
(2001) 12 AP CK 0134
In the Andhra Pradesh High Court
Case No : Writ Petition No. 23158 of 2001

M. Ashok Goud

APPELLANT

Vs

The Collector and Dist. Magistrate and Others

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 3(2), 5A, 8

Citation : (2002) 5 ALT 72

Hon'ble Judges : Gopala Krishna Tamada, J; Bilal Nazki, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bilal Nazki, J.—This Writ petition has been filed by M. Ashok Goud challenging the order of detention passed by the respondents against his father namely M. Anja Goud (hereinafter referred to as "detenu").

2. The order of detention has been passed on 24-9-2001 by Collector and District Magistrate, Nizamabad in terms of the Andhra Pradesh Prevention of Dangerous Activities of Boot leggers, Dacoits, Drug Offenders, Goondas, Immoral traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as "the Act"). Notices have been issued. Counter and an additional counter affidavit have been filed. We have heard the learned Senior counsel Mr. C. Padmanabha Reddy for petitioner and also the learned Advocate General for the State.

3. The impugned order was passed on 24th September, 2001. The petitioner made a representation on 28th September, 2001. The order of detention was approved by the Government on 1st October, 2001. The representation made to the Collector was rejected on 5-10-2001 and the representation made to the Government was rejected on 12-10-2001. The Advisory Board gave its opinion in favour of detention on 29th October, 2001. The Government confirmed the order of detention on 6th November, 2001 and the detention was approved for a period of twelve months.

4. The learned Senior Advocate challenged the order of detention on four grounds they are enumerated herein below;

1) That the grounds 1 and 2 are stale, they are not proximate and are remote.

2) That the ground No.4 is irrelevant, it is not related to bootlegging activity.

3) The detenu is alleged to have indulged in adulterating toddy with chloral hydrate and according to the Chemical analyst chloral hydrate is injurious to health but dealing in a substance which is injurious to health would not be per se an activity prejudicial to the maintenance of public order.

4) The Government did not consider independently the representation of the detenu and it merely rejected the representation on a report of the Collector.

5. The learned Advocate General on the other hand pleaded that these grounds were not available at all to the detenu to be agitated in the fact situation of the present case.

6. Coming to the first ground of attack that grounds 1 and 2 of the detention order are stale and not proximate but remote, let us have a look on the grounds of detention. Ground No.1 relates to a crime in which the detenu was an accused for an occurrence in October,1998 and ground No.2 also relates to a crime in which the detenu was an accused of an offence relating to January,1999. Ground No.3 relates to a crime in which the detenu was an accused of an offence relating to June,2001 and ground No.4 also relates to a crime of June,2001. All these cases are still pending before the Courts. Mr. Padmanabha Reddy argued that, since all the four grounds were taken into consideration by the Collector and District Magistrate the first two grounds being stale therefore it will not be appropriate for this Court to come to a conclusion as to what weighed with the Collector while coming to the satisfaction that the detenu needs to be detained under the preventive detention laws. The learned Advocate General on the other hand submitted that, as a matter of fact the four instances given in the grounds of detention are only the instances of a single ground and that ground is that the detenu is a bootlegger. In order to substantiate and in order to come to a conclusion that the detenu needed to be detained as he was a bootlegger these instances were taken into consideration and weighed with the District Magistrate. Past conduct of a person who is detained is a relevant factor for coming to subjective satisfaction as to whether such a person could be detained or not. He vehemently argued that the ground is only one that the detenu was a bootlegger therefore it would not make any difference whether cases pertaining to the detenu which were remote in point of time were taken into consideration, or not. This argument needs to be rejected at the outset because in terms of section 8 of the Act grounds of order of detention have to be disclosed to persons affected by the order as these are the grounds which have been communicated to the detenu for his detention. If we read the proceedings Rc.No. E4/1721/2001, dated 24-9-2001 it starts with; "GROUNDS OF DETENTION IN RESPECT OF SRI M. ANJA GOUD S/O SAYA GOUD, AGED ABOUT 51 YEARS, RESIDENT OF NARVA

VILLAGE OF NIZAMSAGAR MANDAL OF NIZAMABAD DISTRICT, UNDER THE PROVISIONS OF A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986". So, we have no doubt in our mind that all these four instances were not merely facts or instances but were grounds for detention and the grounds cannot be separated. Mr. Padmanabha Reddy relied on Kamalakar Prasad Vs. State of M.P (1) and stated that when various grounds are pressed into service for coming to a satisfaction then it becomes difficult to postulate what would have been the decision of the detaining authority had he not taken into consideration the grounds which were not permissible to be taken into account for being remote in time. He says that, there was controversy with regard to severability of the grounds and in certain detention laws provisions were added accordingly. He submits that in Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 section 5-A of the Act laid down that where a person had been detained in pursuance of an order of detention which has been made on two or more grounds such order of detention shall be deemed to have been made separately on each of such grounds and accordingly such order shall not be deemed to be invalid or inoperative merely because one or more of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason. He submits that since there is no such provision in the Act therefore all the grounds must be valid in terms of the law. Since admittedly two grounds are remote one relates to year 1998 and another relates to year 1999, one of the incident is three year old and another incident is more than two years old, therefore the detention based on such a ground cannot be sustained. In our view this aspect is squarely covered by the judgment in Kamalakar Prasad's case (1 supra) where detention of a person under National Security Act, 1980 was challenged. One of the grounds stated in the order of detention was found to be remote. The Supreme Court in para-12 laid down the law in the following terms;

"The first two incidents which are of 1978 and 1980 are mentioned as grounds of detention in the order dated 6-5-83. There can be no doubt that these grounds especially ground No.1 relating to an incident of 1978 are too remote and not proximate to the order of detention. It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an order of detention u/s 3(2) of the Act. Nor it is open to the Detaining authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention. Now there is no provision in the National Security Act, 1980 similar to Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities, Act, 1974 which says that where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of

such grounds and accordingly (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-s (1) of S. 3 with reference to the remaining ground or grounds and made the order of detention and (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds. Therefore in the present case it cannot be postulated what view would have been taken by the Detaining Authority about the need to detain the petitioner u/s 3(2) of the Act if he had not taken into account the stale and not proximate grounds 1 and 2 into consideration in arriving at the subjective satisfaction. We are, therefore, of the opinion that the petitioner's detention is unsustainable in law."

7. In view of this position of law as laid down by the Supreme Court and having found that two of the grounds are too remote, it cannot be assumed or postulated what view could have been taken by the District Magistrate had he not considered these two grounds before ordering the detention. The detention cannot be upheld.

8. Since we have found that on this ground alone the detention cannot be sustained, we are ordering the quashing of the detention order and we do not think it desirable to decide the other points raised by Mr. Padmanabha Reddy.

9. Accordingly, the Writ petition is allowed. Order of detention dated 24-9-2001 is quashed. The authorities concerned are directed to release the detenu forthwith unless he is needed in other cases.