

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.67 OF 2012
[@ SLP(Crl) No(s).8114 of 2011]

MUNAGALA YADAMMA

Appellant(s)

VERSUS

STATE OF A.P. & ORS.

Respondent(s)

O R D E R

Leave granted.

2. The appellant's husband, Shri Munagala Anjaiah, son of Gandaian, resident of Ranga Reddy District in Andhra Pradesh, was served with a Detention Order dated 15th February, 2011, under Section 3(1) read with Section 2A and B of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

3. In the Detention Order, the Detaining Authority indicated that the detinue was a bootlegger within the meaning of Section 2(b) of the aforesaid Act and that recourse to

normal legal procedure would involve more time and would not be an effective deterrent in preventing the detinue from indulging in further prejudicial activities.

4. It has been mentioned that the detinue was involved in several cases of violation of the provisions of Section 7A read with Section 8(C) of the Andhra Pradesh Prohibition Act, 1995, involving illicit distillation of liquor.

5. The Detention Order passed by the Collector and District Magistrate, Ranga Reddy District, was questioned by the wife of the detinue by way of WP No.13313 of 2011 before the Andhra Pradesh High Court, which dismissed the same on the ground that under the normal laws, it would be difficult to check the activities of the detinue and, accordingly, the order of detention was justified.

6. The order of the High Court has been challenged before us in this appeal.

7. On behalf of the appellant, it has been urged that the ground taken for issuance of the Detention Order was improper and not available in view of the reasoned judgment of this Court in the case of Rekha Vs. State of Tamil Nadu through Secretary to Government and Anr., 2011(5)SCC 244, where a similar question had arisen and in paragraph 23 of the

judgment, a three-Judge Bench of this Court was of the view that criminal cases were already going on against the detenu under various provisions of the Penal Code, 1860, as well as under the Drugs and Cosmetics Act, 1940, and that if he was found guilty, he would be convicted and given appropriate sentence. Their Lordships also indicated that in their opinion, the ordinary law of the land was sufficient to deal with the situation, and hence, recourse to the preventive detention law was illegal.

8. It has been submitted by Mr. Anil Kumar Tandale, learned advocate appearing for the appellant, that in the instant case also all the offences alleged to have been committed by the husband of the appellant, were under the provisions of the A.P. Prohibition Act, 1995, for which the normal law was sufficient to deal with the offence, if proved. He submitted that the Detaining Authority had wrongfully taken the easy way out and had resorted to an order of preventive detention in order to avoid having to investigate the cases filed against the appellant.

9. On behalf of the State of Andhra Pradesh, another decision of a two-Judge Bench of this Court in the case of G.Reddelah Vs. The Govt.of Andhra Pradesh and Anr.,

[2011(10)SCALE 224], was brought to our notice, in which while referring to the three-Judge Bench decision in Rekha's case (supra) their Lordships were of the opinion that in view of the factual position and the enormous activities of the detinue, violating various provisions of the Indian Penal Code and the Andhra Pradesh Prohibition Act and Rules, continuous and habitual pursuing of the same type of offences damaging the wealth of the nation, the decision in Rekha's case (supra) was not applicable to the facts of the said case. Accordingly, the order passed by the Detaining Authority, as approved by the Division Bench and upheld by the High Court, did not require any interference.

10. Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in Rekha's case (supra), in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land. Taking recourse to the provisions of preventive detention is contrary to the constitutional guarantees enshrined in Articles 19 and 21 of the Constitution and sufficient grounds have to be made out

by the detaining authorities to invoke such provisions. In fact, recently, in Criminal Appeal No.26 of 2012, Yumman Ongbi Lembi Leima Vs. State of Manipur & Ors., we had occasion to consider the same issue and the three-Judge Bench had held that the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws, as 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.

11. 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 that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. 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 detinue may have committed. 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. Accordingly, while following the three-Judge Bench decision in Rekha's case (supra), we allow the appeal and set aside the order passed by the High Court dated 20th July, 2011, and also quash the Detention Order dated 15th February, 2011, issue by the Collector and District Magistrate, Ranga Reddy District, Andhra Pradesh.

12. This order should not in any way prejudice the outcome of the pending cases against the appellant.

.....J.
(ALTAMAS KABIR)

.....J.
(SURINDER SINGH NIJJAR)

NEW DELHI;
January 05, 2012.