

(1997) 07 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8299 of 1997

N. Rami Reddy

APPELLANT

Vs

Govt. of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 31-07-1997

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), 3(2)
Constitution of India, 1950 — Article 22(5)

Citation : (1997) 4 ALT 522 : (1997) 2 APLJ 356

Hon'ble Judges : Neelam Sanjiva Reddy, J; M.N. Rao, J

Bench : Division Bench

Advocate : T. Rajendra Prasad, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

Neelam Sanjiva Reddy, J.—An order of detention passed by the District Collector-cum-District Magistrate, Prakasam District u/s 3(1) and (2) r/w Section 2(a) and (b) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act"), by which one Nusumu Rami Reddy, s/o Rami Reddy, aged about 30 years and resident of Giddalur Town of Prakasam District was detained on the ground that he is a bootlegger, is challenged in this writ petition.

2. In support of the order of detention dated 11-12-1996, three grounds are mentioned by the detaining authority, a copy of which was supplied to the detenu. The three grounds are :-

"(1) On 28-7-1996, at about 7.30 p.m. the Prohibition and Excise Inspector, Giddalur with his S.I.s and staff on credible information proceeded to Sajahan Nagar of Kongala veedu Road in Giddalur Town and found you in possession of 5 litres of I.D. Liquor in a blue colour plastic can, which was in your right hand.

Immediately the Inspector, Giddalur searched the said plastic can and found it to contain around 5 litres of I.D. liquor. After thorough interrogation the Excise Inspector and Sub-Inspector drawn samples of liquor for purpose of Chemical Analysis from the said plastic can which is within your personal possession at the time of detention, and seized the contraband under a cover of special report and arrested you on the scene of occurrence at about 8.30 p.m. and brought you to the Prohibition & Excise Station, Giddalur on point of jurisdiction. Then, the Prohibition & Excise Inspector, Giddalur registered a case in PR. No. 403/95-96 u/s 8(b) of A.P. Prohibition Act, 1995 and transmitted you to judicial custody on 29-7-1996. You are remanded for a period of 15 days to Judicial Custody by the Hon"ble Special Judicial First Class Magistrate Court for Prohibition & Excise offences, Ongole.

(2) On 6-10-1996 at about 10.00 p.m. the Prohibition and Excise Sub-Inspector, Giddalur as per the instructions issued by the Assistant Prohibition and Excise Superintendent, Markapur sub-division to keep a close watch and ward over the activities of illicit sellers and Bootleggers of liquor crime in view of ensuing Lok Sabha Elections since Giddalur town and Assembly segment falls within Nandyal Parliamentary Constituency, proceeded to B.Ed. College vicinity and found you in possession of 1 1/2 litre of I.D. liquor in a white plastic can of 2 litres capacity while you are coming from Mundlapadu Road towards Giddalur town. After thorough interrogation and search, the Prohibition and Excise Sub-Inspector, Giddalur has drawn samples of liquor and seized the case property which was being in your exclusive possession when noticed by the Excise personnel before your detention by them. After your arrest at about 10.40 p.m. under a cover of special report you are brought to Prohibition and Excise Station, Giddalur and a case was registered against you in P.R. No. 20/96-97 u/s 8 (b) of A.P.P. Act, 1995 and subsequently you were remanded to judicial custody for a period of 15 days by the Hon"ble Judicial First Class Magistrate Court, Giddalur.

(3) On 16-11-1996 at 3.00 p.m. the Prohibition & Excise Inspector, Giddalur with his staff while conducting patrolling for Prohibition offences in and around Giddalur Town, found you in possession of One litre of I.D. liquor in a plastic can near Sagileru Bridge southern side. After interrogation, the Inspector has drawn sample of liquor from the plastic can containing I.D. liquor which was seized from your personal possession and arrested you on the scene of occurrence under a cover of special report and brought you to the Prohibition & Excise Station, Giddalur, registered a case against you in PR.No. 127/96-97 u/s 8 (b) of A.P.P. Act, 1995. Thereupon, you are produced before the Hon"ble Judicial First Class Magistrate Court, Giddalur on 17-11-1996 who remanded you to Judicial Custody for a period of 15 days."

3. In all the above cases, samples were drawn and sent to Regional Excise Laboratory, Guntur, Govt. of Andhra Pradesh for analysis through the Judicial Magistrate Court concerned. After chemical examination, the Chemical Examiner, Guntur, has opined that all samples of liquor in question in the cases are illicitly

distilled liquor unfit for human consumption. But, it does not say harmful.

4. Chemical Examiner's reports in respect of all the three samples disclosed:

(1) Test for Alcohol Positive. (2) Test for Acidity Positive. (3) Test for Fusel Oil and allied impurities Positive. 5. The State Government has confirmed the order of the District Collector and the Advisory Board has expressed the opinion after hearing the detenu that in its opinion there is sufficient cause for the detention of the detenu in question. The period of detention, as fixed by the Government u/s 12, is one year with effect from the date of detention.

6. In the counter affidavit filed by the second respondent, it is averred, inter alia, that the liquor seized from the detenu is unfit for human consumption and hence the activities of the detenu are prejudicial to the maintenance of public order and the said activities of the detenu attract the provisions u/s 2(b) and (a) r/w explanation of the Act.

7. The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health no order of detention can be issued u/s 3 of the Act.

8. The above question was considered in *Boya Chinna Subbarayudu v. The Collector and District Magistrate, Kurnool and Ors.* 1995 (1) ALT (CrL.) 58 (A.P.) by a Division Bench of this Court, of which one of us (M.N. Rao, J.) was a party. The said decision applies to the instant case on all fours. It is observed in it:

"Everyone who answers the description of bootlegger can not be detained preventively under the Act. The detaining authority must be satisfied that the detention is necessary with a view to preventing the person concerned from acting in any manner prejudicial to the maintenance of public order."

Considering the effect of Section 3(1) and Explanation to Clause (a) of Section 2 of the Act, the Bench further observed:

"It is therefore clear that a person who is a bootlegger by reason of his indulging in acts in contravention of "the Provisions of the A.P. Excise Act, the rules and the notifications and the orders made under that Act cannot be detained u/s 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words, only if the activities of the bootlegger cause grave or widespread danger to life or public health, he can be detained. If a bootlegger sells illicitly distilled arrack which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health".

9. In Para (10) of the above decision, the Bench opined:

"From a reading of the relevant paragraphs of the Excise Manual it is clear that

the presence of fusel oil in liquor by itself is not injurious to health. Only when fusel oil is separated from the liquor and consumed in large quantities either by human beings or animals, it will prove injurious. What is the permissible level of the fusel oil is not mentioned in the Excise Manual, nor do we get it from the report of the Chemical Examiner. Unless it is stated in the report of the Chemical Examiner that the seized liquor from the premises of the petitioner contained fusel oil in impermissible limits so as to cause grave or widespread danger to life or public health the detaining authority will not be justified in ordering the detention on the ground that the detenu is acting in a manner prejudicial to the maintenance of public order."

10. A Full Bench of this Court, of which (M.N. Rao, J.) is a party in E. Sumathamma Vs. The State of A.P. and Others, through its E. Sumathamma Vs. The State of A.P. and Others, held that unless the seized liquor was spurious, it cannot be said that the detenu was indulging in acts prejudicial to the maintenance of public order. 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.

11. Unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil or other impurities found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention u/s 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under Article 22(5) of the Constitution is violated.

12. In the result, the writ petition is allowed. The impugned order passed by the second respondent in Rc.No. 3021 /96/C1 dt.11-12-1996 is quashed. The detenu, who is now detained in the District Jail, Nellore shall be released forthwith, unless his presence is required in connection with any other case.