

(2008) 03 AP CK 0049
In the Andhra Pradesh High Court
Case No : Writ Petition No. 27196 of 2007

S. Mayulamma

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 12(1), 13, 2, 3(1), 3(2)
Andhra Pradesh Prohibition Act, 1995 — Section 7A, 8
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3, 3(3)
Constitution of India, 1950 — Article 22, 22(5), 226
Maintenance of Internal Security Act, 1971 — Section 8(1)

Citation : (2008) 2 ALD(Cri) 154 : (2008) 3 ALT 649 : (2008) CriLJ 2753

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : Ch. Dhananyaja, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—The wife of Sangadi Bhagaraju invoked the Habeas Corpus jurisdiction under Article 226 of the Constitution for quashing the detention order passed by the second respondent, Collector & District Magistrate, East Godavari District at Kakinada in Ref. No. 61/M/671/2007 dt. 14-11-2007 detaining her husband, Sangadi Bhagaraju (hereinafter called as "the detenu") by declaring the same as illegal and void and set him at liberty forthwith.

2. The 2nd respondent-Collector & District Magistrate, East Godavari District at Kakinada passed the detention order u/s 3(2) r/w 3(1) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1896 (for short "the Act") stating that he satisfied to detain the detenu as he is found to be a "bootlegger" within the meaning of Section 2(b) of the Act and explanation given under the above

section of the Act and his activities qualify as being dangerous to public health and public order.

3. The grounds of detention as enclosed to the detention order disclose that three crimes, namely, (1) Cr. No. 184/2006-2007 dt. 25-11-2006; (2) Cr. No. 91/2007-2008 dt. 22-7-2007 and (3) Cr. No. 129/2007-2008 dt. 21-8-2007 of Prohibition & Excise Station, Kakinada South were registered against the detenu u/s 8(e) r/w 7-A of the A.P. Prohibition Act, 1995; that excise officials seized 800, 700 and 100 litres of ID liquor while clandestinely transporting the same from Yanam, Pondichery to Yetimoga; that samples drawn from the liquor seized were sent to Chemical Examiner, Kakinada who on analysis opined that it is illicitly distilled liquor unfit for human consumption and issued Analysis report Nos. 1062 dt. 7-12-2006, 625/2007 dt. 25-7-2007 and 787/2007 dt. 17-9-2007 respectively; that in the first crime ie., Cr. No. 184/2006-2007 charge-sheet was filed before the Special Judicial First Class Magistrate and the same was numbered as CC No. 171/2007; and that in the 2nd and 3rd crime investigation is not yet completed and charge sheets are yet to be filed.

4. Pursuant to the order of detention, the detenu was taken into custody on 14-11-2007 and lodged in Central Prison, Rajahmundry, East Godavari District by supplying grounds of detention and the material relied upon for passing the detention order. The Government issued G.O.Rt. No. 7109 General Administration (Law & Order-II) Department dt. 21-11-2007 approving the order of detention and placed the matter before the Advisory Board in its meeting held on 12-12-2007. The Advisory Board after giving an opportunity gave its opinion that "there is sufficient cause for the detention of the detenu Sangadi Bhagaraju S/o Lovaraju". The Government after due consideration of the report of the Advisory Board and the material available on record in exercise of the powers conferred under Sub-section (1) of Section 12 r/w Section 13 of the Act confirmed the order of detention through G.O.Rt. No. 7569 General Administration (Law & Order) Department dt. 15-12-2007 and directed that the detenu be continued for a period of 12 months from the date of detention ie., 14-11-2007.

5. The only submission made by the learned Counsel for the petitioner, Sri Ch. Dhananyaja, is that in the grounds of detention, the second respondent-detaining authority referred to the opinion of Dr. B. Balaraju, M.D., Chief Physician, Professor & Head of the Department of Medicine, Osmania Medical College and General Hospital, Hyderabad offered on 18-7-2003 and same has not been furnished to the detenu along with the detention order, therefore entire detention order is vitiated for non furnishing of relevant material as the petitioner could not make an effective representation to the Advisory Board. In support of his submissions, he placed reliance on the following judgments:

1. Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others,
2. Sunil Dutt Vs. Union of India (UOI) and Others,
3. Mohd. Zakir Vs. Delhi Administration and Others,

4. Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others,

5. Taramati Chandulal v. State of Maharashtra, 1981 CriLJ 445

6. Ramchandra A. Kamat Vs. Union of India (UOI) and Others,

6. On the other hand learned Government Pleader representing the Advocate General contended that the opinion of the Dr. Balaraju, referred to in the Grounds of detenu is nothing to do with the liquor seized from the possession of the detenu and the said opinion was not emanated from the analysis report of the liquor seized in the present case, therefore the petitioner cannot complain that non-furnish of the said opinion of the Doctor would vitiate the detention order. He further submitted that all the chemical analysis reports have been furnished along with the material relied upon by the detaining authority on passing the detention order.

7. In Kirit Kumar (1 supra) the Supreme Court considered the detention order passed u/s 3 of Conservation of Foreign Exchange and Preservation of Smuggling Activities Act, 1974. The contention before the High Court was that two documents referred to in the order of detention were not supplied to the detenu. The High Court rejected this contention on the ground that the documents were merely referred to and not relied on by the detaining authority and after having examined the documents it found that the same were not relevant. The Supreme Court while disagreeing with the view taken by the High Court, in the first place, held that it was not open to the Court to have waded through the confidential file of the Government in order to fish out a point against the detenu and secondly the question of relevance was not to be decided by the Court but by the detaining authority which alone had to consider the representation of the detenu on merits and then come to the conclusion whether it should be accepted or rejected. The Supreme Court while repelling the contention that the documents concerned were merely referred to in the ground of detention but did not form the basis of the subjective satisfaction of the detaining authority at the time when it passed the order of detention and further the documents concerned were examined not by the detaining authority but by the Secretary and there is nothing to show that the note or endorsement of the Secretary was placed and approved by the detaining authority held that there was no decision by the detaining authority that the documents were irrelevant. When it was conceded that before the grounds were served on the detenu documents were placed before the detaining authority and were therefore referred in the grounds of detention, it was held that once the documents are referred to in the grounds of detention it becomes the bounden duty of the detaining authority to supply the same to the detenu as part of the grounds or *pari passu* the grounds of detention and there is no particular charm in the expressions "relied on", "referred to" or "based on" because ultimately all these expressions signify one thing, namely, that the subjective satisfaction of the detaining authority has been arrived at on the documents mentioned in the grounds of detention. After noticing its earlier judgment in Ram Chandra A. Kamat v. Union of India (1980) 2 SCC 271, wherein

it was held that if there is undue delay in furnishing the statements and documents referred to in the grounds of detention the right to make effective representation is denied and the detention cannot be said to be according to the procedure prescribed by law, the Supreme Court held that all the documents concerned are referred to, relied upon or taken into consideration by the detaining authority have to be supplied to the detenu as part of the grounds as to enable the detenu to make an effective representation immediately on receiving the grounds of detention. The same is not having been done, the continued detention must be held to be void. Further, the documents concerned were not examined by the detaining authority but by the Secretary. They were not placed before the detaining authority but they are concerned with the commission of offence. When the said documents which were placed before the Secretary were not supplied to the detenu, the Supreme Court held that the detention of the petitioner must be void.

8. In *Sunil Dutt* (2 supra) the facts are that along with the grounds of detention which were served on the detenu on July 11, 1980 none of the documents, either relied upon or referred to in the grounds were served upon him and the service of such documents was delayed upto July 19, 1980 and further the documents referred to in the grounds were served as late as on August, 4, 1980. In those circumstances, the Supreme Court held that non-supply of material documents along with the ground of detention would amount to a violation of the safeguard guaranteed under Article 22(5) of the Constitution.

9. In *Mohd. Zakir* (3 supra) the Supreme Court reiterated that it being a constitutional imperative for the Detaining Authority to give the documents relied on and referred to in the order of detention of pari passu with the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with but supplied the documents subsequently is violative of the constitutional safeguard enshrined in Article 22(5) of the Constitution.

10. In *Taramati Chandulal* (5 supra) the Supreme Court held that documents which were relied on by the detaining authority have to be supplied along with the ground of detention and if the same were supplied in three instalments the detenu was deprived of the opportunity of making an effective representation, therefore order of detention rendered void.

11. In *Icchu Devi* (4 supra), it has been observed by the Supreme Court as under:

There can therefore be no doubt that on a proper construction of Clause (5) of Article 22 read with Section 3, Sub-section (3) of the COFEPOSA Act, it is necessary for the valid continuance of detention that subject to Clause (6) of Article 22 copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu along with the

grounds of detention or in any event not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. If this requirement of Clause (5) of Article 22 read with Section 3, Sub-section (3) is not satisfied, the continued detention of the detenu would be illegal and void.

12. A four-Judge Bench of the Supreme Court in *Khudiram Das Vs. The State of West Bengal and Others*, held that Section 8(1) of Maintenance of Internal Security Act, 1971, which is *pari materia* with Section 8 of the Act, which merely re-enacts the constitutional requirements of Article 22(5) insists that all basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu, so that the detenu may have an opportunity of making an effective representation against the order of detention.

13. Justice O. Chinnapa Reddy speaking for a three-Judge Bench in *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, which is at a later point of time to *Kirit Kumar* (1 *supra*), after extracting the ratio laid down in *Icchu Devi Choraria* (4 *supra*) and *Khudiram Das* (7 *supra*) held at para 5 as under:

...It is, therefore, clear that every failure to furnish copy of a document to which reference is made in the grounds of detention is not an infringement of Article 22(5), fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the fundamental rights guaranteed by Article 22(5). In our view it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention. In the case before us we are satisfied that such were the two documents, copies of which were not furnished to the detenu. We are satisfied that the documents cannot be said to be documents which were relied upon by the detaining authority in making the order of detention. Therefore, the detenu could not properly complain that he was prevented from making an effective representation. There was no violation of the right guaranteed by Article 22 of the Constitution.

Disclaimer: The text is computer generated. The user must verify the authenticity of the extracted portion with the original in Supreme Court Cases.

14. It is not disputed before us that all the documents including the seizure reports in the above three crimes and chemical examiner's reports were supplied to the detenu. The reports of the chemical analyst dt. 7-12-2006, 25- 7-2007 and 17-9-2007 in connection with Cr. Nos. 184/2006-2007 dt. 25-11-2006; Cr. No. 91/2007-2008 dt. 22-7-2007 and Cr. No. 129/2007-2008 dt. 21- 8-2007 respectively disclose that the samples are illicitly distilled unfit for human consumption and injuries to health. The opinion of Dr. B. Balaraju, Chief Physician, Professor & Head of the Department of Medicine, Osmania Medical

College and General Hospital, Hyderabad dt. 18-7-2003 is merely provided the social malady of consumers who consume illicitly distilled liquor, which must have been exercising the mind of the Collector & District Magistrate charged with the administration of law and order. What were alleged against the detenu were only the three incidents set out in the grounds of detention. There was therefore, no material before the second respondent, other than the three incidents set out in the grounds of detention, which went into the formation of the subjective satisfaction of Collector & District Magistrate and which ought, therefore, to have been communicated to the detenu. The opinion of the Doctor is nothing to do with the illicitly distilled liquor, which was seized from the possession of the detenu, nor the same has been placed before the detaining authority at the time of passing the detention order. We are satisfied that the opinion referred to in the grounds of detention cannot be said to be the document which was relied upon by the detaining authority in making the order of detention.

15. In view of the same, we do not see any force in the submission made by the learned Counsel for the petitioner that the detenu was prevented from making an effective representation for non-supply of the opinion referred to in the grounds of detention and same would vitiate the detention order.

16. In the result, the writ petition is accordingly dismissed.