisdiction of the detaining authority. Just as when a person is convicted, no order is required from anybody and the Court which convicts an accused person can send him to the prison within its jurisdiction for undergoing the sentence, similarly the detaining authority is empowered to send a detenu to a jail where by a general order the State Government has directed the detenus were liable to be detained.

The other points which are made in this application are the same as those in the case of Kurne which has already been disposed of by this Court.

The rule, will, therefore, be discharged.

VYAS J. I agree to the order proposed by my learned brother and would like to add a few observations.

On April 1, 1948, an order of detention under s. 2 (1) (a) of the Bombay Public Security Measures Act (Bom. Act VI of 1947) was passed against the petitioner Pralhad Krishna Kurne. Actual date of his arrest was February 13, 1950. After arrest he was detained in His Majesty's House of Correction, Byculla, Bombay. On February 26, 1950, the Preventive Detention Act, 1950, (Act No. IV of 1950), was passed, overriding the provisions regarding detention as embodied in the Bombay Public Security Measures Act. On the same date, i.e., February 26, 1950, an order of detention was passed against the petitioner under the Preventive Detention Act. Grounds under s. 7 of the Act were furnished to him on March 17, 1950. On March 15, 1950, the Inspector General of Prisons passed an order directing that the petitioner shall be removed from His Majesty's House of Correction, Byculla, to the District Prison, Thana, and shall be detained in the said District Prison, Thana. On March 31, 1950, the petitioner was actually removed to District Prison, Thana, and detained there. From that date onward, the detention continued in the District Prison, Thana.

Now, Mr. Sule for the petitioner contends that the Inspector General of Prisons had no jurisdiction to pass or make an order under s. 4 of the Preventive Detention Act. Under s. 4 of the Preventive Detention Act the Central Government or,

as the case may be, the State Government, may from time to time by general or special order specify a place to which a detenu shall be liable to be removed or in which he shall be liable to be detained. It is contended by Mr. Sule that under s. 4 of the Act, which is the only section under which an order of removal of a detenu to, or detention of a detenu in, a particular place can be passed, the Inspector General of Prisons has no jurisdiction to pass an order as to removal or detention. That being so, it is contended that the order of the Inspector General of Prisons dated March 15, 1950, which was executed on March 31, 1950, was illegal and that the detention of the detenu thereafter became illegal.

In this connection the Government Pleader has drawn our attention to a notification of Government, No. S.D. 671—E, dated May 1, 1948. It is a notification which was passed by Government in exercise of powers conferred upon them by s. 21 of the Bombay Public Security Measures Act. By the said notification the Government empowered the Inspector General of Prisons to exercise the powers conferred upon them by s. 2 (4) of the Bombay Public Security Measures Act. But obviously, as is very fairly conceded by the Government Pleader himself, this cannot help the State in this case. The present detention of the petitioner is under the Preventive Detention Act, No. IV of 1950, as amended by the Preventive Detention (Amendment) Act, No. IV of 1951, and not under the Bombay Public Security Measures Act. From February 26, 1950, onward the detention was under the Preventive Detention Act. Accordingly the Inspector General of Prisons, on March 15, 1950, could not validly act under a notification of Government issued under the Bombay Public Security Measures Act.

The Government Pleader has next drawn our attention to s. 3 of Act IX of 1894 (The Prisons Act, 1894) in which the definitions of "criminal prisoner", "convicted criminal prisoner" and "civil prisoner" are given. I am afraid none of these definitions can help the State. A detenu is obviously not a criminal prisoner or a civil prisoner. It may be that in some cases he may happen to be detained in a prison, but he does not fall within the definition of any category of a prisoner. The argument for the State is that the Inspector General of Prisons, in the exercise of his general administrative powers in regard to routine work of the prisons in the Province, could

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properly pass an order which he did pass on March 15, 1950. But this contention assumes that the petitioner is a prisoner. Now, a detenu, although detained in a prison, does not thereby become a prisoner. He could be detained in any place directed by the Central Government or the State Government under s. 4. Supposing that the direction was that he was to be detained in some suitable private place, he would not thereby become a prisoner. In other words, there is a considerable difference between a detenu and a prisoner, the only common factor being that in some particular cases a detenu may happen to be detained in a prison, which common factor, in our opinion, would not be sufficient to confer upon the person concerned a character of a prisoner. If he is not a prisoner, as we hold he is not, obviously the provisions of s. 3 of the Prisons Act cannot help the State for the purpose of validating the order dated March 15, 1950, passed by the Inspector General of Prisons.

Next our attention was invited by the Government Pleader to the Jail Manual where at page 11 it is stated :—

“The Personal Assistant to the Inspector General of Prisons shall be in immediate charge of the Inspector General’s Office in all its branches and shall conduct all routine work, signing communications relating to routine matters.”

Now, in our opinion, these provisions cannot be called into assistance for justifying the order of the Inspector General of Prisons dated March 15, 1950, by which the detenu in question was ordered to be removed to and detained in the District Prison, Thana. Obviously the conduct of routine work, signing communications, etc., is a totally different affair from determining an important question as to where a particular detenu should be detained, and we are of the opinion that the abovementioned provisions of the Jail Manual cannot therefore be of any avail to the State on this point. In our opinion the provisions of the Preventive Detention Act override the provisions of the Jail Manual on the question of detention of a person. Under s. 4 of the Act discretion as to a place to which a detenu is to be removed and where he is to be detained vests absolutely in the Central Government or the State Government as the case may be, and therefore on the date concerned (March 15, 1950) the Inspector General of Prisons had no authority to pass an order directing the removal of the petitioner from the Correction House, Byculla, to the District

Prison, Thana. He could not legally interfere with the discretion which was vested in the State Government by the Act. Section 4 of the Act does not contemplate any delegation at all and therefore under no circumstances could the Inspector General of Prisons validly pass the order which he did on March 15, 1950.

Therefore the net result is that the order of the Inspector General of Prisons dated March 15, 1950, being illegal, the detention of the petitioner in the District Prison, Thana, from March 31, 1950, onward became illegal and continued illegal.

On February 22, 1951, the Preventive Detention (Amendment) Act, No. IV of 1951, was passed. On February 28, 1951, the Commissioner of Police, Greater Bombay, passed the following order :—

“The person known as P. K. Kurane detained under my order No. 9 dated the 26th February 1950 (a) shall be detained in Thana District Prison, Thana; and (b) shall for the purposes of Bombay Conditions of Detention Order, 1951, be treated as a class II prisoner.”

It was apparently an order passed under s. 4 of the Act. Now, Mr. Sule's contention is that even this order was without jurisdiction as under s. 4 of the Act only the appropriate Government could pass such an order. Section 4 of the Act (as amended by s. 6 of Act IV of 1951) is in the following terms :—

“Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:.....”

Next in point of time comes an order dated May 10, 1951, passed by the Assistant Secretary to the Government of Bombay, Home Department, by order of the Governor of Bombay. The text of the said order was as under :—

“In exercise of the powers conferred by s. 4 of the Preventive Detention Act, 1950 (No. IV of 1950), the Government of Bombay is pleased to direct that the person known as Shri P. K. Kurane, who has been detained under Order dated the 26th February 1950 made by the Commissioner of Police, Greater Bombay, shall be removed from the Thana District Prison to the House of Correction, Byculla, Bombay, and detained therein.”

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It would thus be noticed that the detenu, who was originally detained in the House of Correction, Byculla, and was thereafter removed to and detained in the District Prison, Thana, by the order of the Inspector General of Prisons, Bombay, was transferred back to the House of Correction, Byculla, Bombay, and directed to be detained there by the order of the appropriate Government under s. 4 of the Act. Now, even in respect of this order Mr. Sule's contention is that it is a bad order. The contention is made in this way: As the order dated March 15, 1950, passed by the Inspector General of Prisons, Bombay, was without jurisdiction, the detention of the petitioner from March 31, 1950, (the order of the Inspector General of Prisons was executed on March 31, 1950) onward became illegal and continued illegal right up to the date on which the amending Act No. IV of 1951 was passed. The said illegal and invalid detention destroyed the validity of the original order of detention which was passed against the petitioner on February 26, 1950, assuming that the said original order was a valid order. On these contentions it is submitted by Mr. Sule that no proper order under s. 4 of the amending Act could be passed in this case without passing a fresh proper order of detention under s. 3 and that as no such fresh order of detention under s. 3 of the Act was passed, the order under s. 4 which was passed on May 10, 1951, would be bad. In these circumstances it is argued by Mr. Sule that the order dated February 28, 1951, passed by the Commissioner of Police, Greater Bombay, and the order dated May 10, 1951, passed by the Assistant Secretary to the Government of Bombay, Home Department, by the order of the Governor of Bombay, would both be of no avail to the State.

The learned Government Pleader on the other hand contends that on the date on which the amending Act No. IV of 1951 was passed there was a perfectly valid order of detention (of the petitioner) in force, viz. the order passed by the Commissioner of Police, Greater Bombay, on February 26, 1950. That valid order of detention continued in force and had the same effect as if it had been made under the Preventive Detention Act No. IV of 1950 as amended by the amending Act of 1951. For this contention reliance is put on s. 12 of the amending Act which is in these terms:—

"Validity and duration of detention in certain cases.—For the avoidance of doubt it is hereby declared that—

(a) every detention order in force at the commencement of the Preventive Detention (Amendment) Act, 1951, shall continue in force and

shall have effect as if it had been made under this Act as amended by the Preventive Detention (Amendment) Act, 1951;....."

It is accordingly contended by the Government Pleader that no fresh order of detention of the petitioner was necessary after the passing of the amending Act and that without passing any such fresh order a valid order under s. 4 of the amending Act could be passed. In these circumstances it is contended by the Government Pleader that today, in this particular case, there are two perfectly valid orders: (1) the order of detention passed under s. 3 of the Preventive Detention Act, No. IV of 1950, which was kept in force by s. 12 of the amending Act, and (2) an order under s. 4 of the amending Act directing the detention of the petitioner in the Correction House, Byculla, Bombay.

While on this point of the validity of an order, as to detention of the petitioner in a particular place, under s. 4 of the amending Act, it is the contention of the Government Pleader that even the order of the Commissioner of Police, Greater Bombay, dated February 28, 1951, was a perfectly good order. Our attention is invited to the order dated February 27, 1951, made by the Government of Bombay in the Home Department (Political). It was an order made under s. 4 of the Preventive Detention Act, 1950, and was to the following effect:—

"In exercise of the powers conferred by s. 4 of the Preventive Detention Act, 1950 (IV of 1950), and in supersession of Government Order, Home Department (Political), No. S. D. III-1042-A/9628, dated June 26, 1950, the Government of Bombay is pleased to direct that a person in respect of whom a detention order is in force, shall, save as otherwise provided by any special order of the Government of Bombay, be liable to be detained in any of the places specified hereunder:—

The Yeravda Central Prison, Poona...

The Thana District Prison, Thana...

The House of Correction, Bombay...

Relying on this order which was passed by the appropriate Government within the meaning of s. 14 of the amending Act it is contended by the Government Pleader that what the Police Commissioner, Greater Bombay, did on February 28, 1951, was that he merely executed the order of the appropriate Government. The District Prison, Thana, was one of the places specified in the order of the appropriate Government to which a detenu was liable to be removed and in which he was liable to be detained. Therefore although the Commissioner of Police called it his "order", what in substance he did was that he

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carried out the direction of the appropriate Government which was embodied in its above stated order.

In other words, the contention of the State is that in this case, after the passing of the amending Act of 1951 there were two valid orders passed under s. 4 of the said Act, one on February 28, 1951, and the other on May 10, 1951. As the original detention order dated February 26, 1950, which according to the State was a valid order, was kept in force by s. 12 of the amending Act and as proper orders under s. 4 of the amending Act were also passed after the said Act came into force, it is submitted by the learned Government Pleader on behalf of the State that in this case the detention of the petitioner is free from any blemish whatever.

Now, we may revert for a moment to the contention of Mr. Sule which we have already referred to, viz. that as the detention of the petitioner from March 31, 1950, right up to February 22, 1951, on which date the amending Act was passed was illegal, it had destroyed the validity of the original order of detention, assuming that it was a valid order, and that therefore a fresh order of detention under the amending Act was necessary. We regret we cannot accept this contention. In our opinion the order of detention is one thing and the order as to place where the person concerned is to be detained is a totally different thing. It is quite possible in our opinion that the former may be a good order and the latter may be a bad order for want of jurisdiction or on account of some other defect. In our opinion the order of detention under s. 3 of the Act is not required to specify a place where the person is to be detained. Section 3 says that if the Central Government or the State Government is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order, it is necessary to detain him, it may make an order directing that such person shall be detained. Section 3 does not require that the detention order must specify the place where he is to be detained. It is argued for the petitioner that unless the order of detention mentions the place where the person is to be detained, no effect can be given to it and that therefore it is implicit in s. 3 of the Act that the place of detention must be mentioned in the order of detention. We cannot agree at all. It need scarcely be stated that the District Magistrate of a district has jurisdiction over all places

situated within his district and therefore it is perfectly competent to him, when he makes an order of detention, to direct by a separate order that the person concerned shall be detained in a particular place or prison within his jurisdiction. We have no doubt in these circumstances that the order of detention which was passed in this case on February 26, 1950, was perfectly valid and did not suffer from any infirmity on the ground that the place of detention was not specified in it. Next, the order of detention being quite a distinct thing from an order as to the place where the person is to be detained, the former would not be vitiated or rendered invalid simply because the subsequent order as to the place of detention was bad for some reason, for instance the want of jurisdiction in the authority making that order. The fact that the two orders are quite distinct and that one is not to be confused with the other is further clear from the fact that whereas an order of detention is to be passed under s. 3 of the Act, an order as to the place where the person concerned is to be removed to and detained is to be passed under s. 4 of the Act. Of course both the directions, viz. the direction as to detention and the direction as to the place of detention, may in some cases be contained in the same order, i.e. the same order may direct: (1) that a person shall be detained, and (2) that the detention shall be in a particular place. In so far as it directs that a person shall be detained, it will be an order under s. 3, and in so far as it says that the detention shall be in a particular place it will be an order under s. 4. In other words, it will be an order separable in two distinct parts, one of which will fall under s. 3 of the Act and the other under s. 4.

Now, an order of detention being quite different thing from an order directing that the detenu shall be detained in a particular place, it is clear that although the former may be a perfectly good and valid order, the latter order may be bad in some cases for certain reasons. In other words, merely because an order under s. 4 is invalid and would vitiate the detention in a particular place which is referred to in that order, the order of detention itself, which has been properly passed, will not be invalidated. It will remain a good order.

Next, if the factum of detention in a particular place becomes illegal by reason of an order under s. 4 being bad, it can be subsequently validated by a proper order made under s. 4. In

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Criminal Application No. 1671 of 1948 (*In re Sushilabai Govind-rao Jadhav*⁽¹⁾) under s. 491 of the Criminal Procedure Code in the case of *Prabhakar Kondaji Bhapkar* it was observed by the learned Chief Justice as follows :

“What we are concerned with to-day is not whether his confinement at some stage in Poona was legal or not, but whether to-day he has been legally confined in the prison at Yeravda and in our opinion in view of the order of the 15th November it cannot be said that Mr. Bhapkar's confinement to-day in Poona is contrary to law.”

It is to be remembered that in that case the contention was that the order as to the removal of the detenu from the Visapur jail to the Yeravda jail at Poona which was passed on November 11 was an invalid order and that, therefore, the detention of the detenu from that date onward became illegal. Subsequently however a valid order was passed on November 15, 1948, by the Inspector General of Police, Province of Bombay, and the learned Chief Justice observed that in view of that order it could not be validly contended that the detenu's confinement in Poona was contrary to law. In *Basant Chandra Ghose v. Emperor*,⁽²⁾ which was a Federal Court case, it was observed by Spens C. J. that if at any time before the Court directed the release of the detenu a valid order directing his detention was produced, the Court could not direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question was not whether the later order validated the earlier detention but whether in face of the later valid order the Court could direct the release of the petitioner. Applying these decisions to the facts of the present case we find that even if it be conceded that the order passed by the Commissioner of Police, Greater Bombay, on February 28, 1951 was an invalid order, being bad for want of jurisdiction, there was in any event a perfectly valid order under s. 4 of the Act passed by the appropriate Government on May 10, 1951, and that being so it could not be contended that to-day there is no proper order in this case under s. 4 of the Act. There is a proper order today under that section, and there is also a perfectly good and valid detention order under s. 3 of the Act. Accordingly in our opinion the detention of the detenu is valid.

The next contention of Mr. Sule is that the letter which the Government of Bombay wrote to the Commissioner of Police,

⁽¹⁾ (1951) Crim. Appln. No. 1671 ⁽²⁾ (1945) 47 Bom. L. R. 396, f. c. of 1948, decided by Chagla C. J. and Gajendragadkar J., on January 19, 1949 (Unrep.).

Bombay, on May 11, 1951, on receiving the report of the Advisory Board did not state the period of detention and did not contain any direction regarding communication of the said period to the petitioner, and that therefore the detention of the petitioner from that date onward is illegal. Now, the relevant part of the Government letter dated May 11, 1951 is in the following terms :—

“In accordance with s. 9 of the Preventive Detention Act, 1950, the case of detenu Shri P. K. Kurne was placed before the Advisory Board which has reported that there is sufficient cause for his detention. Government has accordingly confirmed the detention order issued against him. Please inform the detenu accordingly and report compliance.”

Now, if we turn to s. 11 of the Act we find that it lays down that in any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit. From the words “for such period as it thinks fit” an argument is made by Mr. Sule that it was incumbent on Government, while confirming the detention order and while continuing the detention of the petitioner, to mention also the period during which the detention shall continue. We have considered this submission but have felt constrained to reject it. Wherever the Act contemplates that a certain thing must be done, a specific provision to that effect is made in so many words. For instance, the Act requires that the grounds of detention must be disclosed to persons affected by the order of detention and therefore in s. 7 of the Act we find a specific provision to that effect. We find it laid down that the authority making an order of detention shall, as soon as may be, communicate to the detenu the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation. We have no doubt therefore that if the intention of the Legislature was that under s. 11 of the amending Act the appropriate Government must, while confirming the order of detention and continuing the detention, also state the period during which the detention will continue, it would have used specific words to that effect. But we do not find any such provision in s. 11, and we think there is a perfectly good reason why no such provision is made. Unless the appropriate Government is in a position to know for what particular period the prejudicial activities of a detenu are likely to continue, it cannot possibly state a definite

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period, while taking action under s. 11 of the Act, during which his detention shall continue. It is quite obvious, we think, that the period during which the activities of the person concerned may continue to be prejudicial to the maintenance of public order will depend on several factors such as the inclination of the detenu, circumstances in existence in the State at the particular time etc. As the appropriate Government cannot possibly have any definite knowledge on these points at the time of taking action under s. 11 of the Act, it would be impossible in our opinion for them to state a definite period during which the detention of the detenu shall continue. Therefore, in this contention of Mr. Sule we see no substance.

The last contention of Mr. Sule is that after the case of the detenu was referred to the Advisory Board by the Government of Bombay under s. 9 of the Act no opportunity was given to him for making a representation to the Advisory Board. Now, we have carefully considered the combined effect of ss. 9 and 10 of the Act and we find that the said sections do not contemplate that apart from the opportunity which the Act requires to be given to a detenu to make a representation under s. 7 any further opportunity is to be given to him to make a representation to the Advisory Board after his case is referred to the said Board by Government. If, on his own accord, the detenu makes another representation before the matter is put before the Advisory Board by Government, that representation has of course to be forwarded by Government to the Advisory Board under s. 9 of the Act. S. 9 says that in every case where a detention order has been made under the Act the appropriate Government shall, within six weeks from the date specified in sub-s. (2), place before an Advisory Board the grounds on which the order has been made and the representation if any made by the person affected by the order. It is clear, therefore, that whatever the number of representations which the detenu might have made to Government before his case is sent to the Advisory Board, Government is bound to forward them to the Board for consideration and examination. The Board is not called upon to ask for any representation from the detenu. S. 10 says that when the case is referred to the Advisory Board, the said Board shall, after considering the materials placed before it and after calling for such further information, as it may seem necessary, from the appropriate

Government or from the person concerned, and, if in any particular case it considers it essential, after hearing him in person, submit its report to the appropriate Government. It is clear therefore that the question whether the Advisory Board should call for any further information from the detenu or should give him an opportunity of being heard in person is left entirely to the discretion of the Advisory Board. It is not incumbent upon the Board to give an opportunity to the detenu to make a representation to them, nor it is incumbent upon them to hear him in person. Therefore, in this particular submission also of Mr. Sule, viz. that no opportunity was given to the detenu for making a representation to the Advisory Board and that therefore the detention from that point onward is bad we find no substance.

The net result therefore is that the application deserves to fail and must be dismissed.

Rule discharged.

M. W. P.

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APPELLATE CRIMINAL

Before Mr. Justice Bāvdekar and Mr. Justice Chainani.

INDUR DAYALDAS ADVANI (ORIGINAL ACCUSED No. 1), APPELLANT v. STATE.*

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Indian Penal Code (Act XLV of 1860), s. 161—Taking illegal gratification by a public servant—Representation that he would show favour in an official act—Showing favour not within his power—Whether an offence.

When a public servant obtains gratification other than legal remuneration upon a representation that favour would be shown to the giver in the discharge of his official functions, the public servant is guilty of an offence under s. 161 of the Indian Penal Code, 1860, notwithstanding the fact that the official act was not within the power of the public servant concerned.

* Criminal Appeal No. 855 of 1950.