
(1994) 01 AP CK 0020
In the Andhra Pradesh High Court
Case No : Writ Petition No. 42 of 1994

E. Sumathamma	Vs	APPELLANT
The State of A.P. and Others		RESPONDENT

Date of Decision : 29-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 ALT 396 : (1994) 1 APLJ 246

Hon'ble Judges : P. Ramakrishnam Raju, J;M.N. Rao, J;M. Ranga Reddy, J

Bench : Full Bench

Advocate : A. Rajasekhar Reddy, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

1. This petition is filed seeking writ of habeas corpus questioning the order dated 22-12-1993 passed by the second respondent in Cr.No. 4904/93/F1 directing detention of the petitioner's husband - E. Thirupathi Reddy - for a period of three months on the allegation that he is acting in a manner prejudicial to the maintenance of public order since he is indulging in sale of uncertified and cheap liquor endangering public health.

2. When the writ petition came up for hearing before a Division Bench of this Court comprising two of us - M.N. Rao & P. Ramakrishnam Raju, JJ., - one of the contentions raised before the Division Bench was that neither the impugned order of detention nor the grounds supplied to the detenu specifically mentioned that the detenu is a boot legger and, therefore, the order is vitiated on that ground on the authority of two Division Bench judgments of this Court in C. Venkataiah v. Commissioner of Police, 1989 (3) ALT 230 and Shaik Shikinder Vs. The Govt. of A.P. and Others,

3. In Venkataiah's case¹, a Division Bench of this Court was of the opinion that unless the satisfaction of a particular type covered by Section 3(1) of the A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders,

Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act") is mentioned in the order of detention, the condition precedent for applicability of Section 3(1) of the Act is not satisfied and consequently, the order will be invalid. To the same effect is the other Division Bench decision in Shaik Shikinder's case¹.

4. Disagreeing with the aforesaid view of the two Division Benches the Division Bench comprising M.N.Rao and P. Ramakrishnam Raju, JJ., observed:

"With great respect we are unable to agree with the view taken by the two Division Benches. When the grounds mention in detail the alleged activities of the detenu, failure to specify under what category of persons the detenu falls, in our view, is not a vitiating factor. We are, therefore, of the considered opinion that the two decisions require reconsideration and the question needs to be considered authoritatively by a Full bench of this Court." Consequently, the matter is posted before us.

5. The impugned order of detention was passed u/s 3(2) of the Act. In the grounds supplied to the detenu along with the detention order, the following three instances are mentioned:

"On 26-9-1990, at about 7-05 A.M., while you were transporting 2,500 litres of arrack of 90 ml. sachets at Chandampet Bus-stop without any valid transport permit or licence to possess the above said contraband. Thereby the Sub-Inspector of Police, Chandampet seized the abovesaid contraband and transferred to the Excise Sub-Inspector, range Gundlapally (Dindi). The Excise Sub-Inspector, range Gundlapally registered a crime and occurrence report No. 13 /89-90. dt. 26-9-1990 u/s 31(1)(b) of A.P. Excise Act, 1968 and is compounded.

On 18-11-1993, at about 12-50 noon, while you were in possession of 753 nips of spurious liquor in your house bearing No. 1-88 without any valid permits or licence to possess the same, thereby the Excise Sub-Inspector, range Gundlapally seized the above said contraband and registered a case in crime and occurrence report No. 30/93-94 dated 18-11-1993 u/s 34(a) of A.P. Excise Act, 1968 and is pending for laying of charge-sheet. You have also threatened the informer in this case by name B. Kondal Reddy, s/o Krishna Reddy, R/o Thimmanur with dire consequences and forcibly collected Rs. 2,000/- from his parents of informant B. Kondal Reddy. A petition dated 25-11-1993 has been received by the Collector in this regard. It clearly shows you high handed behaviour and mens rea.....

Moreover, the sale of uncertified and cheap liquor of doubtful quality in large quantity on the eve of the ensuing festival seasons like the Christmas, the New Year Day celebrations and Sankranti will cause grave danger to public health, safety and tranquility. The provisions of the A.P. Excise Act are not sufficient to deal with such a dangerous activity."

In paragraph (1) of the order of detention, it is mentioned:

"Whereas the Superintendent of Excise, Nalgonda has filed the complaint before me showing various cases in which the contraband i.e., duplicate arrack sachets and spurious liquor (IML) has been seized from different places in different crime numbers in the limits of Excise range Gundlapally (Dindi) and the investigations in the said cases have shown that you are the manufacturer of the arrack sachets and spurious IML liquor and sales to public at large. The possession of arrack sachets and preparation of spurious IML liquor would itself show that you are indulging in clandestine business of duplicate arrack sachets and spurious IML and causing heavy loss to the State's exchequer and if anybody consumes, there is a danger to life on the public health."

It is true that either in the order of detention or in the grounds, the detenu is not described as a "boot legger".

6. Sri Rajasekhar Reddy, learned Counsel for the petitioner, urged two contentions: Unless the category to which the detenu belongs is mentioned in the order and grounds, the order of detention cannot be sustained; it will have to be struck down on the ground of non-application of mind by the detaining authority; and (2) that there is undue delay between the first act alleged and the second act as well as the order of detention. The crime alleged in ground No. 1 has become stale by lapse of time and also in view of the fact that it was compounded.

7. So far as the first contention is concerned, from a reading of the grounds and the order, it is clear that all the alleged acts attributed to the detenu point out that he is a "boot legger". There are no other acts attributed to him pointing out any other category mentioned in Section 3 of the Act. Section 3 of the Act which confers power to order detention of certain persons mentions the following categories:

"Bootlegger, dacoit, drug-offender, goonda, immoral traffic offender of land grabber".

A "bootlegger" is defined u/s 2(b) as:

"Boot-legger means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing."

The learned Counsel relied upon several decisions in support of his contention that unless the category to which the detenu belongs is mentioned in the order

of detention as well as the grounds, the order of detention cannot be sustained. Those cases evidence instances of non-application of mind. We are satisfied, on a reading of the order of detention and also the grounds, that this is not a case of non-application of mind. All the descriptive particulars of the acts alleged clearly and unerringly point out that the detenu is a bootlegger. No other particulars relatable to any other category of persons covered by Section 3(1) of the Act are mentioned.

8. In Venkataiah's case (1 supra), the order of detention was passed by the Commissioner of Police against the detenu "with a view to preventing him from dangerous activities which are prejudicial to the maintenance of public order". The order was passed u/s 3(1) of the Act. Both in the grounds and as well as in the order, it was not mentioned that the detenu was a "goonda" as defined in the Act. Dealing with the contention that non-mention of the category to which the detenu belongs viz., "goonda" is fatal to the order of detention, the Division Bench observed:

"It is not the contention of the detenu here that the grounds of detention which impressed the mind of the detaining authority should find place in the order of detention. On the other hand, the contention of the learned Counsel for the detenu is that, sine qua non, for passing an order u/s 3(1) there must specifically be the recording of the detaining authority that the person concerned belongs to any of the categories mentioned in the opening part of Section 3(1). Section 3(1) does not apply to "any person". The section applies only if the detaining authority is satisfied that the detenu is one of the type of persons mentioned in Section 3(1). Therefore, unless the satisfaction of a particular type covered by Section 3(1) is mentioned in the order of detention, the condition precedent for applicability of Section 3(1) is not satisfied and therefore, the order will be invalid in the sense that it is not in accordance with Section 3(1)."

There is no reference in the law report to the descriptive particulars in the grounds which accompanied the order of detention. The Division Bench distinguished the decision of the Supreme Court in *District Magistrate, Nowgong and Another Vs. Sarat Mudoi*, . The Supreme Court in the said decision, was dealing with a case under the National Security Act, 1980. The order passed against the detenu in that case recited:

".....it is necessary to prevent Shri Sarat Mudoi, s/o Shri Renu Mudoi, village Senchows, P.S. Nowgong from acting in any manner prejudicial to maintenance of public order and maintenance of supplies and services essential to the community, I, S. Kablian, IAS., District Magistrate, Nowgong, hereby in exercise of powers conferred u/s 3(2) read with Section 3(3) of National Security Act, 1980, direct that Shri Sarat Mudoi be detained with immediate effect until further orders."

Six grounds were mentioned in the grounds of detention. The Supreme Court held:

"We are inclined to take the view that a full disclosure made in the grounds in no way prejudices the right guaranteed to the detenu to make an effective representation challenging his detention. Therefore, non-specification of the required particulars in the order of detention would not vitiate the order as long as the particulars are provided in the grounds in support of the order of detention which in quick succession of the detention order are served on the detenu."

9. The sine qua non for the exercise of power u/s 3(1) of the Act is the satisfaction of the detaining authority with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land-grabber with a view to preventing him from acting in any manner prejudicial to the maintenance of public order that it is necessary to detain him. It does not obligate that even after mentioning all the descriptive particulars of the acts attributed to the person to be detained, there should be a formal mention of the category to which the person belongs. It is always advisable to do so but failure to do so, in our opinion, will not vitiate the order of detention, provided, if otherwise the order of detention and the grounds disclose that the satisfaction arrived at by the detaining authority was in accordance with law. The statement of law laid down by the Supreme Court in Dist. Magistrate, Nowgong's case (3 supra) squarely covers a situation of the present type. The Division Bench in Venkataiah's case (1 supra), with great respect, was not right in observing that the decision of the Supreme Court referred to above has no application.

10. So far as Shaik Shikinder's case (2 supra) is concerned, there is no reasoning or discussion to come to the conclusion viz., that unless the category to which the detenu belongs is mentioned, the order of detention is vitiated. In view of the decision of the Supreme Court in Dist. Magistrate, Nowgong's case (3 supra), the two decisions in Venkataiah's case (1 supra) and Shaik Shikinder's case (2 supra) cannot hold the field and accordingly with great respect to the learned Judges we over-rule the same.

14. Having answered the reference made to the Full Bench, we would now proceed to deal with the other contentions raised by the learned Counsel for the petitioner.

12. There is no need to refer to the other contentions advanced by the learned Counsel for the petitioner as we are of the view that the writ petition must succeed on a short point: In ground No. 2 of the grounds of detention, it is mentioned that the detenu was in possession of 753 nips of spurious liquor in his house bearing No. 1-88 without any valid permits or licences. Chi that ground, the detaining authority arrived at the satisfaction that the same would constitute grave and widespread danger to "life and public health". In the material supplied to the detenu, the crime and occurrence report in Cr. No. 30/93-94 dated 18-11-1993 also finds a place. The said report reads:

"The brief particulars of the case are that under supervision of E.D Devarkonda

and E.D. Striking Force, Nalgonda have raided the house bearing No. 1-88, Thimmapur village of Chandampet Mandal and recovered (17) cartons of O.T. Whisky each containing (42) bottles and (1) carton containing (39) bottles each bottle 180 ml. The above property seized and sealed under cover of panchanama. The accused has been arrested, hence booked a case u/s 34(a) of A.P. Excise Act, 1968. Hence registered a case."

Nowhere it mentions that the seized liquor was spurious. Unless it is spurious, it cannot be said that the detenu was indulging in acts prejudicial to the maintenance of public order. The explanation to Clause (a) of Section 2 of the Act reads:

"For the purpose of this clause, public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia if any of the activities of any of the persons referred to in this clause directly or indirectly is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health."

As there is no danger to public health or life if a person stocks genuine liquor, it cannot be said that he has acted in a manner prejudicial to the maintenance of public order. The act alleged may amount to an offence under the Excise Law but it will not justify preventive detention under the Act. This position could not be disputed by the State.

13. The writ petition is, therefore, allowed and the impugned order of detention dated 22-12-1993 is quashed. The detenu - E. Tirupathi Reddy -now lodged in Central Prison, Warangal shall be released forthwith.