
(2003) 04 AP CK 0002
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5255 of 2003

Shaik Bashu

APPELLANT

Vs

Collector and District Magistrate and Another

RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Andhra Pradesh Prohibition Act, 1995 — Section 7(A), 8(E)
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 5A

Citation : (2003) 1 ALD(Cri) 1008 : (2003) 3 ALT 625

Hon'ble Judges : S. Ananda Reddy, J;Ramesh Madhav Bapat, J

Bench : Division Bench

Advocate : E. Venkata Reddy, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This Writ Petition is filed by the Petitioner praying for issue of a writ of Habeas Corpus directing the respondents to produce his son, S. Abubakar who is detained in the Chenchalguda Central Prison, Hyderabad, before this Court and to release him forthwith after declaring that his detention is illegal and invalid.

2. It is stated that by an order dated 28-1-2003 u/s 3(2) read with Section 3(1) of the A.P. Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, the Act), the Collector and the District Magistrate, Anantapur ordered detention of the Petitioner's son on the ground that he is a boot-legger and his activities are prejudicial to the maintenance of public order. The State Government, on 3-2-2003, approved the said order of detention. The Advisory Board reviewed the case on 3-3-2003, and by an order dated 6-3-2003, the Government confirmed the order of detention and directed the detention of the Petitioner's son for a maximum period of 12 months from the date of his detention i.e., from 30-1-2003. It is also stated that in the order of detention,

the Respondents have mentioned 6 grounds indicating his involvement in six cases under which the Prohibition and Excise authorities have seized, from the possession of the detenu, contraband arrack sachets varying from 50 to 150 on each of the occasions. According to the Petitioner, the first instance referred to in the order of detention had taken place on 5-9-2000 with reference to which a case in Cr. No. 129 of 2000-01 dated 5-9-2000 was registered u/s 7(A) read with Section 8(E) of the A.P. Prohibition Act. According to the Petitioner, as the said event had occurred two years prior to the order of detention, it is a stale incident for the purpose of passing the order of detention. It is also stated that the report of the Chemical Examiner in respect of the first incident was to the effect that the samples contained "diluted arrack" and there is no allegation in the report that it contained any substance, which is unfit for human consumption or injurious to health. According to the Petitioner, the first ground is irrelevant and it should not have been taken. It is stated with reference to other grounds that the reports of the Chemical Examiner were to the effect that the samples contained sediments unfit for human consumption, but the said reports do not contain the details as to the substances contained in the samples which would affect the health of the public. It is also stated that as per the reports of the Chemical Examiner, the samples contained fusel oil within the limits and the other tests were negative, except showing the presence of alcohol. It is the case of the Petitioner that the fact that the samples contained alcohol do not make them unfit for human consumption nor are they injurious to health and, therefore, do not make the activities of the detenu prejudicial to the maintenance of public order. It is also stated that the order of detention was passed without applying the mind.

3. The 1st Respondent - Collector and District Magistrate, Anantapur who passed the order of detention, filed a counter affidavit refuting the allegations made by the Petitioner in the affidavit filed in support of the Writ Petition. In the counter it is stated that the sale of arrack is prohibited and as the detenu has been regularly indulging in the sale of arrack, the detaining authority was constrained to pass an order of detention in order to curb the activity of boot-legging. It is also stated in the counter affidavit that any variation with reference to the prescribed limits of the constituents of arrack would be considered as spurious and it amounts to adulterated arrack and the sale is prohibited as it is injurious to the health and thereby causes prejudice to the maintenance of public order.

4. The learned counsel for the Petitioner submitted that the detaining authority, i.e., the 1st respondent, has indicated six grounds for passing the impugned order of detention and the very first ground referred to therein is a stale ground, as the said incident took place about 2 years prior to the order of detention and if one of the grounds is a stale ground, the entire order of detention is liable to be quashed, as the grounds are not severable. In support of this contention, the learned counsel relied on the decisions of this Court in *M. Ashok Goud Vs. The Collector and Dist. Magistrate and Others*, , *Mohd. Ahmad Khan v. Government of A.P.* 2002 (1) ALT (Cri.) 188 (D.B.) and *M. Prema Bai v. Commissioner of Police*,

Hyderabad 2002 (2) ALT (Cri.) 487 (A.P.) :2002 (2) ALD 529 (D.B.).

5. The learned GP representing the learned Advocate General submitted that the grounds referred to in the order of detention are only the past history of the detenu and could not be considered as the separate grounds. The learned Government Pleader also contended that after referring to all the events and involvement of the Petitioner's son in different acts of bootlegging, and taking into account the substance of all the instances, the detaining authority passed the order of detention.

6. From the above rival contentions, the issues to be considered are whether the order of detention detaining the Petitioner's son is sustainable?

7. It is not in dispute that the detaining authority has passed the impugned order of detention on 28-1-2003 to which a copy of the grounds of detention was enclosed. A perusal of the said copy of the grounds of detention shows that six ground are mentioned for making the order detaining the son of the Petitioner. As per the said order, the earliest incident referred is dated 5-9-2000, i.e., which took place about 2 1/2 years prior to the order of detention and it was made as one of the grounds for detaining the son of the Petitioner. According to the learned counsel for the Petitioner, the said ground is a stale ground as it took place more than two years prior to the date of the impugned order of detention and hence the same has no proximity to the impugned order of the detention. The learned counsel for the Petitioner also submitted that even the report of the Chemical Examiner with reference to the seized arrack sachets show that the seized arrack contained "diluted arrack". According to the learned counsel, diluted arrack is not injurious to health and, therefore, the said ground is stale and if one of the grounds is a stale one, the entire order is liable to be quashed. In the back ground of the facts of this case, let us proceed to consider the decisions relied upon by the learned counsel for the Petitioner.

8. In Mohd. Ahamad Khan's case (2 supra), the order of detention passed against the detenue was assailed before this Court. In the said case, the order of detention was passed on two distinct and different grounds. One of the grounds relates to an incident that took place about 2 1/2 years prior to the impugned order of detention. Considering the facts in the above case, the Court held that if one of the grounds is nonexistent, totally irrelevant and cannot be made the basis for satisfaction of the detaining authority to pass an order of detention against the detenue, the entire order is liable to be quashed and so holding the order of detention passed in the above case was quashed.

9. To the same effect is the decision of this Court in M. Ashok Goud's case (1 supra). In that case, the order of detention was passed against the Petitioner's father on 24-9-2001. Four grounds have been made out for passing the impugned order of detention. It was contended before the Court that ground Nos. 1 and 2 are stale and not proximate but remote as the detenue was an accused for an occurrence that took place in October 1998 and another for an

offence relating to January, 1999. It was contended by the respondents in the said case that the four grounds mentioned are instances of single ground i.e., the detenu is a boot-legger. But the Court rejected the contention of the respondents and quashed the impugned order of detention. The Division Bench also referred to the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 wherein u/s 5-A of the said Act, the grounds are severable and the detenue can be detained even if one of the grounds is a valid ground. The Division Bench further held that as such a situation is not contemplated under the provisions of the Act, the order of detention cannot be sustained.

10. In M. Prema Bai's case (3 supra), though the Court found the detenue to be a boot-legger, on the ground that one of the grounds of detention is a stale ground, quashed the order of detention and ordered release of the detenue.

11. In the background of the above legal position, let us proceed to consider the facts of the present case. Admittedly, the first ground mentioned in the grounds of detention, is an incident that took place about 2 1/2 years prior to the order of detention. It is a stale and remote ground as the incident had occurred more than 2 years prior to the date of the order of detention. Therefore, the said ground cannot be made as the basis for making an order of detention. Hence, the impugned order of detention is liable to be quashed on this ground alone, even with reference to the other grounds also, though the reports of the Chemical Examiner shows that the seized sachets contained sediments and are unfit for human consumption, no details are forthcoming in the reports. The reports do not show the details of the sediments or the substance which the seized samples contained which make them unfit for human consumption or how they are injurious to health. In fact, the analysis report shows that seized sample of arrack contains fusel oil within the limits but it does not contain any substance injurious to the health of the public. In any case, as this Court is of the considered opinion that the first ground itself is a state ground, the impugned order of detention cannot be sustained and it is liable to be quashed.

12. In the result and for the foregoing reasons, the Writ Petition is allowed and the impugned order of detention of the Petitioner's son dated 28-1-2003 passed by the 1st Respondent is quashed. We further direct that the detenue be released forthwith, if he is not required in any other case. No costs.