

(1951) 03 AP CK 0001
In the Andhra Pradesh High Court

Gunoor Chandramanamma	Vs	APPELLANT
The State of Hyderabad and Another		RESPONDENT

Date of Decision : 08-03-1951

Acts Referred:

Essential Supplies (Temporary Powers) Act, 1946 — Section 3

Citation : (1951) CriLJ 916

Hon'ble Judges : Shripat Rao, J; Mohd. Ahmed Ansari, J

Bench : Division Bench

Judgement

1. Heard parties. This is a petn. for the issue of a writ of habeas corpus on behalf of the detenu, Gunoor Mallappa, s/o Siddappa of Shamshabad. The facts alleged against him are that he has contravened the provision of Section 3, Essential Supplies (Temporary Powers) Act; 1946. An order of detention was served upon him on 28 1-1961 & he has been under detention since. A copy of grounds of detention was furnished to the detenu on the same date in which it is stated that he is a business man doing trade in sundry articles at Shamshabad. It is stated that he owns an electrically driven flour mill, that he engaged surreptitiously in milling paddy for the purposes of black-marketing & that 9 seers of rice were seized by the S.I. of Police on 11-1-1951 from his huller as also 217 seers of rice in two bags & some paddy bran cum husk. He failed to obtain the requisite licence to run the mills. F.I.R. dated 12-1-1951 was also filed in the Ct. of the Munsiff, Western Circle, Hyderabad District, containing the very facts which are stated in the grounds informing the Ct. that an offence under the Essential Supplies (Temporary Powers) Act has been committed. As the authorities concerned had resorted to both the forms, i.e., of preventively detaining & seeking conviction in a Ct. of Law, we enquired of the Public Prosecutor on that date that out of the two courses which he would adopt & told him that either the detenu must be preventively detained & in that case the charge regarding which the F. I. B. was filed must be withdrawn or the order of detention should be revoked. The Public Prosecutor stated that he would personally go to the D. S. P. & find out which course of action the authorities wanted to adopt. Mr.

Chandrasekhar the learned Public Prosecutor today states that he was unable to go to the D. S. P. owing to illness in his family ; but a reply has been received from the D. S. P. stating that the D. S. P. has written to the District Collector of Hyderabad for submitting a challan & after the receipt of the permission the challan will be filed in Ct, It is clear that the authorities wish to criminally prosecute the detenu. The law on this point is well settled that the detaining authority must make a choice either to preventively detain the offender under the provisions of the Preventive Detention Act or to challan him in a Ct, of Law for the alleged offences which he is stated to have committed. It is also clear from the reply of the D. S. P. that the detenu is to be criminally prosecuted. Under the circumstances, he cannot be preventively detained. We are fortified in our view by the F.B. ruling of the Bombay H. O. reported in Maledath Bharathan Malyali Vs. The Commissioner of Police, In this ruling it has been observed at p. 204 col. 2:

In our opinion it is not permissible to the authorities, under the cloak & guise of the Public Security Measures Act, to override the ordinary criminal law of the land & to deprive the subjects of the safeguards provided under the law. If this was permissible indeed a very serious situation would arise in this Province. It would mean that it would be open to the Police to Investigate into every cognizable case, without the safe-guards provided by the law, by merely detaining the accused & then carrying on investigation secretly & without providing to the accused the protection which the law gives him.

2. These observations of their Lordships of the Bombay H. O. apply to this case as well. It is stated by the learned Counsel for the petnr. Mr. Mohd. Ahsan that the detenu was released on bail by the Mag., Western Circle, but still he is not released because he has been preventively detained. Thus, a curious situation has arisen. It is also clear that investigations are taking place & so far as the D. S. P. is concerned a charge sheet is ready without the safe-guards provided by the law that may be availed of by the accused. We, therefore, think this to be a fit case for the cancellation of the order of detention. We direct the release of the detenu forthwith unless he is kept in detention under some other criminal proceedings.