

(2016) 10 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No.15767 of 2016

Mukkupogula Lavanya

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 25-10-2016

Acts Referred:

Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2(a)

Citation : (2017) 1 ALTcr1 77 : (2017) 1 AndhLDCriminal 228

Hon'ble Judges : Sri C.V. Nagarjuna Reddy and Sri M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : G.P. for Home (TS), for the Respondents; Sri Ch. Samson Babu, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Sri C.V. Nagarjuna Reddy, J. - The detention of one Mukkupogula Yadagiri @ Yadaiah Goud (hereinafter referred to as "the detenu"), by respondent No.3, under the provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, "the Act"), is assailed in this writ petition by the wife of the detenu.

2. A perusal of the detention order shows that respondent No.3 has relied upon only two criminal cases wherein it is alleged that the detenu was in possession and selling of Alprazolam. These two cases are registered as Cr.No.194/2014-15, dated 21.08.2014, of Prohibition and Excise Station, Chevella, Ranga Reddy District and Cr.No.690/2015-16, dated 04.09.2015, of Prohibition and Excise Station, Shadnagar, Mahabubnagar District.

3. In order to pass an order of detention under the Act, the detaining authority must be satisfied that the proposed detenu habitually commits any of the acts enumerated in Section 2(g) of the Act, which is reproduced hereunder:

"Sec.2(g): "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."

From the definition of Section 2(g), it follows that a person committing an isolated act howsoever grave it may be, cannot be treated as habitual offender. In order to treat a person as habitual offender, he must be shown to have committed a series of acts which disturbs public order.

4. As rightly submitted by the learned counsel for the petitioner by mere registration of two cases, the accused cannot be described as a habitual offender within the definition of 2(g) of the Act. Unless the activities of an offender have the potential of disturbing the public order, resulting in disturbance of even tempo of public life, the detaining authority cannot invoke the provisions of the said Act in a light hearted manner for detaining a person thereby depriving him of his fundamental right of personal liberty.

5. A perusal of the record shows that out of the aforementioned two cases, Cr.No.194/2014-15 which was subsequently registered as Sessions Case No.65/2014 on the file of the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, ended in acquittal of the accused.

6. Paras-11 and 13 of the judgment of the Sessions Court read as under:

"11. PW 3 has admitted in the cross examination that there were few customers at the time of raid. He has not examined the customers present there to depose about the fact that they raided TFT Toddy Shop, Counter No.1 of Thirumalapur village and that contraband was seized. It was elicited from PW 3 that he could not even collect the names and other descriptive particulars of persons who were present at the scene of offence. Further, the shop is situated within the village and PW 3 has not examined any of the neighbours also to show that on that particular date and time they have raided the toddy shop and seized contraband. No explanation is offered by PW 3 as to why the statements of the customers and neighbours were not recorded."

13. The samples drawn are expected to be sent quickly to the Chemical Examiner. Any amount of delay may likely to affect the case of prosecution, as it adversely affects the rights of the Accused. In the case on hand, the samples were drawn on 21.08.2014 and one of the samples was received by Chemical Examiner on 28.08.2014. From the date of drawing of samples until the samples were sent to Chemical Examiner, the samples are supposed to be kept in a proper condition, so that there is no possibility of samples being tampered with. There is a delay of 7 days from the date of drawing of samples to that the sending the samples to the Chemical Examiner. No reason is explained for the delay. Further, the prosecution has not stated as to where the property was kept from the date of seizure until it was sent to Chemical Examiner"

7. No doubt, as pointed out by the learned Govt. Pleader mere acquittal of the accused cannot be a ground for quashing the detention order. We have referred to this judgment in order to point out that on account of the shoddy investigation by the Investigating Officer, the case ended in acquittal of the detenu.

8. We have been coming across various cases where while the investigation and prosecuting agency are not taking effective steps to ensure conviction of offenders, the State appears to be trying to find an easy way out to check the activities of the offenders by invoking Preventive Detention Law, even in cases where the offenders are not habitual and the nature of offences does not call for invocation of such law. The State cannot resort to invoking preventive detention laws as a substitute for ordinary penal laws. In our opinion, such a tendency leads to unrest in the society, as more often it may cause serious hardship to the citizens by way of deprivation of their personal liberty, a fundamental right guaranteed under the Constitution of India. The case on hand is an instance where the State on account of its inability to ensure conviction of the detenu has invoked the provisions of the Preventive Detention Act. The two criminal cases out of which one ended in acquittal does not justify detention of the detenu, under the Act. The grounds on which the detention is made being wholly unsustainable for the aforementioned reasons, the impugned detention order is liable to be set aside.

9. In the result, the Writ Petition is allowed. The impugned order of detention, passed by Respondent No.3, dated 28.01.2016, is set aside and the detenu-Mukkupogula Yadagiri @ Yadaiah Goud shall be released forthwith from detention, if he is not required in any other case or crime. No order as to costs.