

(2011) 09 SC CK 0135

In the Supreme Court Of India

Case No : Criminal Appeal No. 1761 of 2011 (Arising out of Special Leave Petition (Criminal) No. 4082 of 2011)

G. Reddeiah

APPELLANT

Vs

The Government of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 20(1), 29, 29(2), 29A(1)
Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2, 3, 3(1)<

Citation : (2011) 10 JT 285 : (2011) 4 RCR(Criminal) 219 : (2011) 10 SCALE 224

Hon'ble Judges : P. Sathasivam, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : ATM Ranga Ramanujan, Gouri Kruna Das Mohanti, Anu Gupta, Prakhar Sharma, Sanjeev Kumar Sharma and Rani Jethmalani, for the Appellant; R. Sundaravardan C. Kannan, Ravi Shankar and G.N. Reddy, for the Respondent

Final Decision : Disposed Of

Judgement

P.Sathasivam, J.—Leave granted.

2. The Appellant, who is the brother-in-law of R. Sreenivasulu-the detinue, has filed this appeal against the judgment and final order dated 08.04.2011 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in a writ of Habeas Corpus being Writ Petition No. 65 of 2011 whereby the High Court dismissed his petition holding that the order of detention of R. Sreenivasulu passed by the Collector and District Magistrate, Kadapa, Y.S.R. District, in Ref. No. 670/M/2010 dated 12.11.2010 is not illegal.

3. Brief Facts:

a) According to the prosecution, the detinue was found to be involved in felling, transporting, smuggling of red-sanders trees and committing theft of forest

wealth in as many as eight times within a period of one year. The cases registered against him disclose his activities. They are:

(i) OR No. 130/2009-10- dated 22.02.2010:

On 22.02.2010, on receiving information at 06:00 a.m., Forest Range Officer and Deputy Range Officer Rayachoty, alongwith other staff proceeded to Masineni Kanuma locality of Palakonda Reserved Forest in Saraswathipalli Beat and noticed 3 persons lifting and storing red-sanders wood and preparing to transport the same. On seeing the Forest officials, they ran away from the scene of offence and could not be apprehended. Later, they were identified and one among them was the detainee. Thereafter, the Forest officials seized 30 red-sanders logs weighing 844 kgs. worth Rs. 45,576/-. An offence was registered against them vide P.O.R. No. 6 dated 22.02.2010 u/s 20(1)(c)(ii) of the A.P. Forest Act, 1967 (hereinafter referred to as "the A.P. Act") for trespassing in Reserved Forest, u/s 20(1)(c)(iii) of the A.P. Act for causing damage by willfully cutting trees and dragging the same, u/s 20(1)(c)(vi) and (x) of the A.P. Act for collection and removal of red-sanders timber and u/s 29(2)(b) of the A.P. Act read with Rule 3 of the A.P. Sandal Wood and Red Sanders Transit Rules, 1969 (in short "the Rules") for transportation of red-sanders timber without permit and without any Government Transit Mark and for theft of red-sanders timber from Reserved Forest u/s 378 of the Indian Penal Code, 1860 (in short "Indian Penal Code") and for criminal conspiracy u/s 120B Indian Penal Code.

(ii) OR No. 01/2010-11 dated 01.04.2010

On 01.04.2010, on receiving information at 7.30 a.m., the Deputy Range Officer, Forest Beat Officers and Assistant Beat Officer proceeded to the localities in Gudukonda and Pathikona and noticed the movement of the detainee and two others who escaped from the scene of the offence and later the detainee was identified and crime was registered against him vide P.O.R. No. 16 dated 01.04.2010 under various sections of the A.P. Act and the Rules and also under Sections 378 and 120B Indian Penal Code.

(iii) OR No. 02/2010-11 dated 03.04.2010

On 02.04.2010, the Forest Range Officer, Rayachoty along with other staff stopped a vehicle carrying 20 redsanders logs. The detainee along with two others escaped from the vehicle but the Forest officials apprehended the driver of the vehicle and a crime was registered vide P.O.R. No. 17 dated 03.04.2010 against them for an offence under various sections of the A.P. Act and the Rules and also under Sections 378 and 120B Indian Penal Code.

iv) OR No. 13/2010-11 dated 11.05.2010 and PS Crime No. 40/10

On 08.05.2010, on receiving a complaint regarding smuggling of red-sanders logs, while doing routine vehicle check, the Inspector of Police, L.R. Palli along with other staff stopped two vans and caught hold of four persons and seized red-sanders logs from the above two vehicles and on the basis of their information a

crime was registered by Galiveedu Police Station in Crime No. 40/2010 for an offence under various sections of the A.P. Act and the Rules and also under Sections 379 Indian Penal Code against 14 accused persons in which detainee was shown as 12th accused.

(v) OR No. 18/2010-11 dated 23.05.2010

On the intervening night of 22.05.2010, the Forest Officer, Rayachoty along with other staff caught-hold of detainee along with other persons and seized 32 red-sanders logs weighing 794 kgs. and a crime was registered vide P.O.R. No. 20 dated 23.05.2010 against them under various sections of the A.P. Act and the Rules.

(vi) FIR No. 46/10 dated 27.05.2010 and OR No. 20/2010-11 dated 30.05.2010

On 27.05.2010, the Inspector of Police, Rayachoty Rural Circle and Sub-Inspector of Police, Veeraballi P.S. along with their staff noticed one Indica Car followed by a lorry from Ragimannudivanpalli. On seeing them, the occupants tried to run away and the police chased and caught-hold of two persons while one person escaped. The lorry was found loaded with 25 red-sanders logs. On interrogation, they informed that the detainee was escorting them and he ran away from the scene. The police registered a case in FIR No. 46/10 dated 27.05.2010 u/s 379 Indian Penal Code and Section 29A(1) of the A.P. Act read with Rule 3 of the Rules. The Forest Range Officer, Rayachoty also booked a case vide POR No. 20/2010-11 dated 30.05.2010.

(vii) FIR No. 75/10 dated 03.10.2010 and OR No. 60/2010-11 dated 04.10.2010

On 03.10.2010, the Inspector of Police, Rayachoty Rural Circle and Sub-Inspector of Police, Veeraballi P.S. along with forest officials proceeded to Teacher Narayana Reddy Mango Garden located at Peddamadiga Palli Village, hamlet of Vongimalla and found four persons removing red-sanders logs from the bushes. On seeing them, three persons escaped and the police could apprehend only one person who informed that the detainee was also involved in taking away the logs three times in his vehicle. The police registered a case in Crime No. 75/10 u/s 379 Indian Penal Code and Section 29 of the A.P. Act read with Rule 3 of the Rules and the Forest Range Officer also booked a case vide POR No. 60/2010-11 dated 04.10.2010.

(viii) Crime No. 92/10

On 09.10.2010, the Sub-Inspector of Galiveedu and Veeraballi, C.I.L.R. Palli along with staff and panchayatdars while proceeding towards the forest found one Tata Sumo and a Ford Ikon car carrying 36 red-sanders logs. When the occupants tried to escape, the police caught hold of them. One among them was the detainee. The police seized the vehicles and registered Crime No. 92 of 2010 u/s 379 Indian Penal Code and Section 29 of the A.P. Act read with Rule 3 of the Rules.

(b) Thereafter, on 10.11.2010, the detainee was released on bail and he was immediately arrested and order of detention was served on 12.11.2010 by the Collector and District Magistrate, Kadapa, Y.S.R. District under Sections 3(1) and 2 (a) and (b) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (in short "the 1986 Act") stating that the activities of the detainee are dangerous to forest wealth and forest eco-system and are prejudicial to the maintenance of public order.

(c) The General Administration (Law and Order II) Department of the Government of A.P., in G.O. Rt. No. 5657, dated 20.11.2010, approved the order of detention and he was sent to Cherlapalli Jail on 13.11.2010. Again on 22.12.2010, Government of A.P. confirmed the order of detention by directing to continue the detention for a period of 12 months from the date of detention i.e. from 13.11.2010.

(d) In January, 2011, challenging the detention order passed by the Collector and District Magistrate, Kadapa, Y.S.R. District, dated 12.11.2010, the Appellant herein - brother-in-law of the detainee, filed W.P. No. 65 of 20011 before the High Court for issuance of writ of Habeas Corpus. By impugned order dated 08.04.2011, the High Court dismissed the petition holding that the order of detention is not illegal. Aggrieved by the said order, the Appellant has filed this appeal by way of SLP before this Court.

4. Heard Mr. A.T.M. Rangaramanujam learned senior counsel for the Appellant and Mr. R. Sundaravardan, learned senior counsel for the State.

5. It is the definite stand of the State that its administration is not in a position to curb the illegal activities of the detainee under the normal procedure, who was habitually indulging in illicit trespass, cutting, dressing and transporting the redsanders wood from the Reserved Forest owned by the State causing irreparable loss to national wealth. The Detaining Authority, on going through all the materials and after holding that the said detainee is a 'goonda' u/s 2(g) of the 1986 Act passed the order of detention.

6. Since the said detention was challenged by his brother-in-law before the High Court and the same has been negated by the High Court, let us refer certain provisions of the 1986 Act. Section 2(g) defines "goonda" which reads as under:

2 (g) "goonda" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code;

Section 3 of the 1986 Act enables the Government to detain certain persons whose activities are prejudicial to the maintenance of public order. Section 3 reads as under:

3. Power to make orders detaining certain persons: The Government may, if

satisfied with respect to any bootlegger: dacoit, drug-offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government is satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (1), exercise the powers conferred by the said Sub-section:

Provided that the period specified in the order made by the Government under this Sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this Section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and No. such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.

If the Government/Detaining Authority is able to satisfy that a person either by himself or in association with other members habitually commits or attempts or abets such commission of offence punishable under Indian Penal Code, A.P. Act and the Rules subject to satisfying Section 3 of the 1986 Act, he can be detained in terms of the said Act.

7. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. Even, as early as in 1975, the Constitution Bench of this Court considered the procedures to be followed in view of Articles 19 and 21 of the Constitution. In *Haradhan Saha Vs. The State of West Bengal and Others*, , the Constitution Bench of this Court, on going through the order of preventive detention under Maintenance of Internal Security Act, 1971 laid down various principles which are as follows:

...First; merely because a detainee is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act.

Second; the fact that the Police arrests a person and later on enlarges him on

bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be No. bar against the District Magistrate issuing an order under the preventive detention.

Third; where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be No. satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or the public order.

Fourth; the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate (sic) the order.

Fifth; the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.

In the light of the above principles, let us test the validity of the detention order issued under the 1986 Act and as affirmed by the High Court.

8. In the earlier part of our order, we have culled out and noted 8 cases in which the detenu R. Sreenivasulu was involved and was habitually committing forest offences, particularly, felling, cutting and smuggling of red-sanders wood causing loss to national wealth. Inasmuch as we have adverted to the details regarding all the 8 cases commencing from 22.02.2010 ending with 09.10.2010 which is reflected in the grounds of detention, there is No. need to refer the same once again. Mr. Rangaramanujam, learned senior counsel for the Appellant has submitted that some of the cases have been foisted and, according to him, the relevant details furnished in the grounds of detention such as the date of occurrence, commission of various offences both under the A.P. Act and the Rules and Indian Penal Code, cannot be construed that his activities are habitual or would not affect the national forest wealth. We are unable to accept the said contention. A reading of the grounds of detention clearly indicate that the detenu had been indulging in various activities in felling and smuggling red-sanders and he was habitually committing the same and was unmindful of wastage of national forest wealth and public order. It also shows that it was not a solitary or stray incident but continuously maintaining his activities commencing from 22.02.2010 till 09.10.2010 in destroying the forest wealth. It clearly shows that he is habitually committing these offences. On going through all the details relating to various offences, incidents and activities, we are satisfied that the conclusion of Detaining Authority that by invocation of normal procedure, the activities of the detenu cannot be controlled is acceptable. We also hold that Detaining Authority is well within its powers in passing the impugned order of detention. Further, we are also in agreement with the reasoning of the High Court which, by a detailed judgment, upheld the order of detention.

9. Mr. Rangaramanujam submitted that even though the detenu was arrested

on 09.10.2010 and was released on bail on 10.11.2010, the detention order was passed on 12.11.2010, the aspect that the detainee was in custody till 10.11.2010 was neither specifically adverted to and considered in the detention order nor the sponsoring authority placed any material regarding the same, hence, the ultimate detention order passed on 12.11.2010 cannot be sustained. Before considering his objection, it is useful to refer the following decision and principles laid down therein.

10. The incident relating to procedure to be adopted in case the detainee is already in custody has been dealt in several cases. In *Union of India (UOI) Vs. Paul Manickam and Another*, this Court, has held as under:

14....Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detainee by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detainee from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not needed when the detainee is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detainee and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detainee was likely to be released on bail, the order would be vitiated. The point was gone into detail in *Kamarunnissa v. Union of India*. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail.

11. It is clear that if the Detaining Authority was aware of the relevant fact, namely, that he was under custody from 09.10.2010 and he would be released or likely to be released or as in this case released on 10.11.2010 and if an order is passed after due satisfaction in that regard, undoubtedly, the order would be

valid. Before answering this point, Mr. R. Sundaravardan, learned senior counsel for the State has brought to our notice that the said objection was neither raised before the Advisory Board nor in the representation to the Government and was not mentioned in the grounds of challenge and argued before the High Court. He also pointed out that even before this Court, this ground was not raised in the special leave petition. It is not in dispute that such objection was not raised anywhere except during the course of argument. No. doubt, learned senior counsel for the Appellant by drawing our attention to CrI.M.P. No. 11504 of 2011 which was filed for permission to file additional documents submitted that the same may be considered and in the absence of such satisfaction by the Detaining Authority as reflected in the detention order, the same is liable to be quashed. No consideration of bail order would amount to non-application of mind. vide M. Ahamedkutty Vs. Union of India (UOI) and Another, and Anant Sakharam Raut Vs. State of Maharashtra and Another, .

12. As pointed out above, the said objection was not raised anywhere. It is also not in dispute that the detainee was given adequate opportunity of hearing before the Advisory Board and all his grievances were addressed to by the Board and submitted its report. The Government, on going through the entire materials including the report of the Advisory Board as well as the representation of the detainee, considering the gravity of the offence alleged against him and his habituality, confirmed the order of detention.

13. The grounds of detention running into 60 pages and the order of detention to 5 pages clearly demonstrate various details about the involvement of the detainee violating the provisions of Indian Penal Code, A.P. Act and the Rules. The details furnished in the grounds of detention clearly show the application of mind on the part of the Detaining Authority. It is not the case of the detainee or the Appellant that the required relevant and relied on materials have not been furnished which prevented him from making effective representation to the Government. The detailed report of the Inspector of Police and Sponsoring Authority clearly show that the detainee was a master mind in organising the felling of red-sanders trees owned by the Government and also providing vehicles for illegally transporting the red-sanders wood, hiring of labourers from the fringe forest villages and responsible for destruction of valuable governmental property. It also shows that it was he who operated gang for destruction of the national wealth causing deforestation leading to ecological imbalance affecting the community as a whole. The grounds of detention also show that the Detaining Authority, after scrutinising all the details including various orders of arrest and release, bail on various dates and noting that he is habitually indulging in trespass in forest area, illicit cutting, felling, smuggling and transporting red-sanders from the reserved forest owned by the State, arrived at a definite conclusion that the provisions of normal law were not sufficient in ordinary course to deal firmly because of his habitual nature and after satisfying all aspects including the fact that the detainee was in jail from 09.10.2010 to 10.11.2010 and the factum of release from the jail in 4 criminal

cases, passed an order of detention with a view to prevent him from further indulging into such offences. In a matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. Once the Detaining Authority is subjectively satisfied about the various offences labelled against the detainee, habituality in continuing the same, difficult to control him under the normal circumstances, he is free to pass appropriate order u/s 3 of the 1986 Act by fulfilling the conditions stated therein. We have already concluded that there is No. infirmity either in the reasonings of the Detaining Authority or procedure followed by it. We are also satisfied that the detainee was afforded adequate opportunity at every stage and there is No. violation of any of the safeguards. In these circumstances, we reject the contention raised by learned senior counsel for the Appellant.

14. Though an attempt was made to nullify the order of detention by drawing our attention to the latest decision of this Court reported in *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, , on going through the factual position and orders therein and in view of enormous activities of the detainee violating various provisions of Indian Penal Code, the A.P. Act and the Rules, continuous and habituality in pursuing the same type of offences, damaging the wealth of the nation and taking note of the abundant factual details as available in the grounds of detention and also of the fact that all the procedures and statutory safeguards have been fully complied with by the Detaining Authority, we are of the view that the said decision is not applicable to the case on hand. On the other hand, we fully agree with the reasoning of the Detaining Authority as approved by the Government and upheld by the High Court.

15. In the light of the above discussion, we find No. merit in the appeal, consequently, the same is dismissed.