CASE NO.:
Appeal (crl.) 1451 of 2004

PETITIONER:
The Collector & District Magistrate, W.G.Dist.Eluru,Andhra Pradesh & Ors.

RESPONDENT:
Sangala Kondamma

DATE OF JUDGMENT: 09/12/2004

BENCH:
N.Santosh Hegde & S.B.Sinha

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (Crl) No. 5341 of 2003)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.
Leave granted.

The husband of the respondent herein by name Shi Sangala Srinivasa Rao a resident of West Godavari was detained by an order of the District Collector made under Section 3 (1) (2) read with Section 2 (a) & (b) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (the Act). The respondent-State Government approved the said detention on 24th of January, 2003. The Advisory Committee after considering the material on record and hearing the detenue in person approved the said detention order. On the basis of the Report of the Advisory Board, the Government confirmed the detention for a period of 12 months from the date of his detention which was from 15th of January, 2003.

The said detention order came to be challenged by the wife of the detenue who is the respondent herein, before the Andhra Pradesh High Court by way of a writ petition. The High Court by the impugned order has allowed the writ petition setting aside the order of detention, hence this appeal before us.
The High Court came to the conclusion that two of the grounds of detention out of five were stale grounds and since the said two stale grounds could not be separated from the other grounds, the satisfaction of the detaining authority got vitiated, therefore, the order of detention cannot be sustained.
The order of detention was based on the following grounds:
(1) That the detenue was involved in criminal case Crime No.400/2000-01 dated 10.1.2001 involving 20 ltrs. of ID liquor in which case the detenue had absconded from the scene of offence leaving behind the scooter used in transport of ID liquor. The said ID liquor on chemical analysis was found to be illicitly distilled and was injurious to health.
(2) He was involved in Crime No.173/1999-2000 dated 17.1.2000 involving 20 ltrs. of ID liquor in the form of 200 arrack sachets which liquor was also found to be illicitly distilled and was injurious to health.
(3) He was involved in Crime No.590/2001-02 dated 3.2.2002 involving 40 ltrs. of ID liquor which liquor was also found to be illicitly distilled and was injurious to health.

(4) He was involved in Crime No.406/2002-03 dated 6.10.2002 involving 20 ltrs. of ID liquor in the form of 200 arrack sachets containing illicitly distilled liquor which was also found to be injurious to health and unfit for human consumption.

(5) He was involved in Crime No.440/2002-03 dated 25.10.2002 involving 20 ltrs. of ID liquor which was also illicitly distilled and was injurious to health and unfit for human consumption.

As stated above, the order of detention was passed on 15.1.2003 about three months after the last of the grounds referred to herein above and after receiving necessary proposals in this regard.

Learned counsel appearing for the appellants-State contended that the object of the Act was to prevent a person from indulging in any one of the activities mentioned therein and bootlegging was one such activity. He contended that to establish the apprehension of the authorities that there is a likelihood of the detenue indulging in such dangerous activities, it is necessary to satisfy the detaining authority with chain of similar events which could give rise to a satisfaction of the detaining authority that the detenue is likely to indulge in such activities in the near future also. In that process some of the facts narrated individually may not be sufficient for the said authority to form an opinion as to the need for such a detention. Therefore, the proposing authority will have to place materials before the detaining authority of a series of incidents which can satisfy the detaining authority the need for such detention. In that process some of the incidents/grounds may not be proximate to the order of detention. If they are proximate to each other the fact that initial few incidents are not proximate to the order of detention, would not make the order of detention bad. Therefore, the High Court was not justified in picking two facts narrated in the grounds as being stale and setting aside the order of detention.

Learned counsel appearing for the respondent supported the judgment of the High Court and contended that it is not open to the detaining authority to rely upon stale incidents in conjunction with some other incidents which may be proximate to the order of detention to make an order of detention. 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. He contended that the State enactment does not contain any provision similar to Section 5A of the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974 which permits the court considering an order of detention to severe the stale grounds from grounds proximate to the order of detention and in the absence of such provision in the local act, the High Court was justified in setting aside the order of detention. He also pointed out that the High Court correctly relied upon certain earlier judgments of the said court while passing the impugned judgment.

We notice from the preamble and statements and objects of the Act that it aims to prevent a person from indulging in certain illegal activities enumerated therein by his preventive detention. For the said purpose, the detaining authority must be satisfied that the proposed detenue is likely to indulge in such illegal activities in future also. This is a satisfaction that could be reasonably arrived at by the detaining authority only by examining the material that is produced by the authority proposing his detention. In such a process, a detaining authority may not always take into consideration a stray or solitary incident which may not give rise to

a reasonable apprehension or satisfaction as to such future act of the proposed detenue. Therefore, it is necessary for the authority proposing the detention of a person under the Act to produce such material which shows the continuous previous illegal activities of the proposed detenue which would satisfy the detaining authority of the need for detaining such a person. In other words, the material produced by the authority proposing the detention should form a chain of incidents last of which will have to be proximate to the date of proposed detention while other acts must be proximate to each other. Thus, if the facts placed before the detaining authority are proximate to each other and the last of the fact mentioned in proximate to the order of detention then the early incidents can not 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 detenue 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 detenue continuing to indulge in the illegal activities which requires his preventive detention. In the present case, as noticed above, the five incidents recorded in the order of detention being proximate enough to each other shows the continuity of the acts of the detenue. In such a fact situation, we think the High Court erred in coming to the conclusion that two of the five grounds being not proximate to the order of detention and the order of detention was based on stale grounds. While it can be stated that the incidents of 17.1.2000 and 10.1.2001 could not by themselves have been sufficient grounds to detain the detenue but would certainly become a relevant material along with other three grounds dated 3.2.2002, 6.10.2002 and 25.10.2002 to come to the conclusion that there is a need for detaining the detenue to prevent him from indulging in similar activities in the future.

While we uphold the validity of the order of detention passed by the detaining authority by disagreeing with the finding of the High Court. However, on facts of this case, we notice that the detenue was taken into custody on 15.1.2003 and was released from detention pursuant to the order of the High Court on 28.4.2003 and at this distance of time the appellants have no fresh material to show before us that his further detention is necessary. Therefore, we think there is no need to re-arrest the detenue to serve out the balance period of detention. Hence, while allowing this writ petition by setting aside the impugned order, we also hold that it is not necessary for the detenue to be re-arrested to serve out the rest of the period of detention. This, however, does not prevent the authorities from passing such an order as is necessary if the present fact situation requires any such action.

Ordered accordingly.