SUPREME COURT

Kanthiah Thambu Chelliah and Others
V
Paranage Inspector of Police and Others

S C Nos 66 to 69/81 - CA applications 10 to 13/81

Prevention of Terrorism (Temporary Provisions) Act No. 48/1979 Section 6, 9, 31 — Unlawful Activity — Meaning — Validity of detention orders Writ of Habeas Corpus — Time at which Court is concerned with legality or propriety of Order.

The first detention order stated the Minister had reason to suspect that each of the detenues was connected with or concerned in terrorist activity.

The second detention order stated that except in the case of S.Murugaiah the Minister had reason to suspect that the other three detenues were connected with or concerned in an unlawful activity to wit the abetment of and conspiracy to commit robbery of the People's Bank. In the case of S. Murugaiah the order had been made on the ground that the Minister had reason to suspect that he was connected with or connected in unlawful activity to wit harbouring and concealing members of the gang and failing to report that such persons had committed such offence and collecting explosives without authority.

The Petitioners prayed that as the Orders were invalid and that a Writ of Habeas Corpus be issued.

The Court of Appeal refused the application and Petitioners appealed to Supreme Court.

Held per Weeraratne J. The words Unlawful Activity, included not only acts which were not lawful but also offences which are triable in Court. Hence all four petitioners had committed acts connected with or concerned in unlawful activity and were justifiably detained by the Minister's Orders under Section 9.

On 25.3.81 an armed gang ambushed at Neerveli two vehicles carrying currency to the value of Rs. 8.1 Million to the People's Bank in Jaffna. The members or this gang shot and killed 2 police officers who were escorting the vehicle and escaped with the money and two rifles. The petitioners were not members of this gang.

Arunagirinathan along with Siva Selvan assisted in concealing and disposing of the money.

Kulasekerarajasingham was a close associate of two members of the gang who resided close to their home. Besides, two persons who were prevented from leaving the country and who were in possession of part of the stolen money were seen in the vicinity of their home.

Murugaiah harboured and concealed one member of the gang, and failed to report to the Police that such person had committed an offence and that he was concerned in collecting explosives without authority.

The four Petitioners were arrested on various dates in April 1981 and detained at the Panagoda Camp on the Orders of the Minister.

per Wimalaratne J. The words 'unlawful activity did not include offences for which a person could be taken to Court but only acts connected with or concerned in the commission of an offence. Hence the detention and continuation of the detention of the three corpus is justified but that S. Murugaiah should be remanded and brought to trial for the offence disclosed.

per Perera J. 1). The affidavits do not disclose that the three suspects actually committed the offence but that there was strong suspicion of their involvement and that the Minister was justified in making the detention orders.

2). In the case of S. Murugaiah there was evidence of the commission of a specified offence and therefore the corpus could not be detained for unlawful activity but rather he was liable to be charged for the offence and thus the detention order in his case was not warranted by law.

APPEALS from Order of the Court of Appeal

Before: Weeraratne, J., Wimalaratne, J & Victor Perera, J.

Counsel: V.S.A. Pullenayagum with F. Mustapha, S.C. Chandrahasan and Miss M. Kanapathipillai for the petitioner in S.C. 66/81.

Dr. Colvin R. de Silva with L.A.T. Williams. S. Perimpanayagam and C. Kumaralingam for the petitioner in S.C. 67/81.

K. Thevarajah with R. Sirinivasan, S.C. Kumaralingam for the petitioner in S.C. 68/81.

H.L. de Silva with S. Mahenthiran
and T. Pakiyanathan for petitioner
in S.C. for 69/81.

T. Marapane, Deputy Solicitor General
with S. Ratnapala, S.C. and
K. Kumarasiri, S.C. for
Attorney General.

Argued on: 11th-13th January, 1982.
Decided on: 19.2.82

Cur. adv. vult.

WEERARATNE J.

Four appeals from a judgment of the Court of Appeal in respect of Applications in the nature of Writs of Habeas Corpus were argued before us. By agreement of Counsel these appeals were consolidated and submissions were made by Counsel on behalf of the several applicants.

Learned Counsel who appeared on behalf of the corpus S. Arunagirinathan in Application No. 12/81, in opening the case for the Petitioners stated that the matter before us is under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 hereinafter referred to as "the Act" and involves the liberty of the subject. He submitted that the question which arises is the scope of the term "Unlawful Activity" as defined in Section 31 of the Act. On the 19th April, 1981, the corpus was arrested by officers of the C.I.D. and Army personnel acting under Section 6 of the aforesaid Act. On the 20th April, 1981, the Minister of Internal Security by Order (marked X^1), acting under Section 9 directed his detention at the Panagoda Army Camp. Then on the 5th May 1981, he was brought to Panagoda where he was at the time of the application. The matter came up before the Court of Appeal on that same date and Notice issued. The Respondents are the I.G.P and Director, C.I.D. Thereafter an Order dated 26th May, 1981 (marked X^2) was issued by the Minister. Counsel submitted that the contents of the two Orders of the Minister, X^1 and X^2 were different. However when the Application was taken up before the Court of Appeal on the 28th July, 1981, fresh orders had been issued.

The real question at issue is the legality of the Detention Orders made under Section 9 of the Act. Counsel contended that the orders of the Minister are invalid. The Petitioner prays that the Writ be issued directing the Respondents to bring the Corpus before the Court of Appeal, to be dealt with according to law and for an order of release of the corpus from custody. The Court of Appeal refused the application of the Petitioners for the issue of the Writ of Habeas Corpus.

Counsel contended that the Orders of the Minister are invalid and illegal. Section 6(1) of the Act No. 48 of 1979 reads:-

"Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorisd in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary –

(a) arrest any person;
(b) enter and search any premises;
(c) stop and search any individual or any vehicle, vessel, train or aircraft; and
(d) seize any document or thing

connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity."

Part II of the Act deals with the "Investigaiton of Offences." The Police Officer's power of arrest, entering and search of premises, could be exercised when a person is "connected with or concerned in or reasonably suspected of being connected with or concerned *in any unlawful activity.*" Section 6(1). Once an arrest is made there are two courses available to the authorities. Section 7 empowers the authorities to keep a man in custody for a period not exceeding 72 hours within which time, unless a Detention Order is made under Section 9, the person arrested would have to be produced before the Magistrate, and on an application being made in writing by a Police Officer not below the rank of Superintendent, the Magistrate shall make an order of remand until the conclusion of the trial of that person. The second course is in Part III of that Act and which deals with Detention and Restriction Orders. Such Orders are made by the Minister when he has reason to believe or suspect that any

person is connected with or is concerned in any unlawful activity, in which event he may order such person to be detained for a period not exceeding three months, and such order may be extended from time to time for a period of not exceeding 18 months. Section 31 of the Act defines "unlawful activity" as follows:-

> "31(1) In this Act, unless the context otherwise requires -
>
> "unlawful activity" means any action taken or act committed by any means whatsoever, whether within or outside Sri Lanka, and whether such action was taken or act was committed before or after the date of coming into operation of all or any of the provisions of this Act in connection with the commission of any offence under this Act or any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offence under this Act."

The Appellant's contention is that the acts constituting "unlawful activity" should be external to the "offence". It is submitted that the definition draws a distinction between an "offence" and "unlawful activity". The latter expression, it was submitted, would not include acts prohibited by law or offences.

It would be seen that the term "unlawful activity" means, "any action taken or act committed.....in connection with the commission of any offence..." It was submitted on behalf of the State that the only requirement is that the "action" or the "act" committed should be in connection with the commission of an offence. I agree with this contention made on behalf of the State. The limitation sought to be placed by Counsel on behalf of the Petitioners in regard to the words "action taken" are not expressly set out in the definition, nor will they be reasonably implied having regard to the ordinary and plain meaning of the words. The following simple illustration was given to us by Counsel for the State.

> A,B and C planned the robbery of money of a Bank while in transit. The discussions have taken place in D's rooms in his absence. 'A' borrows a motor car from 'E' to be used as transport to the scene of the roberry. Pursuant to the plan A, B and C arrive at the appointed place and stop the Bank van which is transporting the money. 'A' shoots and kills the driver,

'B' rushes up and forces open the door of the van with 'C's assistance. 'B' thereafter removes the cash that is found inside the van. It was submitted that 'C's act of assisting to open the door is clearly an act committed in connection with the offence of robbery and would therfore constitute "unlawful activity" within the definition set out above.

It was further submitted that there would be no justification for treating it as otherwise merely for the reason that this act of assisting to open the door would in addition form part of the acts constituting the robbery itself, or for the reason that he is guilty also of conspiracy to commit robbery. Hence, according to learned Counsel for the State the actions of A, B and C are such as to be included in the term "unlawful activity". Then, as regards D and E it was suggested that their conduct is innocent even though connected to the robbery. Had D given his room knowing that it was to be used as the venue of the conspiratorial meeting, or E his car knowing that it was to be used in connection with the robbery, they too, though not guilty of any offence would be concerned in "unlawful activity". The analysis of "unlawful activiy" given above would indicate that it includes an offence under the Act.

It was contended for the respondents that the "unlawful activity" referred to in the three Detention Orders (excepting the order regarding Murugiah) refer to the abetment and conspiracy to commit the offence of robbery and is therefore external to the robbery and hence constitute both an offence and an "unlawful activity". It was further submitted that "unlawful activity" contemplated all offences referred to in the Act and that this definition is in order to make it as wide as possible to catch up every conceivable offence.

I agree with the judgment of the Court of Appeal where it is stated that, "unlawful activity" as defined in Section 31 extends to persons not only on the periphery of criminal liability, but it also encompasses any person whose acts, "by any means whatsoever are connected with the the commission of any offence under this Act and includes a person who has committed an offence under Act No. 48 of 1979."

The lengthy preamble in the Act appears to have been designedly incorporated in order to set out precisely the context in which and

the purpose for which this piece of legislation was enacted. In interpreting any provision of the law the object of the legislation should not be lost sight of. The following passage from Maxwell's Interpretation of Statues (11th edition page 7) is relevant:

> "At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

The Court of Appeal has in its judgment held that the Detention Order (X^1) was invalid. I see no reason to disagree with that finding. On the 26th May, 1981, fresh Detention Orders by the Minister were issued marked (X^2).

Counsel questioned the validity of the Detention Orders (X^2), the opening words of which set out, "where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity..." In this connection it would be observed that the said Orders are made by a Minister of the State who, having regard to his position in Government must be presumed to give his anxious care to the deprivation of liberty of the persons sought to be detained. In any event there is a presumption of regularity of official acts and also a presumption of good faith. These are no doubt rebuttable presumptions. In this connection the relevant affidavits of Senior Police Officers record that the material relating to the suspects was made available to the Minister before his Orders of Detention were made. No effort was made to rebut the apparent good faith of the Minister's orders.

In the case of *Gunasekera vs Ratnavale* (76 NLR 316) Alles J refers to the speeches of the Law Lords in *Liversidge vs Anderson* (1942) AC 206 and*Greene vs Secretary of State for Home Affairs* (1942) AC 284, where the production of the Home Secretary's Order, the authencity and good faith of which were not impugned was held to constitute an answer to an application for a Writ of Habeas Corpus.

On the matter of the legality of the said Detention Orders, the

question arises whether there was anything to preclude the second Detention Orders marked (X^2). In this connection, as mentioned earlier, the first Detention Order (X^1) was held to be invalid and subsequently the orders X^2 were issued.

Under the heading "Amending the cause of the Detention" Sharpe in his work on the Law of Habeas Corpus (p.176,177) states:-

> "The rule that it is only the present circumstances of the restraint which are relevant has meant that the Courts are always prepared to allow for a substituted warrant which corrects a defect in the first committal. It will be permissible for there to be a substituted warrant even after the Writ is issued and served. Indeed it has been held that it is possible to amend the return to the Writ or to supply new and better cause for the detention as the Court commences the hearing. It would seem that so long as material proffered tends to show present justification, it will be accepted by Court at any stage of the proceedings."

As Wijeyatilake J has put it in the case of *Gunasekera vs Ratnavale* in *76 NLR 316 at 343*. "No doubt when an appeal by way of a Writ of Habeas Corpus is considered by this Court it is concerned with the legality and/or propriety of the detention of the corpus at the time the respondent answers unlike in a civil suit where the Court deals with the rights of parties at the institution of the action. So that if in the course of the proceedings a further detention order is made and the respondent seeks to rely on it then it is the duty of the respondent to draw the attention of the Court to the fresh order and not wait till the corpus is discharged to take him into custody an such order."

The cases of *Subodh Singh vs The Province of Bihar* AIR 1949 Patna 247 at 249 and *Godavant Paruleker vs State of Maharashtra* AIR 1966 (Supreme Court) 1404 at 1407 strongly support this view

It was submitted for the Petitioners that one must look at "the Act" with due regard to fundamental rights. Reference was made to the language of Scrutton L.J. in the case reported in *Rex vs Secretary of State for Home Affairs ex parte O' Brien* [1923] 2 K.B. 361 at page 382:-

"This appeal raises questions of great importance regarding the liberty of the subject, a matter on which English law is anxiously careful, and which English Judges are keen to uphold. As Lord Herschell says in *Cox vs Hakes:* 'The law of this country has been very jealous of any infringement of personal liberty.' "

Counsel made reference to Article 13 (2) of the Constitution from the Chapter dealing with Fundamental Rights.

Article 13(2):-

"Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."

As regards this submission made relating to the violation of Fundamental Rights enshrined in Article 13(2), one must take note of the permissible restrictions embodied in Article 15(7) which enacts that the exercise and operation of Article 13(2) shall be subject to such restrictions as may be prescribed by law in the interest of national security and public order. In any event, Article 80(3) of the Constitution precludes this Court from calling in question the validity of the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979, "on any grounds whatsoever."

Having regard to the material made available to the Minister, I am satisfied that there was a reasonable basis for him to make the subsequent Detention Orders (X^2), which in my opinion are valid Orders. The fact that the Detention Orders (X^1) made earlier are invalid is not relevant for the reason that the Detention Order, which is operative at the point of time the Court is called upon to issue the Writ, is the Order (X^2).

There are three similar Orders marked (X^2) wherein the Minister of Internal Security states that he has reason to suspect that S.Arunagirinathan, C. Kulageswaran and C. Sivaselvam are each of

them connected with or concerned in an "Unlawful Activity" to wit, the abetment and conspiracy of robbery of property of the People's Bank, Neervely, on the 25th March, 1981. There is an affidavit by B.M.N. Jurangpathy, as Assistant Superintendent of Police (marked 'B') who states that in respect of Arungirinathan there is materal which indicates that the corpus had assisted in the concealment of part of the monies robbed on the 25th March, 1981. It is stated that, "further information as regards the complicity of the corpus in the said robbery, and the evidence available against him, could be disclosed at this stage, *when investigations are yet continuing*, only at grave risk to the personal safety of the informants and person conducting and investigating in the inquiry.

In respect of the corpus *C.K. Rajasingham*, the affidavit of P. Mahendran, Deputy Inspector General of Police is that, "the investigations conducted so far *have given rise to a strong suspicion* that the corpus has abetted or conspired in the commission of the said robbery of property of the People's Bank Neervely."

In regard to the corpus V. Sivaselvam, B.M.N. Jurangpathy, Assistant Superintendent of Police sets out that, "there is material to indicate that the corpus had assisted in the concealment of part of the monies robbed on the 25th March 1981. It is stated that "further information of the complicity of the corpus in the said robbery and the evidence against him could be disclosed at grave risk to the personal safety of informants."

These three Orders of Detention come within the definition of "Unlawful Activity" as interpreted earlier in this judgment, since they involve acts committed in connection with offences under the Act.

In regard to the Detention Order in respect of *S. Murugiah*, submissions were made on his behalf by Counsel that the Police have identified the offences of which he could be remanded and charged. In this connection our attention was drawn to the affidavit of R.C.S. Gunasinghe, Assistant Superintendent of Police.

He stated therein, "the investigations conducted so far reveal that the corpus had harboured and concealed one N. Thangavel knowing that he had committed an offence under the Act No. 48 of 1979, and had failed to report to a Police Officer that such person has

committed such offence." He stated that "it would appear that the corpus had also been concerned in collecting explosives without lawful authority."

In paragraph 9 of the Affidavit he states that, "further informatation in the matters set out in paragraph 8, and the evidence against him, could be disclosed at grave risk to the personal safety of the informants and persons conducting the investigation. Counsel submitted that the material in the affidavit in respect of this case reveals that the Police have identified an offence, in which event this suspect should be remanded and brought to trial. Each of the affidavits referred to, state that the material available to them with regard to the complicity of suspects was made available to the Minister before he made his Order of Detention.

Since I have already held that the definition of "Unlawful Activity" includes a person who has committed an offence under the Act (No. 48 of 1979), the four Detention Orders referred to above made by the Minister are in my opinion valid.

For the reasons given the Applications for the Writs of Habeas Corpus are dismissed.

WIMALARTNE, J.

I have had the benefit of reading the judgment prepared by Weeraratne, J. Whilst I am in agreement with him that the detention orders X2 in respect of C. Kulasekeran (Corpus in S.C.66/81, C.A.10/81) S. Arunagirinathan (Corpus in S.C.67/81, C.A.12/81) and C. Sivasekeran (Corpus in S.C.68/81, C.A.13/81) are valid, I regret I am unable to agree with him that the continued detention of S. Murugiah (Corpus in S.C.69/81, C.A.11/81) is legal.

Enshrined in our Constitution is a Chapter on Fundamental Rights. Article 13 therein guarantees freedom from arbitrary arrest and detention, and declares in paragraph 2 that "every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the nearest competent court according to procedure

established by law, and not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such Judge made in accordance with procedure established by law." This guarantee of the fundamental right to personal liberty, is based upon Article 9 of the Universal Declaration of Human Rights, that "no one shall be subjected to arbitrary arrest, detention or exile". In the protection of these freedoms the judiciary has constantly to be aware of its role as the custodian of individual rights and the bulwark of liberty in our society.

But the exercise and enjoyment of rights and freedom is inseparable from the performance of duties and obligations, perhaps the most important of which may be considered to be the respect for the rights and freedom of others. Understandably, therefore, fundamental rights are not, and cannot be absolute. They have been and are subject to certain restrictions, which were contained in Article 18(2) of Constitution of 1972, and are now contained in Article 15(7) of the present Constitution in these words: "The exercise and operation of all fundamental rights declared and recognised by Articles 13(1), 13(2) .....shall be subject to such restrictions as may be prescribed by law in the interest of national security, public order.....or for the purpose of securing due recognition and respect for the rights and freedoms of others.....".

In the plenitude of its legislative power Parliament enacted, on the 20th of July 1979, the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, limited in its duration to a period of three years. The present appeals which relate to the interpretation of the Act raise questions of great importance regarding the liberty of the subject as this legislation seeks to curtail that liberty in some of its drastic provisions, such as detention without trial. Learned Counsel for the petitioners have not, and indeed they could not, canvass the validity of the Act, but their principal concern has been that in the interpretation of the Act, the Court will have due regard to the well known canon of interpretation that statutes which encroach on the rights of the subject should be interpreted, if possible, so as to respect such rights; and that if there is ambiguity as to the meaning of any section, the Constitution which is in favour of the freedom of the individual should be given effect to.

According to its long title it is "an Act to make temporary provision for the prevention of acts of terrorism in Sri Lanka, the prevention of unlawful activities of any individual, groups of individuals, association, oganisation or body of person within Sri Lanka or outside Sri Lanka and matters connected therewith or incidental thereto." One notes the emphasis on the aspect of prevention, rather than punishment, although the offences specified therein are visited with the severest of penalties. One notes also the differentiation between "acts of terrorism" and "unlwful activity". The reason for this legislation could be gathered from the second part of the preamble which reads thus:-

> "And whereas public order in Sri Lanka continues to be endangered by elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka, and who have resorted to acts of murder and threats of murder of members of Parliament and of local authorities, police officers, and witnesses to such acts and other law abiding and innocent citizens, as well as the commission of other acts of terrorism such as armed robbery, damage to State property and other acts involving actual or threatened coercion, intimidation and violence"

Part I of the Act specifies certain offences and provides for enhanced punishment including life imprisonment and forfeiture of property. Briefly, section 2 specifies certain offences (a) against the person of specified categories of individuals, including officers charged with the enforcement of the law and the maintenance of public order; (b) against the property of government and semi-government institutions; (c) for the importation, manufacture possession or collection of firearms and explosives without lawful authority; (d) for the rousing of religious, racial or communal disharmony by words spoken or written; (e) for the erasing of words, inscriptions or lettering in any board or fixture in a highway or other public place; and (f) for knowingly harbouring or interfering with the apprehension of offenders. Whilst section 3(b) makes attempts, abetment, conspiracy, exhortation and incitement punishable, section 3(a) makes even an act preparatory to the commission of an offence also culpable, perhaps for the first time in the recent history of our penal legislation. Failure to report

to the Police of the commission of an offence is made punishable under section 5.

Part II deals with the investigation of offences. The Police powers of arrest, search and seizure are contained in section 6, and such powers are to be exercised in respect of persons or property "connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity". "Unlawful activity" is defined in section 31 to mean unless the context otherwise requires "any action taken or act committed by any means whatsoever, whether within or outside Sri Lanka, ... in connection with the commission of any offence under this Act ..... ". Much of the arguments before us have centred around the distinction between "offences" and "unlawful activity" and as to whether the former is included within the latter. Any person arrested under section 6(1) may be kept in Police custody for a period of 72 hours, under a detention order unless section 9 has been made in the meantime, and shall, under section 7(1) be produced before a Magistrate before the expiry of that period; and the Magistrate is obliged, on application made by a Superintendent of Police to order that such person be remanded until the conclusion of his trial. There is provision for the release from remand custody with the consent of the Attorney-General.

Part III deals with Detention and Restriction Orders. Section 9(1) reads as follows:-

> "Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity the Minister may order that such person be detained for a period not exceeding three months, in the first instance, in such place and subject to such conditions as may be determined by the Minister, and such order may be extended from time to time for a period not exceeding three months at a time:
>
> Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months."

The Minister is empowered to suspend a detention order, and to make a restriction order under section 11, imposing prohibitions and restrictions in respect of the movements and activities of any person connected with or concerned in the commission of any unlawful

activity. Both a detention order under section 9 and a restriction order under section 11 are made final and conclusive and are not to be called in question in any court or tribunal by way of writ or otherwise. But it has not been contended that these privative clauses preclude us from determining the validity of any detention order made under the Act.

Part V deals with Trials. Every person who commits an offence under the Act triable without preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a Jury. Statements of a confessional nature made to an officer not below the rank of A.S.P. are admissible, if not irrelevant under section 24 of the Evidence Ordinance. Also sections 25, 26, and 30 of the Evidence Ordinance relation to exclusion of confessions are made inapplicable.

On the 25th March 1981 an armed gang is alleged to have ambushed two vehicles carrying currency to the value of 8.1 million rupees to the regional head office of the People's Bank, Jaffna, at Neeraveli in the Kopay Police area. The members of this gang, had shot and killed two police officers who were escorting the vehicles, and escaped with this large sum of money as well as with two rifles belonging to the police officers. This is said to be the biggest robbery committed in Sri Lanka. Eye witnesses to the robbery had described 13 persons who participated in it. The four detenues in respect of whom the present applications relate were not among the 13 so identified by description. They were, however, arrested on the dates specified in the table given below, and detention orders have been made against them also on the dates specified:

Name of Corpus	Date of arrest	Date of 1st detention order X1	Date of H.C. application	Date of 2nd detention order X2
C. Kulasekararajasingham (Corpus in H.C.A. 10/81)	6.4.81	6.4.81	23.4.81	14.5.81
S. Murgaiah (Corpus in H.C.A.12/81)	28.4.81	30.4.81	30.4.81	26.5.81
S. Arunagirinathan (Corpus in H.C.A.12/81)	19.4.81	20.4.81	30.4.81	26.5.81
B. Sivaselvam (Corpus in H.C.A.13/81)	19.4.81	20.4.81	30.4.81	26.5.81

The reason specified in each of the first detention orders "X1" was that the Minister had reason to suspect that each of the detenues was "connected with or concerned in terrorist activity". The subsequent orders X2 have been made on the ground that, except in the case of S.Murugiah, the Minister had reason to suspect that the other three detenues were "connected with or concerned in an unlawful activity", to wit:- the abetment and conspiracy of the robbery of the People's Bank". In the case of S. Murugiah X2 had been made on the ground that the Minister has reason to suspect that he was "connected with or concerned in unlawful activity, to wit; harbouring and concealing Nadarajah Thangavel alias Thangathurai knowing that he had committed an offence under the Act, failing to report to a police officer that such person had committed such offences and collecting explosives without lawful authority".

Having heard arguments on nine dates the Court of Appeal dismissed the four applications. The judgment of the Court is reported in (1981) 2 SLR, Vol.II part 7,P.187. The major portion of the judgment deals with the allegations of torture and the failure to inform the detenues of the reason for their arrest. We were of the view that those matterss were not relevant to the decision we are called upon to make, but that what is relevant is whether the detention of these four persons on the detentions orders "X2" are valid, and Counsel addressed us only on that aspect of the case. The Court of Appeal has, in interpreting the Act, applied the "mischief rule" in order to ascertain the intention of the legislature and has come to this finding: "everybody knows that the Act is intended to rid the country of terrorism in all its recent sophisticated manifestations". Whilst holding that the order "X1" is invalid because "terrorist activity" which is given as the reason for detention, is not only lacking in particularity but also does not fall under the description of "unlawful activity" in section 31, the judgment concludes that unlawful activity "extends to persons not only on the periphery of criminal liability, but it also encompasses any person whose acts 'by any means whatsoever' are connected with 'the commission of any offence under this Act', and that includes a person who has committed an offence under Act No. 48 of 1979". Therefore "the specifying of an offence under the Act, as has been done in the detention orders "X2" does not invalidate the detention orders". Briefly stated because "offences" are included in the definition of "unlawful activity", the fact that the offences are specified in "X2" does not make the detention orders invalid.

The pith and substance of the argument of learned Counsel for the petitioners before us has been that the Court of Appeal was wrong in holding that "unlawful activity" as defined in Section 31 includes "offences" as specified in Part I of the Act. The Minister's power of detention, they contend extends only to those persons whom the Minister has reason to believe or suspect are connected with or concerned in any "unlawful activity", but not to those persons who are suspected of having committed an offence under the Act. In respect of the former, Parliament has prescribed the remedy of detention by the Minister extending up to a maximum period of 18 months. In respect of the latter Parliament has prescribed not detention but remand by order of Magistrate until the conclusion of the trial before a Judge of the High Court without a Jury.

The learned Deputy Solicitor General has submitted that all acts, whether committed prior to during or after the commission of an offence, if committed in connection with the offence should be regarded as a unlawful activity. "Unlawful activity" may be considered to be a circle within which is a segment which constitutes "offences" committed under the Act. This segment has become somewhat of a major segment as a result of acts preparatory to the commission of an offence also being made culpable. If offences are excluded from the definiton of unlawful activity then hardly any other activity remains to be called unlawful, either for the purpose of arrest under section 6(1) or for detention under section 9(1). Police powers of arrest under section 6(1) extend to those reasonably suspected of being connected with or concerned in unlawful activity. The Magistrate's powers of remand under section 7(1) extend to those who are suspected of having committed offences under the Act. Now, section 7(1) contemplates the remand of persons arrested under section 6(1) and as the power of arrest under section 6(1) is for "unlawful activity", therefore logically "offences" must be included within the definition of unlawful activity. He has, with consummate skill, taken us through the several provisions of the Act in order to demonstrate the absurdities that would necessarily result if any other construction be given. To refer to just a few of those anomalies:- If, the petitioners contend, offences are not included within the meaning of unlawful activity, then the police powers of arrest for offences cannot be the powers stipulated in section 6(1). They can only be the general Police powers of arrest contained in section 32(1) of the Code of Criminal Procedure Act No. 15 of 1979. Now, those general powers are much

less than the special powers given in the Act, and therefore we get the anomalous situation of a Police officer having less power to arrest an "offender" than a "non-offender". Then again, section 6(2) of the Act provides a heavier penalty in the case of obstruction during the arrest of a "non-offender" than the penalty prescribed under the general law in the case of obstruction during the arrest of an "offender".

I am in agreement with the learned D.S.G. that certain absurdities do arise if a construction other than what he has put forward is given. But "there was never any statute so far sighted that it did not have its casus omissi..... The courts cannot escape the responsibility of considering these unforseen contingencies". Allen-Law in the Making (7th Edn.) 496.

Our task is to discover the intention of Parliament. Where the language is plain and admits of but one meaning, the task of interpretation does not arise. The various rules of interpretation are merely guides to assist the Court in its task. The Court of Appeal has sought guidance from what is known as the mischief rule, laid down in *Heydon's Case*. I do not for a moment doubt the proposition that consideration of the mischief or object or purpose of the enactment will often provide a solution to the problem. But the ascertainment of the mischief sought to be suppressed is not sufficient by itself. Equally important is an ascertainment of the remedy prescribed by Parliament to suppress the mischief and the reason for the remedy. This is best stated by *Maxwell* thus:- "To arrive at the real meaning it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke (1) what was the law before the Act was passed; (2) what was the mishcief or defect for which the law has not provided; (3) what remedy Parliament has provided; and (4) the reason of the remedy" *Interpretation of Statutes (11th Edn) p.19*. Whilst the Court of Appeal has correctly identified the mischief as "terrorism in all its recent sophisticated manifestations" the Court has not sufficiently identified the remedy prescribed to rid the country of terrorism which is twofold; namely (1) remand by order of a Magistrate until the conclusion of the trial by the High Court of those against whom there is prima facie case of the commission of an offence under the Act, and (2) detention by order of the Minister for a maximum period of 18 months for those against whom there is no prima facie case of an offence but only of unlawful activity. The Court of Appeal

has not considered the question whether the material available against each of the detenues calls for a remand order or for a detention order. This omission is the result of giving a meaning to the term unlawful activity not warranted in the context of section 9; statutory language is not read in isolation but in its context. The term "unlawful activity" *unless the context otherwise requires* means "any action taken or act committed by any means whatsoever ..... in connection with the commission of any offence under this Act ....." I emphasis the words 'unless the context otherwise requires'. I have no doubt that in section 6 which defines the Police powers of arrest, entry, search and seizure and contained at the commencement of the chapter on "Investigation of offences" the term unlawful activity is used to include offences"; that is to say the power to arrest etc. is given in respect of those who have committed offences as well as those whose acts and activities, although they do not constitute offences are nevertheless unlawful because they may be said to be acts "in connection with the commission of an offence" or those who in the words of the Court of Appeal are "on the periphery of criminal liability". But in section 9(1) the term "unlawful activity" does not include "offences"; that is to say, the Minister's powers of detention without trial are resticted to those who have committed acts which are not offences but are only acts committed in connection with the commission of offences. To say that the Act. gives the Minister the power of detention without trial where a prima facie case of the commission of an offence has been established would be to interpret section 9 contrary to the guarantee of liberty contained in Article 13 of the Constitution.

This interpretation of the term "unlawful activity" finds support from the procedure required to be followed after arrest, which procedure is contained in section 7(1). Any person arrested under section 6(1) may be kept in custody for a period not exceeding 72 hours. This applies to both those who have committed or are suspected to have committed offences, as well as to those whose activities are only unlawful, though they do not amount to offences. The period of 72 hours in contrast to the normal period of 24 hours under which a suspect may be kept in custody, is to give the police more time to complete their investigations which will necessarily be protracted. If within that period there is material to establish a prima facie case against a person in custody, then such person has to be produced before a Magistrate who is obliged to remand him until the conclusion of his trial. If on the other hand there is no material

to establish a prima facie case, then the procedure is either a release of that person from Police custody or detention by order of the Minister under Section 9.

In the interpretation of statutes it is not unusual to give different meanings to the same word in the same statute. Although it has been justly remarked that, when precision is required, no safer rule can be followed than always to call the same thing by the same name, *Maxwell* says that this presumption as to identical meaning is not of much weight. "The same word may be used in different senses in the same statute and even in the same section ....." (12th Edn) p. 279. To give an example of the same word being given distinct meanings; "maliciously" does not have the same impact throughtout the Offences against the Person Act 1861, sometimes adding nothing to the statutory definition of an offence, sometimes requiring a particular state of mind on the part of the person inflicting a wound. It must also be remembered that the meaning of the term "unlawful activity" is contained in an interpretation clause which requires it to be given that meaning *only unless the context otherwise requires*. Cockburn C.J. thought in 1865 that interpretation clauses frequently lead to confusion. *Craies on Statute Law* (7th Edn) 213. It may truly be said of this Act that the definition of "unlawful activity" in the interpretation clause has led to considerable confusion and difficulty in the interpretaion of the several sections of the Act. However, where the word defined is declared to '*mean*' so and so the definition is explanatory and has to be understood in the context. All statutory definitions or abbreviations must be read subject to the qualification, variously expressed in the definition clauses which create them, such as: "unless the context otherwise requires"; or "unless a contrary intention appears". *Craies* p.101. I am therefore of the view that no rule of interpretation is violated by the construction I have adopted of giving different meanings to the term "unlawful activity" in sections 6 and 9 of the Act.

Let me apply this interpretation to the illustration given by the learned D.S.G. of A, B & C planning the robbery of money of a Bank whilst in transit in a van. Discussions have taken place in D's room in his absence. A borrows E' s car to be used as transport to the scene of robbery. Pursuant to the plan A, B and C arrive at the scene and stop the van. A shoots and kills the driver, B forces open the door of the van with C's assistance. B thereafter removes

the cash from inside the van. A, B and C have certainly committed offences specified in the Act. The remedy prescribed by Parliament is that they should within 72 hours after their arrest, be produced before a Magistrate, who is obliged to remand them until the trial against them is concluded. But what of D and E ? At the time of arrest there may only be a suspicion against them, because the Police would not have had sufficient time or opportunity to ascertain whether they had knowledge – D of the purpose for which the meeting was held in his room or E of the purpose for which his car was borrowed. Now "suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking. 'I suspect but I cannot prove'. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When proof has been obtained, the police case is complete. It is ready for trial and passes on to the next stage" per Lord Devlin in *Shaaban Bin Jussein vs. Chang Fook Kam* (1969) 3. A.E.R. 1626 at 1630.

D. and E. are then only on "the periphery of criminal liability". Their acts or omissions constitute "unlawful activity" within the meaning of the Act. So they are liable to be arrested under section 6(1) and are liable to be detained under section 9(1). But once the Police investigations reveal a prima facie case of the commission of an offence by them, then the law requires that they shall be remanded by a Magistrate and remain on remand until their trial before the High Court is concluded. In such a case it would be the duty of the Police to appraise the Minister of additional evidence establishing a prima facie case, obtain their release from detention, produce them forthwith before a Magistrate and have them remanded.

I am of the opinion that the legislature has drawn a distinction between those whose actions or acts, whether as perpetrator, abettor, conspirator, exhortor, incitor or whose acts amount to attempts or even only preparation to commit an offence are by themselves offences; and those whose actions and acts, though not amounting to an offence are yet unlawful for the purpose of the Act because they amount to activity "in connection with" the commission of any offence under the Act. The remedy prescribed in the case of the former category is remand by a Magistrate until conclusion of the trial before the High Court without a jury. The remedy prescribed for the latter is detention by order of the Minister for a limited period, without trial. Detention need not necessarily be detention in

military custody, as in these cases. It may even be house detention or detention in any other specified place. So it would not be correct to say that those who are "offenders" receive somewhat better treatment or less curtailment of liberty than "non-offenders".

Having drawn this distinction I shall now consider the case of each of the detenues in order to determine whether the remedy prescribed by the Legislature has been applied in his case. The several affidavits of the Police Officers who arrested the detenues as well as the affidavits of the Minister of Internal Security are the sources of information available to us. The detenues are, each of them, said to be members of organisations, the declared aim of which is the establishment of a separate state to be called "Tamil Eelam" by means of armed struggle, violence and terrorism. There was a law to proscribe the Liberation Tigers of Tamil Eelam enacted on 23.5.78. That law was repealed by section 30 of the present Act; so that mere membership in such an organisation by itself would not amount to unlawful activity within the meaning of section 31 unless there has been some display of violence.

As against *C. Arunagirinathan* and *B. Siva Selvan*, the allegation is that there is material to indicate that they had assisted in the concealment or subsequent disposal of part of the cash robbed. Now, concealment and disposal of stolen property are not specified as offences in the Act. But they are acts done in connection with the bank robbery, and constitute unlawful activity, within the meaning of section 31; so their detention is justified.

As against *C. Kulasekerarajasingham* the allegation is that two of the 13 suspects identified with the robbery were close associates and resided close to his house. Besides, on 5.4.81 two of three persons apprehended that night in the process of attempting to leave the country, and from whose possession a portion of the money robbed was recovered were seen in the vicinity of his house. That same night several members of the organisation had visited his house. There was, therefore, material to show that the activities in or near his house that night were in some way connected with the offence of robbery; so his detention is justified.

As against *S. Murugiah* the allegations are that (a) there was material to indicate that he harboured and concealed one Nadaraja Thangavelu alias Thangathurai knowing that the latter had committed an offence under the Act; (b) he failed to report to a Police Officer that such person had committed an offence; and (c) that he was concerned in collecting explosives without lawful authority. Now these allegations point to the Police having prima facie proof of the commission by Murugiah of offences under the Act, namely offences specified in sections 2 (j), 5(a) (i) and 2(f) respectively. Therefore detention under section 9(1) is not lawful in his case. The remedy provided by Parliament is remand and trial.

The error in the detention orders X2 in respect of Arunagirinathan, Sivaselvam and Kulasekerarajasingham, in that they have specified the unlawful activity by the use of the words "to wit: the abetment and robbery of property of the People's Bank, Neeravely on 25.3.81" does not in my view, invalidate X2 because the allegations in the affidavits support the reason given for the detention, namely unlawful activity.

Accordingly I would make order dismissing appeals S.C. 66/81, 67/81 and 68/81; but allowing the appeal in S.C. 69/81.

VICTOR PERERA, J.

I have had the benefit of perusing the judgments of Weeraratne, J. and Wimalaratne, J. I am in agreement with Wimalaratne, J. that the term 'unlawful activity' in Act No. 48 of 1979 does not include offences under the Act.

The appellants in the four Habeas Corpus Applications Nos. 10/81, 11/81, 12/81 and 13/81 had applied for Writs to the Court of Appeal on 23rd April 1981. Each of the persons in respect of whom the applications were made had been arrested and detained under the provisions of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979. The orders for detention had been made by the Minister of Defence who was empowered by the Act if he had reason to believe or suspect that any person is connected with or

concerned in any unlawful activity to order his detention for a period not exceeding three months and to extend this order from time to time for periods not exceeding three months at a time provided that the aggregate period shall not exceed eighteen months.

The four applications were taken up together and at the hearing before the Court of Appeal the appellants had challenged.

(a) the legality of the arrests and
(b) the validity of the detention orders.

They had alleged acts of torture, which too were investigated into by the Court of Appeal.

The Court of Appeal by its order dated 10th September 1981 refused the applications for Writ. The appellants filed appeals against this order to this Court.

At the hearing of these appeals which were taken up together, Counsel for the appellants did not challenge the validity of the arrest made but confined their submissions to the question of the validity of the detention orders only. In regard to the detention orders marked X1 in which the grounds of detention were stated to be "terrorist activity", the Court of Appeal had held that the said orders were invalid and Counsel for the appellants and for the State did not challenge that finding. The only contention raised by the appellants was that the detention orders X2 and the subsequent orders were invalid as the alleged unlawful activity mentioned in the detention orders was not what the law contemplated as 'unlawful activity' but acts which constituted offences under the Act. The Court of Appeal without attempting to analyse the various provisions of the Act No. 48 of 1979 and without assigning any reasons whatsoever for its finding held as follows:-

> "Unlawful activity as defined in Section 31 extends to persons not only on the periphery of criminal liability but it also encompasses any person whose acts "by any means whatsoever" are connected with the commission of any offence under this Act and that, we hold, includes a person who has committed an offence under Act No. 48 of 1979".

On this basis alone, the Court of Appeal held that the four detention orders X2 'were valid ex facie'.

Counsel for the appellants very strongly urged that this conclusion by the Court of Appeal was absolutely without justification and that the Court of Appeal had failed to give due consideration to the fundamental rights of a person in regard to his liberty now enshrined in the clearest terms in the Constitution of the Democratic Socialist Republic of Sri Lanka (1978). It was also urged that the Court of Appeal had not followed the fundamental principles of law that no person can be deprived of his liberty *except by judicial process* and which have up to date been jealously safeguarded and upheld by our Courts particularly in the case of *In re Mark Antony Lyster Bracegirdle* (39 NLR 193).

In view of the failure of the Court of Appeal to make an analytical study of the far reaching provisions contained in Act No. 48 of 1979, Counsel for the appellants invited us to examine the entire Act also giving consideration to the law it sought to repeal by Section 30. In order to appreciate fully the purpose and intention of the Legislature in enacting this Law, the Prevention of Terrorism (Temporary Provisions) Act No.48 of 1979 in July 1979, it will be necessary to refer to the condition prevailing in the Republic at that date. In 1978, it was established that there was an organisation styling itself as the "Liberation Tigers of Tamil Eelam" advocating the use of violence whose activities were prejudicial to national unity and integrity, national security, public safety and public order and that certain acts of violence were being committed in Sri Lanka in open disregard of the normal law of the land.

The Legislature therefore enacted Law No. 16 of 1978 (amended later by Act No. 30 of 1979) for the dual purposes of :

(1) proscribing the "Liberation Tigers of Tamil Eelam" and any other organisation which advocated the use of violence to achieve its object, and

(2) providing for the effective prevention of *'unlawful activities'* of any such organisation and persons connected with such organisation.

By Clause 2(1) the Liberation Tigers of Tamil Eelam was proscribed and Clause 2(2) empowered the President to proscribe any organisation advocating the use of violence and either directly or indirectly concerned in or engaged in any *'unlawful activity'*. The Law proceeded to enumerate the acts that constitute offences after an organisation is proscribed and the corresponding penalties therefor and provided for a trial for such offences in the District Court. The Minister was empowered to make detention orders in respect of every person so committing an offence. The term 'unlawful activity' which had been used only in Clause 2(2) had been defined as meaning any action taken by any means whatsoever *within Sri Lanka* or *outside* by or on behalf of any organisation *which is prejudicial to the internal security of Sri Lanka*. Thus it is clear that this term did not have its general meaning but a specified meaning which did not include any offence under that Law. No prosecution could be initiated for such *'unlawful activity*. It merely formed the basis for the President to use his powers to proscribe the organisation engaged in such activity. Under this Law the Minister was empowered to make detention orders in respect of all persons who committed offences under that Law, but no such powers were granted in respect of persons concerned or engaged in 'unlawful activity'.

However, in spite of the operation of this Law, it was found that public order in Sri Lanka continued even in 1979 to be endangered by elements that advocated the use of force or the commission of crimes, as a means of governmental change, within Sri Lanka and that it was necessary to introduce more stingent laws to meet the situation. Accordingly the Legislature decided to repeal Law 16 of 1978 and to enact the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 which according to its long title was for the dual purposes of:

(1) making temporary provision for the prevention of acts of terrorism in Sri Lanka, and

(2) to *prevent "unlawful activities"* of any individual, group of individuals association, organization within Sri Lanka or outside Sri Lanka.

The preamble of this Act proceeds to refer to various acts of terrorism. In Part I (clauses 2-5), the Legislature in order to prevent terrorism has specifically declared what acts constituted offences under this Act, provided severe penalties therefor, and made the said offences triable only before a Judge of the High Court without any preliminary inquiry. In regard to the investigation of such offences, it is clear that the Code of Criminal Procedure Act No. 15 of 1979 except Sections 303 and 306, were meant to be operative subject to the special provisions contained in this Act. It made provision in regard to the powers of the Police in Chapter II under the heading Investigation of Offences. Section 7(2) made special provision in regard to persons connected with or concerned in or reasonably suspected to be connected with or concerned *in the commission of any offence* who appeared in any Court or were produced before any Court (other than in the manner referred to in Section 7(1)). It was conceded by the State that this section contemplated persons who came or were produced before Court in the course of investigation of offences under the Code of Criminal Procedure Act.

Clause 6 dealt with persons against whom investigations are commenced by the Police on the ground that they are engaged in *'unlawful activity"* as defined in Clause 31. The term *'unlawful activity'* in this Act too does not have its general meaning but has been given a special meaning;

> "Unlawful activity means any action taken or act committed by any means whatsoever, *whether within or outside Sri Lanka* ..... in connection with the commission of any offence under this Act".

Section 6(1) has empowered any Police Officer not below the rank of Superintendent or any officer not below the rank of Sub-Inspector authorised in writing to arrest without a warrant any person connected with or concerned in or reasonably suspected of being connected with or concerned in such *'unlawful activity.'* A Police officer so arresting any person under the powers given in Section 6(1) may keep such person in custody for a period of not exceeding 72 hours and within that period he has to be produced before a Magistrate who on an application made therefor, as provided, shall make an order that that person be remanded *until the conclusion of the trial.* It was argued that after such arrest if the person so arrested is found

to have committed an offence, the Police will be obliged to have him charged and brought up before a competent Court for trial. The Magistrate will then remand him till the conclusion of the trial. But if no offence as such was disclosed, the Minister was empowerd by this Act, under Clause 9 if he has reason to believe that the person is *'connected with or concerned in any unlawful activity'* to order such person to be detained and in that event the police were not obliged to have the person produced before the Magistrate. This contention appears to be justified for the reason that there was provision made for a person aggrieved by the detention order *on being informed of the 'unlawful activity' for which he was detained,* to make representations to an Advisory Board appointed by the President, while a person charged with an offence is detained on orders of Courts and has an opportunity of defending himself in Court.

The Deputy Solicitor General contended that the term *'unlawful activity'* included the acts constituting offences under this Act and that therefore the detention orders which identify the unlawful activity as actual offences under the Act were valid law. If this contention is accepted a person against whom there is evidence of the commission of an offence is being deprived of his right to be brought before a competent Court. On an examination of the provision of Clause 6, there is nothing to show that it referred to investigation into offences under the Act. But read along with the definition of 'unlawful activity' it is clear that the specified category of Police Officer could proceed to act under section 6(1) whenever they had information or reasonable suspicion that any person was connected with or concerned in any action or acts, connected with the commission of an offence, which constituted 'unlawful activity'. This particular Section 6 contemplates actions or acts connected with or concerned in the commission of an offence, however remote they may appear to be, but not by themselves constituting offences or the abetment of such offences. They are actions or acts having a bearing on the acts of terrorism declared offences, but which are not sufficient to be dealt with as offences and for which a person could not be brought to trial. Suspicious movements, acts or words of encouragement tending to incite the commission of offences could well come within this type of activity. The investigation into this type of activity is wider in scope than the investigation of offences and the persons who could be arrested for such activity are from a larger segment of the people. It is for that reason that the Legislature gave the powers of entry,

search, seizure and arrest to Police officers not below the rank of Superintendents of Police or a Police officer, not below the rank of Sub-Inspector authorised in writing by such officer. Such Police officers were given special powers in regard to dentenion. There is force in the contention that if circumstances disclose an offence under the Act the Police, whenever they have acted under section 6, should resort to the judicial process and that if there were circumstances that did not disclose an offence but consisted of acts otherwise connected with the commission of an offence amounting to unlawful activity, then the Police will have to seek the assistance of the Minister of Defence. If the Minister on the information so furnished to him has reason to believe or suspect that a person has committed an act or acts which are offences under the Law, then clearly he has no jurisdiction to make a detention order or to continue to keep a detention order in force.

Our Courts have consistently upheld and safeguarded the fundamental principle that no person can be deprived of his liberty except by judicial process. The Constitution of the Democratic Socialist Republic of Sri Lanka (1978) has enshrined this fundamental right of the individual and it is the duty of the Court to see that there is no infringement of such right by the Executive.

Counsel for the appellants referred us to Chapter III of the Constitution:

> "Article 13(2). Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before a Judge of the nearest competent Court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon an order of such Judge made in accordance with procedure established by law."

The only restriction to these fundamental rights are contained in Article 15(7) which reads as follows:

> "The exercise and operation of the fundamental rights declared under Articles 12, 13(1) and 13(2) shall be subject to restrictions as may be prescribed by law in the interests of national security, public order, and the protection of public health or morality or for the purpose of securing

due recognition and respect for the rights and freedoms of others or of meeting the just requirements of the general welfare of a democratic society".

On an examination of the provisions of this Act No. 48 of 1979, it is clear to me that the Legislature was very mindful of these fundamental rights and though it was constrained by circumstances to restrict the exercise of such rights in some measure, did not take away the fundamental rights of persons alleged to have committed offences from being brought to trial. There was specific provision for the remand of persons who could be charged with having committed offences under the Act, under the ordinary law of the land, subject to the specified restrictions in this Act. Simultaneously it provided for the detention of persons believed or suspected of being connected with or concerned in 'unlawful activity' as defined by the Act against whom no charges could be framed without being brought before Court on detention ordes of the Minister of Defence in the interests of public security.

I have come to the conclusion that therefore the Court of Appeal had misdirected itself when it held that the term 'unlawful activity' as defined in Act No. 48 of 1979, includes offences under the Act. All the detention orders marked X2 in all four cases purport to have been made by the Minister as he had reason to believe or suspect that the persons were connected with or concerned with 'unlawful activity'.

When the Minister made the orders of detention he clearly intended that they were to be effective if the persons concerned were involved in 'unlawful activity'. To ascertain whether the unlawful activity in each case was based on representations made to him that the persons had committed offences or were only involved in 'unlawful activities' it is necessary to scrutinize all the affidavits filed by them and on behalf of the respondents. In cases Nos. 66/81, 67/81 and 68/81, all the affidavits disclosed that the suspects were suspected or believed to be involved in 'unlawful activity' relative to certain offences, namely the commission of the robbery of the People's Bank at Neervelli on the 25th March 1981, or to the abetment or conspiracy for the commission of such offence. These affidavits do not disclose that these three suspects actually committed the offences but that there were strong suspicions of their involvement. The reference to the abetment or conspiracy in the detention orders in specifying the

'unlawful activity' would appear to be a mis-description which does not affect the validity of the detention orders. The Minister was justified in making these detention orders as the facts disclosed to him point to 'unlawful activity' within the meaning of the term used in this Law. I therefore agree, for the aforesaid reasons with Weeraratne, J. and Wimalaratne, J. that the three detention orders were legal and that the appeals should be dismissed.

In regard to the suspect in case No.69/81, namely, Saravanai Murugaiah, the detention order X2 dated 26th May 1981 and the susbsequent orders, thought purporting to have been made in respect of 'unlawful activity', attempt to describe the 'unlawful activity' as harbouring and concealing Nadarajah Thangavel *alias* Thangathurai, knowing that he committed such offence under the Prevention of Terrorism (Temporary Provisions) Act No.48 of 1979, failing to report to a Police officer that such person had committed such offence and collecting explosives without lawful authority. In the affidavit of the Assistant Superintendent of Police, it is clear, that there was material to indicate that the corpus had harboured and concealed Nadarajah Thangavel knowing that he had committed an offence and that he had failed to report to a Police officer and that he had collected explosives. There was evidence of the commission of the specified offence in this case and therefore the corpus could not be detained for 'unlawful activity' but rather he was liable to be charged for such offences. I therefore hold that detention order is not warranted by law. However, it is conceded that the arrest had been legally made under this law under Section 6(1) in the course of an investigation into unlawful activity. As the investigations have since disclosed specific offences the corpus should have been produced before a Magistrate in terms of Section 7(1). The only reason why the corpus was not so produced was the intervening detention order. I agree with Wimalaratne, J. that the petitioner is not entitled to have the corpus released. I direct that the corpus be forthwith produced before the Magistrate having jurisdiction to be dealt with in terms of section 7(1) of Act No. 48 of 1979.

Validity of Detention orders in 66 to 68/81 upheld but not in 69/81. Arrest of Corpus in 69/81 legal.