

(2016) 01 AP CK 0040
In the Andhra Pradesh High Court
Case No : Writ Petition No. 28714 of 2015

Chitikesi Shoba Rani

APPELLANT

Vs

State of Telangana and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 13, Section 13(f), Section 34
Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 12, Sec

Citation : (2016) 3 ALTcr1 363 : (2016) 1 AndhLDCriminal 1003

Hon'ble Judges : Nooty Ramamohana Rao and Anis, JJ.

Bench : Division Bench

Advocate : K. Rajsekhar, for the Appellant;

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao, J.

1. This writ petition for Habeas Corpus was moved by the wife of the detainee challenging the correctness of the orders passed by the Collector and District Magistrate, Warangal on 30.06.2015 for the preventive detention of Sri Chittikesi Sadashivudu S/o. Punnam Chander. This order has been passed by the Collector and District Magistrate, Warangal exercising the power available to her under Sub-section 2 of Section 3 of Andhra Pradesh Prevention of dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short the Act). The District Magistrate for arriving at subjective satisfaction has relied upon seven grounds.

2. The first of them relates to an incident which took place on 24.02.2011 where the raid conducted yielded to 29 plastic bags each containing about 24 kgs of black jaggery and 1 kgs of alum. Thus, this material is allegedly used for preparation of illicitly distilled liquor. Thus, a case in crime No. 61/2011-2012, was registered on 24.02.2011 by the Station House Officer, Hanomkonda.

3. The 2nd ground relates to an incident which took place on 14.11.2013, on which day the Prohibition and Excise Inspector, Hanomkonda raided Madhu Thanda where illicitly distilled liquor is manufactured. It is stated that the detainee surrendered before the Special Judicial First Class Magistrate for Prohibition and Excise cases Warangal on 26.11.2013 and he was enlarged on conditional bail.

4. The 3rd ground related to an incident which took place on 26.11.2013 and a case was booked on 26.11.2013 whereas the detainee surrendered before the criminal court on 29.11.2013 and he was released on bail.

5. The 4th ground related to an incident which took place on 22.12.2013 where the Prohibition and Excise Inspector, Hanomkonda conducted raids which resulted in seizure of 20 litres of illicitly distilled liquor, 1260 kgs of black jaggery and 90 kgs of alum. The detainee surrendered before the Court on 03.01.2014 and he was released on bail.

6. The 5th incident relates to a raid that was conducted on 20.07.2014 resulting in seizure of 5 litres of illicitly distilled liquor, 800 kgs of black jaggery and 25 kgs of alum.

7. The 6th incident also has taken place on 20.07.2014 at about 11.50 AM, 1 hr 5 minutes after the earlier incident.

8. The 7th incident relates to 02.11.2014, on which day the Prohibition and Excise Inspector, Hanomkonda raided Gundlasingaram village and seized TATA ACE Vehicle which contained 60 litres of illicitly distilled liquor, 1000 kgs of black jaggery and 40 kgs of alum and hence, registered crime No. 1718/2014-2015 on 02.11.2014. The detainee surrendered before the Court on 20.11.2014 and he was remanded to judicial custody.

9. Heard Sri Kollu Rajsekhar, learned counsel for the petitioner and Sri H. Venu Gopal, learned Government Pleader for Home at considerable length.

10. Sri Rajsekhar would contend that, it is in fact the Telangana State Act which is applicable as it is adopted on 21.03.2015, whereas the detaining authority acted upon the State Act of composite Andhra Pradesh State, thus reflecting lack of application of mind, but proceeded to contend that under Sub-section 1 of Section 3 of the Act, it is in fact the State Government which is the competent authority to order for preventive detention of a person whereas a similar exercise can be carried out by a Collector and District Magistrate or the Commissioner of Police as the case may be under Sub-section (2) of Section 3 of the Act. But, however, in case the power is exercised by the authorities specified under Sub-section 2 of Section 3 of the Act such a composite order shall not be valid unless it is approved by the State Government within 12 days of passing of such order. In the instant case, the State Government has passed orders through their G.O. Rt. No. 1886 General Administration Department dated 08.07.2015 approving the order of detention read in the said order. The order of the Government dated

08.07.2015 in turn referred to an order said to have been passed by the Collector and District Magistrate, Warangal on 29.06.2015 whereas the order of detention that has been served on the detainee is the one which is passed on 30.06.2015. It is, hence, contended by Sri Rajsekhar that possibly the Collector and District Magistrate, Warangal may have passed 2 different orders one on 29.06.2015 and another on 30.06.2015 and what was approved by the State Government is the one which is passed on 29.06.2015 whereas no such detention order dated 29.06.2015 is served on the detainee. Whereas the order that was served on the detainee bears the date 30.06.2015, which does not appear to have been approved by the State Government and hence, the preventive detention of the detainee is illegal. Sri Rajsekhar would also bring out that the State Government has passed orders through their G.O. Rt. No. 2361 GAD dated 26.08.2015 ordering for the detention for a period of 12 months from the date of detention on 01.07.2015. This order was passed exercising the power available under sub section 1 of Section 12 of the Act by the State Government, after receiving the report of the Advisory Board. Even in this order dated 26.08.2015 reference to an order of preventive detention said to have been passed by the Collector and District Magistrate, Warangal on 29.06.2015 was made but not the one passed on 30.06.2015.

11. Sri H. Venu Gopal, learned Government Pleader for Home, very frankly, would submit that the reference made to an order of preventive detention said to have been passed by the Collector and District Magistrate on 29.06.2015 is an erroneous one. In fact, no such order of preventive detention was passed by the Collector and District Magistrate, Warangal. In so far as the detainee is concerned in this case and against him the Collector and District Magistrate did pass the order on 30.06.2015, but a typographical error has crept in the orders passed by the State Government on 08.07.2015 as well as on 26.08.2015, while approving the initial order of preventive detention and subsequently firming up the period of detention. The date of preventive detention order as 29.06.2015 noted in those orders is the result of a typographical error.

12. To satisfy ourselves that it is a mere case of a typographical error in wrongly referring the date as 29.06.2015, we secured the file from the State Government and perused it. It is clear therefrom that the Collector and District Magistrate, Warangal did submit proposals to the State Government on 01.07.2015 clearly requesting the State Government to approve the order of preventive detention passed by her on 30.06.2015. The State Government which has considered the proposals at various levels of administration have clearly adverted to the same order dated 30.06.2015 in its note file. It is in fact that order which has been approved ultimately by the State Government. But, however, when the actual order has been released by the State Government, there was an erroneous reference to the order of preventive detention dated 29.06.2015. We are, therefore, convinced that there are no 2 orders passed by the Collector and District Magistrate, Warangal on 29.06.2015 and another on 30.06.2015 and on the other hand, there is only one order passed by her on 30.06.2015 and it is

this order which is approved initially and acted upon subsequently for firming up the term of detention. Thus, the inadvertent reference found in the 2 orders dated 08.07.2015 and 26.08.2015 passed by the State Government to the date 29.06.2015 is the result of an unintended typographical error and we are also of the opinion that such an unintentional error cannot be considered as a fatal error. But, however, the State Government in the General Administration Department will initiate necessary steps to fix the accountability on the person concerned for the error that has crept in and also take suitable measures for prevention of any such reoccurrence in future. Similarly, the State Government would ensure that no reference would be made henceforth to the Act, applied in the composite state, as the State of Telangana adopted the Act on 21.03.2015.

13. On the merits of the case, Sri Rajsekhar would submit that the Collector and District Magistrate has taken into account and consideration the instances which had occurred in between 24.02.2011 and up to 02.11.2014. Whereas the order of preventive detention was passed nearly 8 months after the last of those instances that had taken place on 02.11.2014. Therefore, it is contended that there is no proximate event that had occurred, for the Collector and District Magistrate to form the subjective satisfaction that the detainee was indulging in prejudicial or dangerous activities warranting his detention. In support of his plea, Sri Rajsekhar would rely upon the judgement rendered by the Supreme Court in *Union of India v. Paul Manickam and another*, (2003) 8 SCC 342 and *Rekha v. State of Tamilnadu through Secretary to Government and another*, (2011) 5 SCC 244.

14. The Supreme Court, while dealing with Paul Manickams case has noticed the view expressed earlier by it in *Icchu Devi Choraria v. Union of India* (, 1980 4 SCC 531) wherein the principle has been set forth as follows:

"The Court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirement of the law and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention."

15. Similarly, the Supreme Court also noticed the following principle enunciated earlier by it in *Hem Lall Bhandari v. State of Sikkim* (, 1987 2 SCC 9), wherein it was observed:

"It is not permissible in matters relating to the personal liberty and freedom of a citizen to take either a liberal or a generous view of the lapses on the part of the officers....."

16. Then proceeded to set out the following principle in Para 16 of the judgment:

"In case of preventive detention no offence is proved, nor any charge is

formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See *Rex v. Nallidev* (1917 AC 260); *Mr. Kubic Dariusz v. Union of India and others* (, AIR 1990 SC 605). But at the same time, a person's greatest of human freedoms, i.e., personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however, technical is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. (See *Ayya alias Ayub v. State of U.P. and another* (, AIR 1989 SC 364). To lose our country by a scrupulous adherence to the written law, said Thomas Jafferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end itself and the curtailment of liberty for reasons of State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters."

(Emphasis is supplied)

17. Whereas in *Rekhas case* , (2011) 5 SCC 244 (Supra) the relevant principle has been spelt out in Paras 29, 30, 32 and 33 as follows:

"Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal."

18. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is : Was the ordinary law of the land sufficient to deal with the situation ? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Indian Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.

19. In *Biram Chand's* case (supra) this Court held that the authorities cannot take recourse to criminal proceedings as well as pass a preventive detention order on the same facts (vide para 15 of the said decision). It is this view which was reversed by the Constitution Bench decision in *Haradhan Saha's* case (supra). This does not mean that the Constitution Bench laid down that in all cases the authorities can take recourse to both criminal proceedings as well as a preventive detention order even though in the view of the Court the former is sufficient to deal with the situation. This point which we are emphasizing is of extreme importance, but seems to have been overlooked in the decisions of this Court.

20. No doubt it has been held in the Constitution Bench decision in *Haradhan Saha's* case (supra) that even if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in Articles 21 and 22 of the Constitution (which we have already explained). Article 22(3)(b) is only an exception to Article 21 and it is not itself a fundamental right. It is Article 21 which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him opportunity of placing his defence through his lawyer. It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (Indian Penal Code or other penal statutes) will not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.

21. It might be true that the detaining authority had reason to believe that the detainee is suspected of involvement in series of crimes resulting in detection of illicitly distilled liquor. The record placed before the detaining authority by the sponsoring authority may have reflected the consistent involvement of the detainee in one crime or the other at regular intervals. It might also be true that the detaining authority has been made known that in several cases in which the detainee is suspected to have been involved, the samples of the illicitly distilled liquor was analysed by the chemical examiner and it was reported that it contained higher percentage of alcohol apart from various impurities in large quantities. Apart from ethyl alcohol, because of the crude and unscientific method of manufacture of liquor, the higher percentage of alcohol present is also brought out as amyl alcohol, butyl alcohol and propyl alcohol which are stronger substances than ethyl alcohol and consequently, have the tendency to effect the central nervous system of the consumer much faster resulting in rapid deterioration of the health system of the consumer. Thus, the detaining authority may have felt that the suspected activities of the detainee will have direct bearing upon the public order than posing a mere law and order problem.

22. In this context, it is appropriate to notice that the Supreme Court in *Ramesh*

Thapper v. State of Madras , 1950 SCR 594, has observed:

"..... Public Order is an expression of wide connotation and signifies that state of tranquillity, which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established..... It must be taken that the public safety is used as a part of the wider concept of the public order....."

23. Similarly, a Constitution Bench of the Supreme Court in Brij Bhushan and another v. State of Delhi , 1950 SCR 605 had observed that Public Order may well be para-phrased in the context as public tranquillity.

24. The Supreme Court again in Babul Mitra v. State of West Bengal , 1973 (1) SCC 393 has observed that the true distinction between the areas of law and order and public order is one of degree and extent of the reach of the act in question upon society. The act by itself is not determinant of its own gravity. In its quality it may not differ, but in its potentiality it may be very different. In Kuso Sah v. State of Bihar , 1974 (1) SCC 185, it was brought out by the Supreme Court that every infraction of law is bound in some measure to lead to disorder in the society, but every infraction of law does not necessarily result in public disorder. Again after reviewing the various earlier decisions of it, the Supreme Court in Commissioner of Police and others v. Smt. C.Anita , 2004 (7) SCC 467 has pointed out that it is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting public order from that concerning law and order. The Court went on to note that the question to ask is: Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? this question has to be faced in every case on its facts.

25. As the detaining authority has noticed, the acts suspected to have been indulged in by the detinue are likely to have an impairing affect of the societies life. Firstly, because of the convenient availability of the impurely and unscientifically distilled liquor and secondly, it being pushed for a relatively lesser price than a properly distilled and marketed liquor. Above all, the greater degree of potentiality of intoxication, because of presence of otherwise harmful alcohol in the illicitly distilled liquor, makes it a potentially attractive one but it is a dangerous activity as it can impair the health of a larger body of the consuming society, much faster than one may have anticipated. The subjective satisfaction of the detaining authority cannot be faulted on that score.

26. The learned Government Pleader is also right in placing reliance upon the majority opinion contained in the Full Bench judgment between Ganesh Traders (Kirana and General Merchants), Dhermapuri, Karimnagar District v. District Collector, Karimnagar and others , 2002 (1) ALD 210 (FB), wherein Justice Raghu Ram in his opinion has forcefully brought out the answer to the question whether black jaggery is a substance which falls within the meaning of the expression

materials found in Section 13(f) of the Andhra Pradesh Excise Act, 1968 or not, in Paras 16, 17, 23, 24, 27 and 31:

"16. It is trite that a Judge too is a legislator who uses the law's inevitable ambiguities to promote justice. Legislation is the organised civil society's structured response to perceived social demands. Regulatory legislation targets deviant behaviour of some members of the social composite, behaviour that is perceived to subvert the equilibrium of the society. Some identified factors that upset the equilibrium may be specified in the legislation. The legislation may also, in recognition of the dynamics of the society, the technological and other advances perceived at the time of the enactment, including the creative propensities of depredators and their potential to discover, explore or create novel means to disturb the social harmony, bring within the expressed regulatory frame work such evolving mischief too, by employing broad terms definitional or substantive. If the legislation has set for itself a broad regulatory charter, specifying the core and including a dynamic penumbra, the judicial branch ought not to subvert the charter by a pedantic or a lexicographic analysis. If a construction of the broad legislative terms, on accepted interpretive principles, permits the regulatory architecture of the Act to encompass and regulate current versions of the mischief which the Act is intended to curb, the legislation must be permitted the full sway of its amplitudinous reach.

17. From the lofty ramparts of Part III of the Constitution, Article 21 guarantees that no person shall be deprived of his life except in accordance with the procedure established by law. This guarantee is not a creation of the Constitution. It is the recognition in our founding document of the inalienable and transcendent norm of every civilised society. This guarantee is not dependent on any transient choice expressed in a majoritarian instrument nor needs sustenance by a legislative edict. The guarantee is not a guarantee against mere State action. It is a guarantee against the whole of the society and every member of it is a guarantee that encompasses manufacturers of products that inexorably and tortuously choke a consumer of the product, to excruciating death or physical disability. This is the broad charter of Art 21 itself and of the 1968 Act too in so far as intoxicants are concerned.

23. This broad term statutory prescription, in the generic amplitude expressed coupled with the expression "whatsoever" would certainly include "Black Jaggery". Of this there can be no doubt. The question is whether "Black Jaggery" is material for the purpose of manufacturing an intoxicant That illicit distilled liquor is an intoxicant, is also not in dispute.

24. What appears to be in issue however, is the identification of the material expressed to be "Black Jaggery". Is it jaggery otherwise fit for human consumption but black in colour; is it jaggery that is black in colour and though not fit for human consumption is fit for use in other lawful areas excluding or including manufacture of an intoxicant or is it a material having no other use except in the manufacture of unscientifically distilled liquor?

27. Even this processed interpretation may be productive of substantive inconvenience to the manufacturers, traders and dealers of "Black Jaggery" as it is only on analysis of a specific sample of the material that the conclusion is possible that it is ""Black Jaggery"" that has no other use except potentially for manufacture of an intoxicant But in my considered view this is not a disproportionate burden on the manufacturers or traders of "Black Jaggery" that outweighs the dear and present danger of leaving this material totally unregulated.

31. On the analysis above 1 hold that "Black Jaggery" which has no other legitimate, established or demonstrable purpose and utility except for the manufacture of an intoxicant, is comprehended within the meaning of the expression "materials" in Section 13(f) and as such is susceptible to the regulatory framework and to the penalties set out in the 1968 Act including Section 34 thereunder."

27. Learned Government Pleader is also right in relying upon the Division Bench Judgment of the Commissioner of Prohibition & Excise, Andhra Pradesh, Hyderabad and others v. Sri Balaji Traders, Hyderabad and others , 2006 (5) ALT 506 (DB), that possession of black jaggery attracts the penal provision contained under Section 13(f) of the Excise Act and consequently liable to be penalised as per section 34 of the said act. The learned Government Pleader is also right in his submission that the sufficiency of grounds for ordering preventive detention is not available for judicial review of this Court. In fact he has relied upon the principle enunciated by the Constitution Bench of the Supreme Court as long back as on 25.01.1951 in its judgment rendered in Tarapada De and others v. State of West Bengal , AIR 1951 SC 174, wherein Chief Justice Kania held as under:

"The sufficiency of the grounds, which gives rise to the satisfaction of the Provincial Government, is not a matter for examination by the Court..... On the question of satisfaction, as has been often stated, one person may be, but another may not be, satisfied on the same grounds."

28. But at the same time it would be appropriate to notice that the power of preventively detaining a person is a frightful and awesome power with drastic consequence affecting the personal liberty of the individual. Hence, such power has to be exercised with great care and caution and it is the duty of the courts to see to it that the said power is not abused or misused, as noted by the Supreme Court in Frances Coralie Mullin v. Union Territory of Delhi , AIR 1981 SC 746.

29. In Sushanta Goswami v. In Re , 1969 (3) SCR 138, it was held by the Supreme Court:

"The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is not necessarily sufficient for action under the Act but a disturbance which will affect public order can alone

justify the detention under that Act."

30. In *State of U.P. v. Hari Shankar Tewari* , 1987 AIR (SC) 998, on a review of the relevant case law, it was held:

"No hard and fast rule can really be evolved to deal with problems of human society. Every possible situation cannot be brought under watertight classifications and a set of tests to deal with them cannot be laid down. As and when an order of detention is questioned, it is for the Court to apply these well known tests to find out whether the impugned activities upon which the order of detention is grounded go under the classification of public order or belong to the category of law and order."

31. It is one of the principal grounds of attack that remote events cannot be made the basis for detention by the detaining authority.

32. In the instant case the latest incident which has been referred and relied upon in the grounds of detention by the detaining authority is stated to have taken place on 02.11.2014 whereas the detention order has been passed nearly 8 months thereafter on 30.06.2015. In such a case, can that be said to be a proximate event to the order of detention warranting the exercise of power by the detaining authority. There cannot be hard and fast rule or a set standard by which the remoteness of events to the detention order can be gauged. But, however, the statute itself offers some guidance in this respect, when it provided for the maximum period of detention to be 12 months under Section 13 of the Act. Therefore, if a person can at best be detained for a maximum period of 12 months, so as to achieve the objective of preventing him from taking to the dangerous activity, if an event had happened fairly sometime back, say, by a substantive length of this tenure, then such an event cannot be considered as a proximate one at all. As was noticed supra, the incidents the last of which has been referred to had occasioned 8 months before the order of preventive detention passed on 30.06.2015. Eight months of duration, when compared to the tenure of 12 months, one would find that it necessarily amounts to a substantive length of time back. Consequently, we are of the opinion that when we reckon from the last of the incidents, the detention order, lost the connectivity because of lack of proximity. It is a settled principle that stale and sterile factors cannot be taken into account and consideration for preventively detaining a person, as was held in *Rishikesh Tanaji v. State of Maharashtra* , 2012 (2) SCC 72.

33. In this view of the matter, we find that the order of detention passed by the Collector is based upon remote events and hence, it is not liable to be justified and as a natural corollary the further continuance of the detention of the detenu is illegal.

34. For the reasons aforementioned, we are of the opinion that the further detention of the detenu, by name Sri Chitikesi Sadashivudu, S/o Punnam Chander, pursuant to the order passed by the Collector and District Magistrate,

Warangal on 30.06.2015, is unsustainable. Therefore, he shall be set at liberty forthwith, if not required in connection with any other matter.

35. The writ petition accordingly, stands allowed.

36. Consequently, miscellaneous petitions, if any shall stand closed. No costs.