
(1982) 04 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1326 of 1982

Gangaram

APPELLANT

Vs

Government of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 23-04-1982

Acts Referred:

Evidence Act, 1872 — Section 125

Citation : (1982) CriLJ 1433

Hon'ble Judges : Punneya, J;P.A Choudary, J

Bench : Division Bench

Advocate : P. Babul Reddy, for Shaik Sardar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Punneya, J.—The petitioner's brother named jai Bhagwan was kept under detention by an order of detention passed by the first Respondents on 20-2-1982, under S. 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 hereinafter referred to as the Blackmarketing Act.

2. While passing the order of detention in exercise of the powers of conferred under S. 3(1) of the Blackmarketing Act the Commissioner of Civil Supplies furnished the grounds of detention on 20-2-1982 as required under S. 8 of the Act, in order to enable the detenu to make a representation against the order of detention to the appropriate Government. The grounds read as follows :-

"You are a partner of M/s. Jainarayan Jaibhagwan a firm registered in Delhi, in the month of January and February, 1982 you brought 21 consignments of Maida to Hyderabad for sale and got the documents concerned with the said consignments of Maida from Laxmi commercial bank. You have been trading in the name of M/s. Agarwal Trading Company. Pulses and Grain Merchants, Mukthyarguni Hyderabad, without their knowledge. Enquiries from Laxmi Commercial Bank revealed that consignments despatched in the named of M/s. Agarwal Trading Company are being taken delivery of by two person from Delhi

by your self and your younger brother, Jai Prakash. You were identified by the Manager, Laxmi Commercial Bank, Abida Hyderabad as the same person. All the above 21 consignments were despatched on the various dates shown in the Annexure and got released by you. The firm Agarwal Trading Company floated by you does not have registration or licence under A.P. Foodgrains Dealers" Licensing Order and you dealing in Maida without licence at Hyderabad is a contravention under the Clause 3 of the A.P. Foodgrains Dealers" Licensing Order, 1964. Your acts constitute a clandestine sale within the meaning of the A.P. Foodgrains Dealers" Licensing Order.

Again in the week of February 1982 you sent a lorry load of pulses to Hyderabad in the name of a fictitious firm known as M/s. Rajeev trading Company for the purpose of sale but the same was detected by the Vigilance Cell Officers of Civil Supplies departments and got registered a case as Crime No. 5/VC/City/82 of V.C. Hyderabad (F.I.R. enclosed) ".

3. Sri P. Babulu Reddy challenges the order of detention on the following grounds.

1. That the order was void since the material furnished to the detenu were vague or insufficient affecting his right to make an effective representations against the order of detention.

2. That the documents on which the Detaining Authority relies were not furnishing to the detenu :

3. That the grounds are not specific inasmuch as the Detaining Authority is certain or decisive in its mind whether the acts of the detenu come under clause (a) or Clause (b) or under both the clauses of Explanation to S. 3 of the Act, and

4. That the proceedings under S. 6-A of the Essential commodities Act and consequent criminal proceedings launched against the detenu debar the detaining authority from taking action for his detention under the Act.

4. We would like to examine whether the necessary particulars were not furnished to the detenu in support of the first grounds.

5. It is now well settled that the grounds under which the detention was made be specific and precise so as to enable the detenu to make an effective representation. In The State of Bombay Vs. Atma Ram Sridhar Vaidya, , their Lordships held that the satisfaction of the Governments must be based on some grounds. There can be no satisfaction if there are no grounds for the same. The grounds are such that a rational human being can consider connected in some manner with the object which were to be prevented from being attained. The grounds which from the basis of satisfaction when formulated are bound to contain certain facts. The question is what should be stated in the grounds.

6. In Rameshwar Lal Patwari Vs. State of Bihar, , their Lordships held that the grounds must not be vague or indefinite and must afford a real opportunity to make a representation against the detention.

7. In the first grounds it was stated that the detenu was a partner of M/s. Jainarayan Jaibhagwan, a firm registered in Delhi. In the months of January and February, 1982, the detenu brought 21 consignments of Maida to Hyderabad for sale and got delivery of the said 21 consignments of Maida to submitting the concerned documents in the Laxmi Commercial bank, He has been trading in the name of M/s. Agarwal Trading Company, pulses and grain Merchants, Mukthyargunj, Hyderabad, without their knowledge. Enquiries from Laxmi Commercial bank revealed that they consignments despatched in the name of M/s. Agarwal Trading Company are being taken delivery of by two persons from Delhi i.e. the detenu and his brother, Jaiprakash and they were identified by the Manager of Laxmi Commercial Bank, Abida, Hyderabad that all the above 21 consignments were despatched on the various dates shown in the annexure and got released by the detenu.

8. The firm Agarwal Trading Company floated by the Detenu does not have any registration or licence under the Andhra Pradesh Food Grains Dealers" Licensing Order and the detenu was dealing in Maida without licence at Hyderabad and it is a contravention of Clause 3 of the Andhra Pradesh Food Grains Dealers" Licensing Order, 1964, His acts thus constitute a clandestine sale within the meaning of A.P. Food Grains Dealers" Licensing Order.

9. As could be seen from the particulars furnished in the first grounds it is clear that the detenu obtained delivery of 21 consignments of maida to Hyderabad in January and February, 1982 in the name of M/s. Agarwal Trading Company, Pulses and Grain Merchants which is a fictitious firm and not at all in existence in Hyderabad and took delivery of the said 21 consignments of Maida through Laxmi Commercial Bank and the detenu was identified by the manager of the laxmi commercial bank as the person that took delivery of the consignments of maida on the production of the relevant documents and the detenu was selling the said consignments in Hyderabad without licence in contravention of Clause 3 of the Andhra Pradesh Food grains Dealers" Licensing Order, 1964. All these particulars were furnished to the detenu in support of the first grounds.

10. That being so we find it difficult to accept the contention of the counsel for the detenu that this ground is vague was not able to produce any material to show that M/s. Agarwal Trading company, Pulses Grain Merchants is not a fictitious one or it is a registered firm existing in Hyderabad. He could state in his affidavit that he was holding licence for selling the said consignments of Maida in Hyderabad. On the other hand his explanation in the affidavit is that the detenu was working as a canvassing agent, registers indents for the supply of given commodity and this (sic) message will be sent to Delhi wither by telephone or by the way of letters/telegram etc. On the receipt of the message for supply of given commodity, the necessary arrangements will be made for despatching the goods either by rail or trucks according to the given circumstances and the Rs. and the lorry receipts as the case may be would be sent to Hyderabad on self basis through bank and after the receipt of the goods at Hyderabad the

documents will be retired from the Bank after the remitting the sale price covering the goods to be taken delivery of and on the documents necessary endorsements will be made on the R.Rs. to enable the purchaser to take delivery of the goods from the station or transport office as the case may be. If this explanation is true there was no necessary for the detenu to bring the goods from Delhi and other places in the name of a fictitious firm M/s. Agarwal Trading Company, Pulses and grains Merchants himself retiring the documents under the same and also taking delivery of goods in the same name and then selling the same goods to local dealers without licence. The explanation is therefore, false. It is therefore, clear that the detenu was selling Maida which he took delivery in the name of a fictitious firm without a licence. The local dealers are not accounting for the goods sold by the detenu in their records. On this aspect the respondents explained in the counter that normally trading practice is that goods are sent in the name of consignor and documents after payment of the invoice amount to consignee only and even if the detenu follows the normal procedure of sending goods in the name of actually registered dealers in Hyderabad and sends documents through bank there will be no difficulties for him in releasing sale proceeds of goods sold by him. The detenu has not been functioning as a canvassing agent but has been functioning as a dealer as the railway receipts in question have not been endorsed to any Hyderabad Party, but the goods have been taken delivery from the railway station in the name of a fictitious firm M/s. Agarwal Trading Company.

11. We therefore, have no hesitation to hold that all the particulars in support of grounds No. 1 are furnished to the detenu.

12. Even with regard to the second grounds the detenu was furnished with all the particulars. This ground also cannot be said to be vague. In support of the second grounds it is stated specially that the first week of February, 1982 the detenu sent a lorry load of pulse to Hyderabad in the name of the fictitious firm called M/s. Rajeev Trading Company for the purpose of sale but the same was detected by the Vigilance Cell Officer of Civil Supplies Departments and got registered a case and the matter was under the investigation.

13. On this aspect the petitioner contends in his affidavit that the detenu has nothing to do with M/s. Rajeev trading Company. But the counter it was specifically stated that it was the detenu that approached the concerned authorities for release of those goods that he has therefore, not true to say that he has been nothing to do with the said consignments. It really the detenu has nothing to do with the goods transported through the lorry of the fictitious firm of Rajeev Trading Company the detenu should not have requested the concerned authorities for the release of the goods to him.

14. Sri Babul Reddy contends that in as much as the relevant documents in which the detaining authority relied were not furnished to the detenu, the detention is vitiated. According to him the furnishing of mere F.I.R. is not sufficient. When the detaining authority contends that the detenu sent a lorry

load of pulses to Hyderabad in the name of M/s. Rajeev trading Company for the purpose of sale and when the same was detected by the Vigilance Cell Officer of the Civil Supplies Departments the documents showing that the detenu himself sent the said lorry ought to have been furnished along with the grounds.

15. It is now well selected that the documents and material relied upon in the order of detention from an integral part of the grounds and must be supplied to the detenu *pari passu* the grounds of detention.

16. Before the order of detention can be supported these constitutional safeguards must be strictly observed (Vide *Kamla Kanyalal Khushalani Vs. State of Maharashtra* and another, . In this case as stated above all the particulars relating to the lorry being sent by the detenu are furnished in the F.I.R. The detenu of course contends that he has nothing to do with the Rajeev Trading Company. But the investigation reveals that the detenu himself sent the lorry transporting pulses. As stated above S. 125 of the Evidence Act prohibited the investigating authorities from revealing the name of the person who informs the authorities that the detenu transported the consignments of pulses through the lorry. In view of S. 125 of the Evidence Act the informant's name could not be revealed. As all the particulars were furnished in the F.I.R. which is supplied to the detenu it can not be said that this grounds is vitiated by non-supply of the relevant documents.

17. Sri Babul Reddy contends that even if particulars are furnished in support of the grounds, the order of detention can be treated to have been vitiated if it is shown that vice of uncertainty.

18. According to him, the detaining authority has not applied its mind whether acts of the detenu would come under the both the clauses of the Explanation to S. 3 of the Blackmarketing Act and if the impugned order does not state so the order is vitiated in the grounds of uncertainty. In support of his contention he relied upon the decision in *Leharibai v. State of Karnataka* 1981 Cri LJ 1048 (Kant).

19. Now we have to examine whether there is force in this contention.

20. The impugned order recites that the detenu is indulging in acts prejudicial to the maintenance of supplies of commodities essential to the community by resorting to clandestine import of Maida from outside the State and the sale thereof in this state without valid licence granted under the provisions of Clause 3 of the A.P. Food Grains Dealers' Licensing Order, 1964. The particulars furnished in both the grounds lend support of the order of detention. Thus the order is in terms of Section 3 of the Blackmarketing Act.

21 It is true that it is not sufficient to quote the provision of law conferring power on the detaining authority to detain a person. It is essential that the order should state specifically the acts committed by the detenu are prejudicial to the maintenance of supplies of commodities essential to the community.

22 On a careful perusal of the order we are satisfied that the impugned order states clearly the acts constitute dealing prejudicial to the maintenance of supplies of commodities essential to the community.

23 Sri Babul Reddy comments that the order is significantly silent as to whether the acts attributed to the detenu fell under one head or other head provided under the explanation.

24. It is now well settled that the explanation appended to a Section becomes an integral part of it and has no independent existence apart from it. In the eye of law both the section and the explanation thereunder are two inseparable parts. They move in a body if they move at all. (Vide *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, .

25. Explanations to Section 3(1) of the Acts reads as follows :-

"for the purpose of this sub-section the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means -

(a) committing or instigating any person to commit any offence punishable under the Essential commodities Act, under any other law for the 1955, or force relating to the control of the production, supply or distribution of a trade and commerce in any commodity essential to the community : or

(b) dealing in any commodity -

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955, or.

(ii) with respect to which provisions have been made in any such other law as is view to making gain in any manner which may directly or indirectly defeat or lend to defeat the provisions of that Act or other law aforesaid".

26. The impugned order does not come under clause (a) of the Explanation but it comes under clause (b) of the Explanation to Section 3 as the order specifically states that the detenu was actually indulging in importing Maida and pulses from outside the state into this State, in the name of fictitious firm and selling clandestinely the same without any licence in contravention of Clause (3) of the A.P. Food Grains Dealers' Licensing Order, 1964. It is therefore, clear that the detaining authority has applied its mind by coming to a firm and clear conclusion that the acts committed by the detenu undoubtedly come under clause (b) of Explanation to Section 3(1). Hence the comment that the detaining authority has not applied its mind and the order has suffered from the infirmity of uncertainty is devoid of substance. If that be so the ruling in *Leharibai v. State of Karnataka* (1981 Cri LJ 1048) (Kant) (Supra), on which the learned counsel for the petitioner relies does not apply to the case on hand as in that case the detaining authority did not specifically state whether the acts of the detenu would come under Clause (a) or Clause (b) or under both the clauses of Explanation to

Section 3 of the Act.

27. The learned counsel for the petitioner contends that even assuming that the detenu has contravened Clause 3 of the A.P. Foodgrains Dealers", Licensing Order, 1964 there is other remedy available u/s 6 of the Essential Commodities Act and as a matter of fact the concerned authorities have initiated criminal proceedings authorities under Art. 6-A of the Essential commodities Act before the 12th Metropolitan Magistrate, Hyderabad and hence the order of detention is void.

28. Even this contention is unsustainable in view of the decision of the Supreme Court in Borjahan Gorey Vs. The State of West Bengal, in which it was held that merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him with in Chapter VIII of the Criminal P.C. would not by itself debar the government from taking action for his detention under the Act. The scheme of the Act as disclosed by its support to the contention urged by the learned counsel for the petitioner.

29. The preventive detention provided by the Act is designed to deal urgently and effectively with more serious situation inter alia with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community as contemplated by Section 3 of the Blackmarketing Act. Judicial trial for punishing the accused for the commission of an offence as also preventive security proceedings in a circumstances criminal court against a person merely for keeping the peace or for good behaviour under Chapter VIII of the Criminal P.C. is a jurisdiction distinct from that of detention under the Act, which has in view the object of preventing the detenu from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. The field of these two jurisdiction are not co-extensive nor are they alternative. The jurisdiction for trial or for preventive proceedings under Chapter VIII, Criminal P.C. cannot be successfully invoked in a situation where a person is suspected to be likely to act in a manner prejudicial to the maintenance of supplies of commodities essential to the community. The fact that therefore, a prosecution under the code also could have been launched is not valid grounds for saying that it precludes the authority from acting under the Act.

30. Having regard to our discussion to our discussion, we find no merits in the Writ petition. The writ petition is therefore, dismissed, Advocate's fee Rs. 250/-.

31. Petition dismissed.