**SUPREME COURT OF INDIA**

District Collector, Ananthapur

Vs.

V. Laxmanna

Crl.A.No.436 of 2005

(N.Santosh Hedge and S.B.Sinha JJ.)

17.03.2005

**JUDGMENT**

**Santosh Hegde, J.**

1. Leave granted

2. The grievance of the State Government in this appeal primarily is that the High Court erred in quashing the detention order on the ground that some of the instances relied upon by the detaining authority being stale the entire detention order becomes invalid. So far as this grievance of the appellant-State is concerned the same is since addressed to by us in our judgment in the case of *The Collector & District Magistrate, W.G.Dist. Eluru, Andhra Pradesh & Ors. Vs. Sangala Kondamma*[1] wherein we have held: "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 earlier incident cannot be treated as stale and the order cannot be set aside."

3. The principle extracted herein above from the case The Collector & District Magistrate, W.G. Dist. Eluru, Andhra Pradesh & Ors. (supra) applies to the facts of this case also. In the above case of The Collector & District Magistrate, W.G. Dist. Eluru, Andhra Pradesh & Ors. (supra) even though we held the order of the High Court was unsustainable, we did not interfere with the same for reasons mentioned therein. In the normal course, the very same reasons would have been sufficient to dispose of this appeal also without interfering with the order of the High Court.

4. But, Mr. M.N. Rao, learned senior counsel appearing for the respondent submitted that there is another question of law which requires consideration arising from the facts of this case which also may be decided in this case since the same issue arises very often in many detention matters arising out of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (the 'Act') hence, he submitted that the same may also be decided in this appeal itself because there is no judgment of this Court on this point. Ms. D. Bharathi Reddy, learned counsel for the appellant-State concurs with the submission made by Mr. M N Rao.

5. The contention of Mr. Rao is that under the Act it is only the manufacture, transport and sale of arrack which is dangerous to public health which alone would become an act prejudicial to the maintenance of public order attracting the provisions of the Detention Act. The detaining authority has to be satisfied on material placed before it that the alleged manufacture, transport or sale of arrack was unfit for human consumption and if it is based on that material, the detaining authority wants to pass the order of detention then copies of such material based on which he forms the opinion that the arrack so sold by him is dangerous to public health, must also be given to the detenu otherwise the detenu will not be in a position to make an effective representation.

6. The learned counsel appearing for the State contends that such supply of material is not necessary because in the State of Andhra Pradesh the sale of arrack itself is prohibited, therefore, under the provisions of the Act, the manufacture, transport and sale of arrack is prohibited and hence under the Act it is sufficient if the detaining authority is satisfied that the detenu is indulging in such manufacture, transport and sale of arrack and there is no need for him to come to the conclusion that such arrack is dangerous to public health. Consequently, it is not necessary for the detaining authority to give materials based on which the detaining authority came to the conclusion that the detention of the detenu on the ground that he is manufacturing, transporting or selling arrack unfit for human consumption is necessary.

7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy such material should also be given to the detenu to afford him an opportunity to make an effective representation.

8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of the such material should be given to the detune. For the reasons stated above this appeal fails and is dismissed.

[1]*[2004 (10) SCALE 315]*