

**(2012) 07 SC CK 0008**

**In the Supreme Court Of India**

**Case No :** Criminal A. No. 1113 of 2012 (Arising out of SLP (Criminal) No. 419 of 2012)

K. Nageswara Naidu

APPELLANT

Vs

Collector and District Magistrate Kadapa, Y.S.R. District, A.P.

RESPONDENT

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**Date of Decision :** 26-07-2012

**Acts Referred:**

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 3(1), 3(2)  
Constitution of India, 1950 — Article 19, 21, 22(2)

**Citation :** (2013) 115 CLT 1116 : (2012) 11 SCALE 409

**Hon'ble Judges :** J. Chelameswar, J;Altamas Kabir, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

1. Leave granted.

2. This appeal is directed against the judgment and order dated 9th December, 2011, passed by the Division Bench of the Andhra Pradesh High Courts dismissing the Appellant's Writ Petition No. 23698 of 2011. challenging the detention order passed by the Collector and District Magistrate. Kadapa, Y.S.R. District, in proceedings Ref: C1/444/M/2011. dated 4th August, 2011, in respect of Maddipatta Reddy. Narayana, u/s 3(1) read with Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. hereinafter referred to as "the 1986 Act". The detention order was passed with the object of preventing the detenu from causing excessive damage to the national wealth by trespassing, cutting, dressing and transporting the red sanders wood from the forest. The said detention order was approved by the Government of Andhra Pradesh in GO Rt. No. 3589, General Administration (Law & Order II) Department dated 10th August, 2011, in GO Rt. No. 3920, General Administration (Law & Order II) Department, dated 3rd September, 2011.

3. The grounds of detention could not be served on the detenu as he was in judicial custody in execution of a non-bailable warrant in Cr. No. 110 of 2007 of Chinthakommadinne Police Station. The detention order and the ground of detention were subsequently served on the detenu on 12th August, 2011, when he was lodged in the Central Prison, Kadapa.

4. The detention order was challenged on the ground that the same had been passed in a mechanical manner on vague, irrelevant and non-existing grounds.

5. Before the High Court, it was submitted on behalf of the Respondents that the detenu had been repeatedly involved in cutting down red sanders trees in violation of the provisions of the Andhra Pradesh Forest Act, 1967, and since every time he has been released on bail, the Respondents, found it difficult to check the illegal activities of the detenu without resorting to the provisions of the 1986 Act, by passing the order of detention.

6. On behalf of the detenu, it was submitted before the High Court that the offences with which he had been charged, could not be taken as sufficient grounds for passing of a detention order, since the said offences could be tried and dealt with under the provisions, not only of the Andhra Pradesh Forest Act, but also under the provisions of the Indian Penal Code. Reliance was placed on behalf of the detenu on a three-Judge Bench decision of this Court in *Rekha v. State of Tamil Nadu* (2011) 5 SCC 244 in which two propositions were considered. One proposition was with regard to the question raised as to whether the detention order would be legal and valid if recourse to criminal proceedings were sufficient to deal with the alleged prejudicial activities of the detenu. This Court held that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law will not be able to deal with the situation, then, and only then, the preventive detention order may be taken recourse to.

7. The second issue which was considered was the possibility of the detenu being released on bail while in custody in connection with the same cases.

8. On both counts this Court held that preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal in view of Articles 19 and 21 of the Constitution of India.

9. On behalf of the Respondents herein, reliance was placed on a two-Judge Bench decision of this Court in *G. Reddeiah v. Government A.P. and Anr.* (2012) 2 SCC 389, which also involved a detention order passed under the 1986 Act, in regard to theft of sandalwood and red sanders wood. It was pointed out on behalf of the authorities that the learned Judges had taken note of *Rekha's* case (*supra*), but had held that the same would have no application to the facts of the case before Their Lordships in view of the gravity of the offence indicated in the detention order.

10. Ultimately, relying on the two-Judge Bench decision of this Court in Reddeiah's case (supra), the Division bench of the Andhra Pradesh High Court dismissed the writ petition filed by the Appellant herein, as indicated hereinabove.

11. Before us, much the same submissions were sought to be advanced.

12. On behalf of the Appellant, it was submitted that in Rekha's case, all the questions, which were subsequently considered in Reddeiah's case (supra), had also been considered and there was also similarity in respect of the facts of the two cases. Apart from the aforesaid two decisions, learned Counsel for the Appellant also relied on a subsequent three-judge Bench decision of this Court in Yumman Ongbi Lembi Leima v. State of Manipur and Ors. (2012) 2 SCC 176 , in which the decision rendered in Rekha's case (supra) was followed and reiterated. It was pointed out that the decision in Reddeiah's case (supra) was also considered, as was the Constitution Bench decision in the case of Haradhan Saha v. State of West Bengal (1975) 3 SCC 198 wherein it was, inter alia, observed as follows:

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.

13. The said observation was taken note of and, thereafter, this Court held that the exercise of extraordinary powers of detaining an individual in contravention of the provisions of Article 22(2) of the Constitution, was not warranted in the said case, where the grounds of detention did not disclose any material which was before the Detaining Authority, other than the fact that there was every likelihood of the Petitioner therein being released on bail in connection with the cases in respect whereof he had been arrested, to support the order of detention. In fact, one of the submissions advanced was the possibility of the detenu being released on bail, since he was in custody in connection with other offences.

14. After the aforesaid decision, the same issue again came up for consideration before a two-Judge Bench of this Court in Munagala Yadamma v. State of Andhra Pradesh and Ors. (2012) 2 SCC 386 where a similar order had been passed under the 1986 Act. In the said case, the detention order had been passed in regard to the detenu, who had been indulging in illicit distillation of liquor and the same submission was advanced on behalf of the State, that recourse to ordinary law would involve more time and would not be an effective deterrent in preventing a person from indulging in prejudicial activities. In the said decision while considering the decision, both in Rekha's case (supra) and Reddeiah's case (supra) and also in Yumman Ongbi Lembi Leima's case (supra), it was held that the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. It was observed that the State has been granted the power to curb such rights under criminal laws and also under the laws of preventive detention, which, therefore, are required to be exercised with due caution, as well as upon a proper

appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. It was also observed that no doubt the offences alleged to have been committed by the Appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act. but such punishment would have to be awarded under the said laws and taking recourse to preventive detention laws would not be warranted. It had been emphasized that preventive detention involves detaining of a person without trial in order to prevent him/ her from committing certain types of offences, but such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes, which the detenu may have committed. It had also been observed that after all, preventive detention. in most cases, is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial.

15. When the decision was rendered by the Division Bench of the High Court, the decisions rendered in Yumman Ongbi Lembi Leima's case and Munagala Yadamma's case, were not available, though the decision in Rekha's case was. When the decision of a three-Judge Bench was available on the same issue, judicial discipline demanded that the Division Bench should have followed the same. In fact, judicial discipline is one of the fundamental pillars on which the judicial edifice rests, and if such discipline is eroded, the entire edifice will be affected.

16. In such circumstances, we have no hesitation in allowing the appeal and setting aside the judgment and order dated 9th December, 2011, passed by the Andhra Pradesh High Court and to allow Writ Petition No. 23698 of 2011, tiled by the Appellant herein.

17. The appeal is, therefore, allowed and the aforesaid order of the High Court is set aside. Consequently, the detention order is also quashed. The authorities are directed to release the detenu forthwith.