

---

**(2009) 07 AP CK 0044**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 12076 of 2009**

Easlewala Mumtaz

APPELLANT

Vs

Collector and District Magistrate and Others

RESPONDENT

---

**Date of Decision : 15-07-2009**

**Acts Referred:**

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2, 3(1)  
Constitution of India, 1950 — Article 226

**Citation :** (2009) 2 ALD(Cri) 459 : (2009) 6 ALT 395 : (2009) 3 APLJ 216

**Hon'ble Judges :** D.S.R. Varma, J;B. Seshasayana Reddy, J

**Bench :** Division Bench

**Advocate :** C. Praveen Kumar, for the Appellant; A.G., for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

B. Seshasayana Reddy, J.—This writ petition has been filed under Article 226 of the Constitution of India by Easlewela Mumtaz challenging the order of detention dated 08.04.2009 passed by the Collector and District Magistrate, Ranga Reddy-1st respondent detaining Easlewela Laxminarayana S/o. Kanjarlu on the ground that he is a bootlegger within the meaning of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No. 1 of 1986) (for short, "the Act"), and consequential order of approval passed by the Advisory Board and confirmation by the Government vide G.O.Rt. No. 2060 General Administration (Law and Order. II) Department, dated 01.05.2009.

2. The detaining authority i.e., Collector and District Magistrate, Ranga Reddy-1st respondent has referred four incidents to categorize the detainee as a bootlegger as defined u/s 3(1) r/w. 2(a) and (b) of the Act.

3. The grounds of detention, in brief, are: On 07.05.2008 the Prohibition and Excise Sub-Inspector of Prohibition and Excise Station, Balanagar, Ranga Reddy District, seized 130 illicit distilled liquor sachets from the possession of K.

Yadagiri and arrested him. On enquiry, the said Yadagiri revealed the name of the detainee as the person who supplied the illicit distilled liquor sachets to him. Police arrested the detainee on 07.05.2009 and produced before the Special Judicial Magistrate of First Class for Proh. and Excise-cum-XII Metropolitan Magistrate at L.B. Nagar, Rangareddy District. Subsequently, the detainee came to be released on bail on 09.05.2008. The sample collected from the illicit distilled liquor sachets came to be sent for analysis. The Government Chemical Examiner tested the sample and opined that the sample is illicit distilled liquor and unfit for potable purpose. On 19.06.2008, the Prohibition and Excise Sub-Inspector of Prohibition and Excise Station, Balanagar, Rangareddy District, arrested the detainee and seized 416 illicit distilled liquor sachets. Sample collected from the said sachets came to be sent for chemical analysis. The Government Chemical Examiner of Prohibition and Excise, Regional Prohibition and Excise Laboratory, Hyderabad submitted his report opining that the sample is illicit distilled liquor unfit for potable purpose. Subsequently, the detainee came to be released on bail on 28.06.2008. On 13.10.2008, the Prohibition and Excise Sub-Inspector of Prohibition and Excise Station, Balanagar, Rangareddy District, conducted route march and found Takur Pavan Kumar S/o. T. Raj Kumar and Siddu Sing S/o. Subash Singh in possession of 100 litres of illicit distilled liquor. They stated to have told the Prohibition and Excise Sub-Inspector the source of securing I.D. liquor was from the detainee. The detainee came to be arrested and sent for judicial custody. Subsequently, he came out on bail on 19.11.2008. The sample collected from the I.D. liquor was sent for chemical analysis and the report reveals that the sample is illicit distilled liquor unfit for potable purpose. On 23.11.2008 the Prohibition and Excise Sub-Inspector, Enforcement Party, Rangareddy Zone surprised the premises bearing H. No. 11-82 owned by E. Laxmikanth, Parthiwada, Fathenagar of Balanagar and seized 1400 I.D, liquor sachets in seven plastic bags. The said E.Laxmikanth stated to have revealed the name of the detainee as the person who supplied the illicit distilled liquor. The detainee surrendered before the Spl. Judicial Magistrate of First Class for Proh. and Excise-cum-XII Metropolitan Magistrate at L.B. Nagar, Rangareddy District on 02.12.2008. Thereafter he came out on bail on 02.12.2008. The sample collected from the I.D. liquor sachets came to be forwarded for chemical examination. The report of the Government Chemical Examiner revealed that the sample is illicit distilled liquor unfit for potable purpose. The Collector and District Magistrate, Rangareddy District-1st respondent has referred these four incidents and came to the conclusion that the detainee comes within the meaning of the bootlegger as defined in Section 3(1) r/w. 2(a) and (b) of the Act and thereby proceeded to order for detention of the detainee under proceedings dated 08.04.2009. Subsequently, the order of detention came to be confirmed after perusing the report submitted by the Advisory Board. The Government issued G.O.Rt. No. 2060 General Administration (Law and Order. II) Department, dated 01.05.2009 confirming the order of detention. Hence, the writ petition.

4. When this writ petition came up for consideration, learned Advocate General

takes notice on behalf of the respondents. With the consent of the learned Counsel appearing for the parties, the writ petition is take-up for final disposal at the admission stage.

5. Heard learned Counsel appearing for the petitioner and learned Assistant Government Pleader representing the learned Advocate General appearing for the respondents.

6. Learned Counsel appearing for the petitioner submits that the case registered against the petitioner in respect of COR No. 40 of 2008-09 of Prohibition and Excise Station, Balanagar, ended in acquittal on 02.04.2009 and this fact was not considered by the detaining authority-1st respondent and thus, the order of detention vitiates.

7. Learned Assistant Government Pleader representing the learned Advocate General appearing for the respondents supported the order of detention impugned in the writ petition.

8. The only point that arises for consideration is, whether non-consideration of the acquittal of the detenu in Crime COR No. 40 of 2008-09 by the detaining authority vitiates the order of detention. Learned Counsel appearing for the petitioner by placing reliance on the decisions of the Supreme Court in *Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another*, and *Ramesh Vs. State of Gujarat and Others*, submits that material fact of acquittal of the detenu was not placed before the detaining authority and therefore, the order of detention suffers from serious infirmity. It is well settled in the above said two decisions that in case of detaining authority not taken into consideration of the fact of acquittal of the detenu, the order of detention vitiates. For better appreciation, we may refer para 12 of the judgment in *Dharamdas Shamlal Agarwal's case (supra)*, which reads as hereunder:

12. From the above decisions it emerges that the requisite subjective satisfaction the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. It is clear to our mind that in the case on hand, at the time when the detaining authority passed the detention order this vital fact, namely, the acquittals of the detenu in case Nos. mentioned at Serial Nos. 2 and 3 have not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases were pending. The explanation given by the learned Counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material fact - namely the acquittal of detenu in the above-said two cases resulting in non-application of minds of the detaining authority to the said fact has vitiated the requisite subjective satisfaction,

rendering the impugned detention order invalid.

As could be seen from the order of detention, the sponsoring authority stated that case in COR No. 40 of 2008-09 is pending trial. This is factually incorrect. The learned Assistant Government Pleader has not disputed the fact of acquittal of the detainee in a case relatable to COR No. 40 of 2008-09. Once the sponsoring authority has not placed before the detaining authority with regard to acquittal of the detainee in COR No. 40 of 2008-09, the entire order of detention vitiates.

9. In the result, this writ petition is allowed and the impugned detention order, dated 08-04-2009, passed by the Collector and District Magistrate, Ranga Reddy-1st respondent, as confirmed by the Government in G.O.Rt. No. 2060 General Administration (Law and Order. II) Department, dated 01.05.2009, is set aside. The detainee, by name Easlewala Lakshminarayana, S/o.Kanjarlu, who is now detained in Central Prison, Cherlapalli, Ranga Reddy District shall be released forthwith, if not required in any other offence. No costs.