

(2009) 07 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11310 of 2009

Sada Lakshmi

APPELLANT

Vs

Collector and District Magistrate and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2, 3(1), 9

Citation : (2009) 2 ALD(Cri) 455 : (2009) 4 ALT 763

Hon'ble Judges : D.S.R. Varma, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : C. Praveen Kumar, for the Appellant; Asst. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard the learned Counsel appearing for the petitioner as well as the learned Assistant Government Pleader, representing the learned Advocate General, appearing for the respondents.

2. This Writ of Habeas Corpus is filed by the petitioner seeking a direction to the respondents to produce her husband viz., G. Ashok @ Jadukattala Ashok, s/o. Hanumaiah, aged 40 years, resident of H. No. 5-49/1, India Basti, Darga Hussain Shahwali, Sherilingampally Mandal, Ranga Reddy District, who had been detained in Central Prison, Chanchalguda, pursuant to the order of detention, dated 31-03-2009, in proceedings Rc. No. B2/439/2009, passed by the 1st respondent herein-Collector and District Magistrate, Ranga Reddy District, u/s 3(1) read with Section 2(a) and (b) of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity "the Act"), before this Court and set him at liberty.

3. The husband of the petitioner, the alleged detenu, was allegedly involved in trafficking of illicit liquor in and around Sherilingampally Mandal, Ranga Reddy

District. Taking into account of his frequent involvement in the said activity, the competent authority i.e, the Collector and District Magistrate, Ranga Reddy District, passed the order of detention, dated 31-03-2009, for detention of the alleged detenu and the same was forwarded to the Government for approval. The Advisory Board, constituted u/s 9 of the Act, reviewed the case of the alleged detenu on 24-04-2009 and eventually the Government had passed the final order vide G.O.Rt. No. 2026, General Administration (Law and Order. II) Department, dated 29-04-2009, confirming the order passed by the competent authority i.e., the 1st respondent herein, as a result of which the alleged detenu was directed to be detained for a period of twelve (12) months from the date of his detention i.e., 31-03-2009. Aggrieved by the same, the petitioner has filed the present writ petition seeking production of the alleged detenu and to release him, forthwith.

4. The competent authority had relied upon four instances in which the alleged detenu has been shown as an accused viz., (1) COR. No. 384/2007-08, dated 02-01-2008, (2) COR. No. 385/2007-08, dated 02-01-2008, (3) COR. No. 453/2007-08, dated 07-02-2008, and (4) COR. No. 238/2008-09, dated 08-09-2008, relating to the offences under A.P. Excise Act, 1968 and also A.P. Prohibition Act, 1995.

5. Sri C.Praveen Kumar, learned Counsel, appearing for the petitioner, contends that there is no proximity between the last date of offence, which was cited in the order of detention, and the date on which the order of detention was passed; that there is no proximity between the other offences also and hence the instances, which were made the basis for passing the order of detention, have got to be treated as having become stale and accordingly the detenu deserves to be released.

6. In order to substantiate his contention, the learned Counsel appearing for the petitioner relied on a judgment rendered by a Full Bench of this Court in S. Jayamma Vs. Collector and District Magistrate and Another, and also a judgment of the apex Court in The Collector and District Magistrate, W.G. Dist. Eluru, Andhra Pradesh and Others Vs. Sangala Kondamma, .

7. In S. Jayamma's case (supra), a Full Bench of this Court, to which one of us (BSSR, J) is a party, at paragraph No. 13, observed as under:

13. ...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.

8. From the above, what could be deduced is that no doubt a rationale nexus between the incident or incidents relied upon must exist and such nexus shall be to the satisfaction of the competent authority and further there is no prohibition to consider the past events. However, there shall be continuous link of events, coupled with the proximity of time.

9. But, it is to be seen that what amount or distance of time or the distance of time can be treated as proximity.

10. It is settled law that the last incident from among various incidents cited in order of detention, for the purpose of detention, has to be taken into consideration, if has proximity with the date of passing of the order of detention. The past events, which are not very proximate, can also be based for the purpose of passing an order of detention. Therefore, the proximity, as such, is not defined anywhere and the same is to be deduced from the facts and circumstances of each case.

11. In Sangala Kondamma's case (supra), it is contended on behalf of the detenu that the detention order being one based on subjective satisfaction of the detaining authority, it will not be possible for a Court to find out how far the stale incident influenced the mind of the detaining authority, hence the consideration of such stale incident along with some other proximate incidents certainly would vitiate the subjective satisfaction of the detaining authority.

12. In the light of the above contention, the apex Court at paragraph No. 9, observed as under:

9. ...Thus, if the facts placed before the detaining authority are proximate to each other and the last of the fact mentioned is proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside. In the instant case, it is seen that between the period from 10-1-2001 and 25-10-2002 the detenu was involved in five incidents of bootlegging which are reasonably proximate to each other and the last of the incidents being proximate to the order of detention, we think the High Court was not justified in treating the two incidents of 17-1-2000 and 10-1-2001 as stale by taking them in isolation. In our opinion, the court should have considered the proximity of the incidents between themselves which indicates the possibility of the proposed detenu continuing to indulge in the illegal activities which requires his preventive detention.

13. In our considered view, the judgments referred to supra by the learned Counsel appearing for the petitioner, though unexceptional, cannot be made applicable to the present set of facts and circumstances of the case.

14. In fact, as pointed out by the apex Court, the subjective satisfaction of the competent authority, in passing the order of detention, is to prevent certain acts prohibited under law, which adversely affect the public order.

15. Therefore, the Courts, have to necessarily look into the reasons assigned by

the competent authority in passing the order of detention and the reasons so assigned if found to be reasonably satisfactory to the Courts, no interference is warranted.

16. In fact, it is worthwhile to take notice of the facts in Sangala Kondamma's case (supra), where the apex Court noticed the fact that between the period from 10-01-2001 and 25-10-2002 the detenu therein was involved in five incidents of bootlegging and the same were estimated as reasonably proximate to each other and it was further found that the last date of incident being proximate, the order of detention was passed in the month of January, 2003.

17. Coming to the case on hand, it is to be seen that out of four incidents mentioned in the order of detention, three (3) were found to have been committed in the months of January and February, 2008, and the last incident was on 08-09-2008 and the order of detention was passed on 31-03-2009.

18. From the above facts, it is obvious that from the date of last incident, there is a gap of about six months to the competent authority to pass the order of detention. But, this Court cannot ignore the fact that the other three (3) incidents have taken place in the early months of 2008.

19. The above fact shows that the alleged detenu has been involving continuously in the same kind of offences, which are injurious to the public order. Therefore, in such cases, the competent authority has to necessarily weigh the circumstances with a holistic approach, but not simply on mere technicalities.

20. As already pointed out, there is no clear period of limitation, as regards the proximity. In other words, the expression "proximity" is not defined anywhere and, as such, the same has to be deduced from the facts and circumstances, which include the nature, the number and the frequency of the offences, which would affect the public order.

21. No doubt, a rare and stray incident, which, would not, in normal course, remain in the mind of the society, may not be capable of being branded as a strong circumstance and an incident, which can be based for passing the order of detention. But, if the same act continues to be perpetrated over a period of time, which appears to be reasonable, not only to the competent authority but also to the society, can always be taken into consideration as a whole.

22. As pointed out earlier, it is the facts and circumstances of each case and subject to the satisfaction of the detaining authority, the order of detention can be passed.

23. For the foregoing and in view of the facts and circumstances, prevailing in the present case, we cannot hold that there is no proximity of the offences with the date of order of detention.

24. Therefore, we find no merits in the writ petition and the same is liable to be dismissed.

25. In the result, the writ petition is dismissed, at the stage of admission. However, there shall be no order as to costs.