
(2004) 04 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 379 of 2004

S. Jayamma

APPELLANT

Vs

Collector and District Magistrate and Another

RESPONDENT

Date of Decision : 26-04-2004

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2

Citation : (2004) 3 ALD 458 : (2004) 3 ALT 642 : (2004) 2 APLJ 71 : (2004) CriLJ 3153

Hon'ble Judges : G. Yethirajulu, J;G. Bikshapathy, J;B. Seshasayana Reddy, J

Bench : Full Bench

Advocate : K. Soma Konda Reddy, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The matter arises out of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986)

2. The Division Bench, on a doubt expressed by the learned Advocate-General regarding the correctness of the principle laid down in M. Ashok Goud Vs. The Collector and Dist. Magistrate and Others, , referred the matter for Full Bench. In fact, the issue involved is:

"Can the detaining authority refer past events of the detenu for the purpose of ascertaining the propensity of the detenu of his involvement while passing the detention order?"

3. The learned Counsel for detenu however submits that while passing the orders of detention, the detaining authority has to form subjective satisfaction on the basis of the grounds mentioned in the detention order and he is not expected to take into consideration stale and non-proximate grounds for reaching such satisfaction while issuing the orders of detention. While, it is the case of the

learned Advocate-General that it is always open for the detaining authority to refer to the past events for assessing the propensity of the detenu, if the chain of continuity persists. Various decisions have been brought before this Court to sustain respective contentions, which will be referred to hereinafter.

4. The Supreme Court in *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, , observed that:

"Grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The "grounds" must be self-sufficient and self-explanatory. Therefore copies of documents to which reference is made in the "grounds" must be supplied to the detenu as part of the "grounds". The failure to communicate the factual material as a part of the "grounds" would amount to non-communication of grounds on which the order of detention has been made and thus would infringe Article 22(5).

The Supreme Court further held that:

It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote.

5. In *Jagan Nath Biswas Vs. The State of West Bengal*, , the Supreme Court observed that:

"The Order of detention challenged before us is dated 27th February, 1973. The subjective satisfaction of the District Magistrate of Nadia, who directed the detention, is based upon three criminal adventures of the petitioner dated 8th November, 1971, 9th December, 1971 and 25th August, 1972.

The incidents themselves look rather serious but also stale, having regard to the long gap between the occurrences and the order of detention. One should have expected some proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at. This Court has repeatedly pointed out that unexplained and long delay will be fatal to the plea subjective satisfaction. In the present case, Counsel for the State Shri G.S. Chatterjee, took time to furnish an explanation as to why there was such a long delay for the District Magistrate to pass the order of detention. Unfortunately, we are no wiser today than at the previous hearing. In short, we are not taken into confidence by the District Magistrate as to why there should have been such an inordinate delay. We, in turn, therefore, are not satisfied about the bona fides of the subjective satisfaction of the District Magistrate.

In the result, the order of detention must fail as illegal. The petition is allowed, the rule nisi is made absolute and the petitioner directed to be released forthwith."

The Supreme Court in the said case holding that there was a long gap between the occurrences set aside the order of detention. It was categorically observed by the Supreme Court that there should be some proximity in time to provide rational nexus between the incidents relied on and the satisfaction arrived at.

6. The Supreme Court in *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta* 1995 SCC (Cri.) 454, quashed the order of detention passed more than 16 months after the alleged prejudicial conduct. The Supreme Court observed that "this long lapse of time between the alleged prejudicial activity and the detention order loses its significance because the said prejudicial conduct was not proximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order. Such a stale incident cannot be construed as justifiable ground for passing an order of detention".

7. In *Kamlakar Prasad Chaturvedi Vs. State of M.P. and Another*, , the Supreme Court held that:

"It is not open to the Detaining Authority to pickup 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."

The Supreme Court in categorical terms stated that there should be proximity in time to provide rational nexus between the incidents relied on and the satisfaction arrived at. Unexplained long delay will be fatal to the plea of subjective satisfaction.

8. The learned Advocate-General, however, categorically relied on a decision in *Suraj Pal Sahu Vs. State of Maharashtra and Others*, , wherein the Supreme Court has observed that where the offences in respect of which detenu is accused are so interlinked and continuous in character and are of such nature that they affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the order being passed for preventive detention. The decision came and delivered by the Supreme Court in connection with interpretation of Section 3(2) of the National Security Act, 1980.

9. The Division Bench of this Court in *Mohd. Ahmed Khan v. Government of A.P. and Ors.* 2002 (2) ALD (Cri.) 120 (AP), held:

"There should be some proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at."

10. To the same effect, the decision of the Division Bench in *M. Ashok Goud Vs. The Collector and Dist. Magistrate and Others*, , wherein the Division Bench following the decision of the Supreme Court held in *Kamlakar Prasad Chaturvedi Vs. State of M.P. and Another*, , held that a too remote and not proximate event

cannot sustain the order of detention. The Supreme Court in the aforesaid case 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 6.5.1983. There can be no doubt that these grounds especially ground No. 1 relating to an incident of 1978 is 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-section (1) of Section 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."

11. From the survey of the aforesaid decisions, it is observed by the Supreme Court time and again that while it is open for the detaining authority to pass orders of detention, on the basis of subjective satisfaction, but at the same time stale incidents and events which are not proximate in time having no rationale nexus to the alleged prejudicial act would vitiate the detention order.

12. It is also settled law that even if one stale and not proximate ground is taken into consideration in arriving at the subjective satisfaction, the detention order in its entirety becomes unsustainable. There is no provision in the Act on hand similar to Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 where the grounds are severable. In such circumstances, it becomes difficult to discern as to which ground weighed with the detaining authority while passing the detention order.

13. The issue required to be adjudicated is whether the reference in the detention orders regarding the past conduct of the detenu for the purpose of arriving the propensity of criminal acts of the detenu would vitiate the detention Order. The Judgments are clear on this aspect, which are referred to above. The relevancy and proximity of time are *sine qua non* for successfully sustaining the order of detention. No hard and fast rule can be fixed and each case has to be decided on its own merits. The Supreme Court considered gap of sixteen months between the offending acts and the detention order and set aside the order of detention holding that the order of detention was based on stale incidents. Therefore, the proximity in time should provide a rational nexus between the incident relied on and the satisfaction arrived at. While there is no prohibition to consider the past events, at the same time, there should be continuous link of events coupled with proximity of time. Under these circumstances only the order of detention would be immune from attack. Accordingly, we answer the reference as follows:

While there is no specific bar for the detaining authority to refer to the past events, but at the same time such events should have a close and continuous link and proximity so as to provide a rational nexus between the incidents relied on and the satisfaction arrived at.

14. Coming to the facts of this case, the detenu Sorakayala Rama Subbaiah @ Subbarayudu was directed to be detained by an order of the competent authority dated 17.11.2003 and the order came to be passed u/s 3(1)(2) read with Section 2(a) and (b) of A.P. Act 1 of 1986.

15. The detenu was categorized as a bootlegger as referred to u/s 2(b) of the Act, As many as seven incidents have been referred to in the grounds of detention ordered on 17.11.2003 which are succinctly stated below:

1. Crime No. 148/97-98 dated 11.5.1998 under A.P. Excise Act.
2. Crime No. 12/1999-2000 dated 13.10.1999 under A.P. Excise Act.
3. Crime No. 149/2001-2002 dated 21.9.2001 under A.P. Excise Act.
4. Crime No. 58/2002-2003 dated 21.8.2002 under A.P. Prohibition Act, 1995.
5. Crime No. 105/2002-2003 dated 21.10.2002 under A.P. Prohibition Act, 1995.
6. Crime No. 82/2003-2004 dated 6.7.2003 under A.P. Prohibition Act.
7. Crime No. 204/2003-2004 dated 6.11.2003 under A.P. Prohibition Act.

All the offences are alleged to have been committed under the provisions of A.P. Prohibition Act. It is noted that an incident of 1998 as noted in Crime No. 148/97-98 took place on 11.5.1998 and next Crime No. 13/1999-2000 took place on 13.10.1999. Thereafter, the next incident in Crime No. 149/2001-02 is dated 21.9.2001. Thus, there is no proximity at all between Crime No. 148/1997-98 and Crime No. 13/1999-2000 with reference to the grounds

mentioned in the order of detention. Further, we also find yet another serious lacuna in this case. Admittedly, two crimes in Crime No. 82/ 2003-2004 and Crime No. 204/2003-2004 were registered on 6.7.2003 and 6.11.2003 respectively and the samples were sent to the Government analyst for his opinion and by the date of detention order, the report of the analyst was not received. In similar circumstances of the case, the Division Bench of this Court reported in *Dhanraj Singh v. Government of A.P.* 1997 (3) ALD 390 (DB), observed:

"that the detaining authority did not have the material namely, the report of the Laboratory analysis in respect of grounds 4 to 7 before passing the detention order. Therefore, with regard to the said grounds, it cannot be said that the sale of illicitly distilled liquor fall within the meaning of the words "acting in any manner prejudicial to the maintenance of public order". Therefore, the essential requisite for passing the impugned order of detention is lacking in the said grounds, so these grounds became irrelevant for ordering detention."

16. The case on hand stands on a better footing; the reports are not yet received. Therefore, before the report of the analyst is received mentioning the same as one of the grounds of detention is to be held irrelevant and extraneous. It is also beyond the pale of controversy that if the detention order contains relevant and irrelevant grounds, the entire order of detention gets vitiated and it does not survive to the extent of relevant grounds. Under these circumstances, even on merits also we find that the order of detention is not sustainable, accordingly it is set aside.

17. The writ petition is allowed accordingly. The detaining authority is directed to release the detenu forthwith unless he is require to be detained in any other crime.