under s 6(1) of the Act (s 3(1) of the Act). Second, the Minister is empowered under s 6(1) to order detention and restriction of persons associated with trafficking activities where he is satisfied in the interest of public order that such person be detained. Sub-section (3) of s 3 directs the police officer making the investigation on the person arrested and detained to cause a copy of a complete report of the investigation to be submitted to an inquiry officer and to the Minister. It is upon receipt of such report that the inquiry officer is required to inquire whether there are reasonable grounds for believing that such person has or is associated with trafficking activities (s 5(2)). Basically the question is what constitutes an inquiry within the meaning of s 5(2) of the Act. The learned judge formed the view that it is imperative for the inquiry officer to apply the provisions contained in paras (a) to (d) of s 5(3) of the Act (hereinafter called 'the relevant paragraphs') and was therefore compelled to call witnesses for purposes of such inquiry.

Fundamentally, the learned judge came to that conclusion on the strength of the words 'shall inquire' appearing in s 5(2). But where he went wrong was that he completely omitted to consider the opening words of sub-s (3) which reads:

> An Inquiry Officer may, in his discretion, for the purpose of sub-s 2 –
> (a) require ...

These words were crucial to a proper interpretation of the meaning of 'inquiry' under s 5(2) of the Act.

If the learned judge had given due regard to these words, he would not, in our view, have come to the conclusion that he did. The language used in s 5 of the Act is crystal clear.

In our view, the words used in sub-s (2) read in the light of the whole of sub-s (3) make it abundantly clear that discretion rests with the inquiry officer. It is for the inquiry officer in a particular case to decide whether to exercise any of the powers. In other words it is for the inquiry officer to decide whether, for the purpose of the inquiry, to invoke any of the powers in the relevant paragraphs. Whether there is a need to do so would depend primarily on whether, having regard to the complete report submitted to him by the police investigating officer and on the materials submitted, he could be satisfied there were reasonable grounds to found his belief. If an inquiry officer is satisfied, after examining and considering the materials contained in the complete report, that there are reasonable grounds for believing that such person has been or is associated with trafficking activities, the need to call any witness or to procure any document does not arise. It is therefore only in cases where the inquiry officer, on the materials contained in the report submitted to him, is unable to satisfy himself that there are reasonable grounds to found his belief that such person is associated in trafficking activities, that the need to exercise his discretion arises. It would perhaps be proper to say that he ought to exercise the discretion if it is only by so doing that he can properly decide.

In our judgment, therefore, the learned judge erred in law in holding that it is imperative for the inquiry officer to invoke the powers contained in the relevant paragraphs to constitute a valid inquiry under sub-s (2) of s 5 of the Act. The duty is that of the inquiry officer to be satisfied that there are reasonable grounds for believing that the person has been or is associated with trafficking activities. In carrying out his duty he has a discretion whether or not to call witnesses. And it is not mandatory that he should invoke the powers contained in sub-s (3) of s 5 of the Act.

We feel that the learned judge imposed on the inquiry officer a heavier burden than that imposed on him by the legislature.

Accordingly, the order of the learned judge is set aside and substituted therefore with an order of dismissal of the application of the respondent.

Order accordingly.

Solicitors: *Darshan Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Minister for Home Affairs, Malaysia & Anor v Jamaluddin bin Othman

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 76 OF 1988
ABDUL HAMID LP, HASHIM YEOP A SANI CJ (MALAYA) AND AJAIB SINGH SCJ
30 JANUARY AND 24 FEBURARY 1989

Constitutional Law – Habeas corpus – Detention under Internal Security Act 1960 – Ground that detainee was involved in a plan or programme to propagate Christianity among Malays – Participation in meetings and seminars for the dissemination of Christianity among Malays – Conversion of Malays to Christianity – Actions of detainee not a threat to security of country – Freedom of religion – Internal Security Act 1960, s 8(1) – Federal Constitution, arts 11 & 149

In this case the respondent had been detained pursuant to an order made under s 8(1) of the Internal Security Act 1960. According to the affidavit of the Minister for Home Affairs, he was satisfied that the detention of the respondent was necessary with a view to preventing him from acting in a manner prejudicial to the security of Malaysia. The grounds for detention stated that the respondent was involved in a plan or programme to propagate Christianity among the Malays and it was also alleged that the activities of the respondent could give rise to tension and enmity between the Muslim community and the Christian community in Malaysia and could affect national security. The

allegation of fact stated that the respondent participated in a group for the purpose of spreading Christianity among the Malays, that he participated in a work camp and seminar for such purpose and that he converted six Malays to Christianity. On an application by the respondent for habeas corpus, the learned trial judge took the view that the Minister has no power to deprive a person of his right to profess and practise his religion which is guaranteed under art 11 of the Federal Constitution and therefore if the Minister acts to restrict the freedom of a person from professing and practising his religion, his act will be inconsistent with the provision of art 11 and therefore any order of detention would not be valid (see [1989] 1 MLJ 368). He therefore ordered the release of the respondent from detention. The Minister for Home Affairs appealed.

Held dismissing the appeal:

(1) The sum total of the grounds for detention in this case was the supposed involvement of the respondent in a programme or plan for the dissemination of Christianity among Malays. The grounds do not, however, state that any actions have been done by the respondent except participation in meetings and seminars, and the fourth allegation alleged that the respondent converted six Malays to Christianity.

(2) The mere participation in meetings and seminars could not make a person a threat to the security of the country. As regards the alleged conversion of six Malays, even if it is true, it could not by itself be regarded as a threat to the security of the country.

(3) The grounds for the detention in the present case read in the proper context are insufficient to fall within the scope of the Internal Security Act 1960, which is a piece of legislation essentially to prevent and combat subversion and actions prejudicial to public order and national security.

(4) The guarantee provided by art 11 of the Federal Constitution, that is, the freedom to profess and practise one's religion, must be given effect to unless the actions of a person go well beyond what can normally be regarded as professing and practising one's religion.

Cases referred to

1 *Minister for Home Affairs, Malaysia & Anor* v *Karpal Singh* [1988] 3 MLJ 29 (folld)
2 *Mamat bin Daud & Ors* v *Government of Malaysia* [1988] 1 MLJ 119 (refd)
3 *Inspector General of Police* v *Tan Sri Raja Khalid bin Raja Harun; Re Tan Sri Raja Khalid* [1988] 1 MLJ 182 (refd)

Legislation referred to

Federal Constitution arts 11, 149
Internal Security Act 1960 ss 8(1), 11(2)(b)

Appeal from: Federal Territory Criminal Application No CR 54-18-88 (High Court, Kuala Lumpur)

Mohd Raus bin Sharif, Deputy Public Prosecutor, for the appellants.

Lee Min Choon (*Philip Koh* with him) for the respondent.

Ramadas Tikamdas holding watching brief for the Bar Council, Malaysia.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): The respondent was detained pursuant to an order made under s 8(1) of the Internal Security Act 1960 ('the Act'). According to the affidavit of the Minister for Home Affairs he was satisfied that the detention of the respondent was necessary with the view to preventing him from acting in a manner prejudicial to the security of Malaysia. This conclusion was apparently arrived at after receiving reports and information relating to the 'conduct and activities' of the respondent. This is expressed in para 3 of the affidavit of the Minister for Home Affairs dated 16 September 1988. The grounds for the detention of the respondent were contained in a statement made under s 11(2)(b) of the Act which was served on the respondent.

It is already settled law in this country that whilst the grounds of detention as stated in the detention order are open to challenge if alleged to be not within the scope of the legislation, the allegations of fact are not subject to review. This principle was reiterated in *Minister for Home Affairs, Malaysia & Anor* v *Karpal Singh*.[1] Thus the only question for us to determine here is whether the grounds are within the scope of the Act.

The trial judge relied solely on art 11 of the Federal Constitution on the freedom of religion as the basis for his ruling that the detention of the respondent was unlawful. The crucial part of his judgment appears at p 108 of the appeal record where he said, when referred to s 8 of the Act:

> Although under s 8(1) of the Internal Security Act the minister may detain a person with a view to preventing that person from 'acting in any manner' prejudicial to the security of Malaysia, I am of the view the minister has no power to deprive a person of his right to profess and practise his religion which is guaranteed under art 11 of the Constitution. If the minister acts to restrict the freedom of a person from professing and practising his religion, his act will be inconsistent with the provision of art 11 and therefore any order of detention would not be valid.

Without hesitation we say that we agree wholeheartedly with the sentiment expressed by the learned judge. However, to get our perspective right we feel obliged to add a rider to what the learned judge said. His Lordship's ruling must be read subject to the following. The freedom to profess and practise one's religion should not be turned into a licence to commit unlawful acts or acts tending to prejudice or threaten the security of the country. The freedom to profess and practise one's religion is itself subject to the general laws of the country as expressly provided in cl (5) of art 11 of the Constitution which states that:

> 11(5) This article does not authorize any act contrary to any general law relating to public order, public health or morality.

This is also alluded to in *Mamat bin Daud & Ors* v *Government of Malaysia*.[2] Thus the protection conferred by art 11 of the Constitution cannot be a complete umbrella for all actions.

Coming back to the present case the grounds for detention are reproduced from p 21 of the appeal record as follows:

Alasan-Alasan Untuk Perintah Tahanan

Bahawa kamu, Jamaluddin bin Othman alias Yeshua Jamaluddin, sejak tahun 1985 hingga ditangkap pada 27 Oktober 1987, telah melibatkan diri dalam satu rancangan untuk menyebarkan agama Kristian di kalangan orang-orang Melayu. Kegiatan kamu itu boleh mendorong kepada timbulnya suasana ketengangan dan permusuhan di antara masyarakat Islam dengan masyarakat Kristian di negara ini dan boleh memudharatkan keselamatan negara.

The important words in that statement are 'telah melibatkan diri dalam satu rancangan untuk menyebarkan agama Kristian di kalangan orang-orang Melayu'. Or in English 'was involved in a plan or programme to propagate Christianity amongst Malays'.

The grounds become clearer when we look at the allegations of fact contained in the statement. The first allegation concerned participation in a group (in November 1985) at the First Baptist Church, Jalan Pantai, Petaling Jaya called the 'Philip Cheong's group' said to be formed for the purpose of spreading Christianity among Malays. The second, third and fifth allegations concerned participation (in 1986) in a 'khemah kerja' (work camp) and participation in a 'seminar on Islamic consultation' (in Singapore). The fourth allegation alleged that the respondent converted into Christianity six Malays.

The sum total of the grounds for the detention was therefore the supposed involvement of the respondent in a plan or programme for the dissemination of Christianity among Malays. It is to be observed that the grounds do not, however, state that any actions have been done by the respondent except participation in meetings and seminars and that the fourth allegation alleged that the respondent converted into Christianity six Malays.

We do not think that mere participation in meetings and seminars can make a person a threat to the security of the country. As regards the alleged conversion of six Malays, even if it was true, it cannot in our opinion by itself be regarded as a threat to the security of the country.

As stated by this court in *Inspector General of Police* v *Tan Sri Raja Khalid bin Raja Harun*[3] the Act was enacted under art 149 of the Federal Constitution and it is a piece of legislation essentially to prevent and combat subversion and actions prejudicial to public order and national security.

In *Re Tan Sri Raja Khalid*[3] the authority had stated that they had reason to believe that the substantial losses suffered by a bank (with deposits from members of the armed forces) caused by the manner in which loans were approved through the acts of the detainee/applicant could evoke feelings of anger, agitation, dissatisfaction and resentment amongst members of the armed forces which in turn could lead them to resorting to violent actions and thereby affecting the security of the country. The trial judge there thought it to be incredible that losses sustained by a public bank where the depositors also included members of the public at large could result in any organized violence by the soldiers. This court was of the view that it would be naive to preclude the judge from making his own evaluation and assessment from an obvious statement of fact.

In the present case we are of the view that the grounds for the detention in this case read in the proper context are insufficient to fall within the scope of the Act. The guarantee provided by art 11 of the Constituton, ie the freedom to profess and practise one's religion, must be given effect unless the actions of a person go well beyond what can normally be regarded as professing and practising one's religion.

The appeal is accordingly dismissed.

Order accordingly.

Solicitors: *Lee, Perara & Tan.*

Reported by *Prof Ahmad Ibrahim*

Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v Lim Guan Eng

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 61 OF 1988
ABDUL HAMID LP, HASHIM YEOP A SANI CJ (MALAYA) AND AJAIB SINGH SCJ
30 JANUARY AND 24 FEBRUARY 1989

Constitutional Law – Habeas corpus – Application for – Whether detainee has right to be present in court – Discretion of court – Practice not to allow presence of detainee – Internal Security (Detained Persons) Rules 1960, r 93(1)

This was an appeal from the decision of the High Court reported at [1988] 3 MLJ 323. The respondent who had been detained under the Internal Security Act applied for the issue of a writ of habeas corpus. He was originally represented by counsel but subsequently the respondent discharged his solicitors. The respondent applied for an order to be issued for him to appear at the hearing of the application. The learned trial judge allowed the application and the appellants appealed.

Held, allowing the appeal:

(1) The principle is that where the issue of a writ of habeas corpus is sought it is not the practice to allow the presence of the person detained.

(2) Although the court has a discretion to secure the presence of the detainee under r 93(1) of the Internal Security (Detained Powers) Rules 1960, the discretion should only be