In *Ratanji Virpal and Co.* v. *Dhirajlal Manilal* (1), the High Court of Bombay read section 32, Arbitration Act, in the way in which I have read it. I am unable to agree with the view of Pollock, J., in the Nagpur case and I am of the opinion that such a suit, as the one brought by the plaintiff, does not lie, and on that ground alone the appeal should be dismissed.

As I am deciding this case on the ground that such a suit does not lie, naturally the findings given in this case will not affect the parties' rights whatever they may be.

The respondent will have his costs in this Court and in the Courts below.

CRIMINAL WRIT

Before Bhandari and Falshaw, JJ.

SITAL PARSHAD,—*Petitioner,*

versus

THE STATE,—*Respondent.*

1951

Oct. 23rd

Criminal Writ No. 85 of 1951

Preventive Detention Act (IV of 1950), section 11—Advisory Board's report to Government that there is sufficient cause for detenu's detention—Period within which Government to confirm the order of detention—Failure or delay in doing so, effect of.

Held, that although section 11 does not specify the period during which the order of detention should be confirmed by the appropriate Government, there can be little doubt that it should be confirmed within a reasonable period, i.e., within a period which a man of ordinary prudence would consider reasonable in the circumstances of the case. If an order of detention is not confirmed at all or is confirmed after the lapse of a period which cannot be regarded as reasonable the detention must be deemed to be illegal or improper.

(1) A. I. R. 1942 Bom. 101.

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Habeas Corpus *Petition under section 491, Criminal Procedure Code and Article 226 of the Indian Constitution, praying that the detention being illegal, the detenu may be ordered to be produced before this Hon'ble Court and may be set at liberty.*

In the matter of the detention of L. Mukat Lal, son of L. Matru Mal, caste Vaish, resident of Delhi, now detenu in District Jail, New Delhi.

H. R. SACHDEVA, for Petitioner.

BISHEN NARAIN, for ADVOCATE-GENERAL, for Respondent.

ORDER

Bhandari J.

BHANDARI, J. This is an application under Article 226 of the Constitution and section 491 of the Code of Criminal Procedure for the release from custody of Mukat Lal who has been ordered to be detained in custody under section 3 of the Preventive Detention Act, 1950.

The order of detention was passed on the 6th April 1951, the detenu was arrested on the 15th June and his representation was rejected by the Advisory Board on the 4th August. The present petition for the issue of a writ of *habeas corpus* was presented in this Court on the 23rd August. Among other reasons it was mentioned that the detenu was entitled to be released as he had received no reply to the representation made by him to the Advisory Board.

Section 3 of the Preventive Detention Act does not prescribe the period for which a person can be detained, but section 10 imposes a statutory obligation on the Advisory Board to submit a report to Government within a period of 10 weeks from the date of the detention. Section 11 prescribes the action that should be taken when the report of the Advisory Board is received by Government. Subsection (1) declares that if the Advisory Board is of the opinion that there is sufficient cause for the detention of the detenu, the Government may confirm the order of detention and continue the detention for such period as

it thinks fit. Subsection (2) declares that if the Advisory Board is of the opinion that there is no sufficient cause for detention, Government shall revoke the detention order and cause the person to be released forthworth. Subsection (I) does not specify the period during which the order of detention should be confirmed by the appropriate Government, but there can be little doubt that it should be confirmed within a reasonable period, i.e., within a period which a man of ordinary prudence would consider reasonable in the circumstances of the case.

When this petition came up for hearing on the 24th September Mr Bishan Narain, who appears for the State, was asked to enquire from his clients whether the report of the Advisory Board had been received and, if it was unfavourable to the detenu, whether the order of detention had been confirmed by the appropriate authority. He appeared before us on the 28th September and stated that on the 6th September, the Home Secretary to the Chief Commissioner informed the Superintendent of the Jail in which the detenu was confined that the detenu's representation to the Advisory Board had been rejected. This communication did not comply with the statutory formalities and we accordingly asked Mr Bishan Narain to produce the order "confirming" the order of detention. On the 4th October he produced a letter, dated the 24th September 1951, in which the Home Secretary asked the Superintendent of the Jail to inform the detenu that the Chief Commissioner had confirmed the order of the District Magistrate.

Two questions now arise for decision, namely (1) whether the Chief Commissioner has confirmed the order of detention under the provisions of section 11 of the Act of 1950 ; and if so, (2) whether this order was confirmed with all convenient speed.

As pointed out in a preceding paragraph the Advisory Board reported on the 4th August that there was

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sufficient cause for the detention of the detenu, and on receipt of this report it was open to the Chief Commissioner to confirm the order of detention and to continue the detention of the detenu for such period as he thought fit. He appears to have taken no action in the matter, for paragraph (ix) of the petition which was presented in this Court on the 23rd August shows that the detenu received no reply to the representation which was made by him to the Advisory Board. When Mr Bishan Narain appeared before us in Court in response to the notice issued to Government, we asked him to enquire from his clients whether the Advisory Board had reported against the detenu, and if so, whether the Chief Commissioner had confirmed the order of detention. On the 4th October he invited our attention to a communication which had been addressed by the Home Secretary to the Chief Commissioner on the 24th September 1951, in which it was stated that the Chief Commissioner had confirmed the order of the District Magistrate. The order passed by the Chief Commissioner confirming the original order of detention was not shown to us and Mr Bishan Narain frankly admitted that no such order exists on the file. Section 11 imposes a statutory obligation on the appropriate Government to *confirm* the order of detention, and it seems to me, therefore, that it was incumbent on the State to satisfy us that the order had in fact been confirmed by the Chief Commissioner. No evidence of this confirmation was placed before us excepting only the letter of the 6th September to which a reference has already been made. In the absence of evidence to the effect that the Chief Commissioner had in fact passed the order of confirmation I can only hold that no such order was passed.

Assuming for the sake of argument that the Chief Commissioner confirmed the order of detention on the advice of the Advisory Board, the question arises whether that order was passed within a reasonable period. The report of the Advisory Board was received on the 4th August and one would have imagined that the order of confirmation would have been

passed within a few days of the receipt thereof. No such order was passed or communicated to the detenu till the 24th September when the Home Secretary informed the jail authorities that the Chief Commissioner had confirmed the order of the District Magistrate. As the report of the Advisory Board was received on the 4th August and as the order of confirmation was not communicated till the 24th September, it seems to me that it was passed after the lapse of a period which cannot be regarded as reasonable in the circumstances of the case.

There is another aspect of the question which needs to be considered. The petition for the issue of a writ of *habeas corpus* was presented on the 23rd August and the order confirming the order of detention was passed on the 24th September after the learned counsel for the State had been asked repeatedly to produce it. In *Naranjan Singh* v. *The State of the Punjab* (1) the learned Judges of the Supreme Court observed as follows :—

> "There is not even an attempt made to justify the delay in serving the grounds. The detention is therefore an infringement of the fundamental right of the petitioner and he is ordered to be released forthwith. It is stated by Mr Sikri that the East Punjab Government has passed another order for detention after the Court issued notice on the 4th September 1951 and it was served on the East Punjab Government on the 14th September 1951. We do not take cognizance of that order as it was passed obviously to defeat the present petition. In spite of that order, therefore, we direct the release of the petitioner. If the East Punjab Government think that there are proper grounds for the detention of the

(1) Petition No 334 of 1951 decided on 28. 9. 51

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petitioner, they may act according to Law after the petitioner is set free under this order of the Court."

I can see no reason why a similar order should not be passed in the present case.

For these reasons I am of the opinion that the detenu is being illegally or improperly detained and is entitled to be released from custody. I would order accordingly.

Falshaw J.

Falshaw J. I agree.—

CIVIL APPELLATE

Before Falshaw and Kapur, JJ.

HARI KISHAN DAS,—*Plaintiff-Appellant,*

versus

RAJESHWAR PARSHAD, ETC.,—*Defendants-Respondents.*

1951

Nov. 12th

Regular First Appeal No. 383 of 1946

Hindu Law—Partition between father and sons—Father dying and leaving property which fell to his share on such Partition—Whether the sons succeed to such property as co-parceners or as tenants in common.

Held, that the statement of law in section 31 of Mulla's Hindu Law (1946 Edition) is not a correct statement of law. The sons when succeeding to the property of their father which fell to him on partition with his sons, succeed as tenants in common and not as co-parceners and the property does not become co-parcenary property in their hands. Co-parcenaryship and survivorship are incidents of a joint family and not of a separated family.

First Appeal from the decree of Lala Kirpa Ram, Sub-Judge, 1st Class, Karnal, dated the 1st day of July 1946, passing a decree for possession of half share in the house in dispute in Plaintiff's favour against the defendants and leaving the parties to bear their own costs and disallowing the claim for mesne profits.

F. C. MITTAL and N. L. WADHERA, *for Appellant.*

H. L. SIBBAL and J. L. BHATIA, for Respondents.