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**(1996) 09 AP CK 0069**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 17509 of 1996**

Smt. Konala Syamala

APPELLANT

Vs

The Collector and District Magistrate and Others

RESPONDENT

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**Date of Decision : 23-09-1996**

**Acts Referred:**

Constitution of India, 1950 — Article 21

**Citation : (1996) 4 ALT 205**

**Hon'ble Judges : Syed Shah Mohammed Quadri, J; R. Bayapu Reddy, J**

**Bench : Division Bench**

**Advocate : V. Eswaraiah, for the Appellant; A.A.G., for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

R. Bayapu Reddy, J.—The petitioner herein is the wife of the detenu, Konala Baiarama Ratna Reddy alias Ramulu, s/o. Venkata Reddy of Ravulapalern Village, East Godavari District.

2. The Collector and District Magistrate of East Godavari District who is the first respondent, passed the detention orders in reference No: C1(M)/1295/96 dated 8-8-1996 under the provisions of Section 3(2) r/w. Section 3(1) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits; Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986) (for short "the Act"), directing the detention of the detenu on the ground that he is a boot-legger indulging in illegal transportation of liquor in to the districts of East Godavari and West Godavari from outside and has been violating the provisions of the A.P. Excise Ad and A.P. Prohibition Act and is acting in a manner which is prejudicial to the maintenance of public order as defined in Section 2(a) of the Act. The writ petition is filed under Article 226 of the Constitution of India by the wife of the detenu seeking a writ of Habeas Corpus to direct the respondents to produce the detenu who is now detained in the Central Prison, Rajahmundry before the Court and release him forthwith after quashing the order of the detention passed by the first respondent. The order of

detention was passed on 8-8-1996 and the detenu was served with such order and has been detained from 9-8-1996 onwards and later on the grounds of detention contained in reference No: C1(M)/1295/96 dated 12-8-1996 enumerated by the first respondent were also served on the detenu.

3. The order of detention is challenged by the petitioner contending that the detenu is not a boot-legger and has not acted in any manner prejudicial to the maintenance of public order; that the grounds mentioned in the order of detention are vague and the order itself is passed without application of mind by the first respondent and that the said order is illegal, arbitrary and violative of Articles 21 and 22 of the Constitution of India and is, therefore, liable to be quashed.

4. The first respondent, whose counter affidavit is filed in support of the detention orders passed by him, has, however, tried to contend that the detenu is a boot-legger indulging in clandestine business of importing liquor into the districts of East Godavari and West Godavan from other States thereby violating the provisions of the A.P. Excise Act and A.P. Prohibition Act; that he has, therefore, acted in a manner prejudicial to the maintenance of public order as defined in the Act; that such detention orders are passed with a view to prevent him from further acting in a manner prejudicial to the maintenance of public order and the detention orders are also approved by the Government in G.O.Rt. No. 4568 General Administration (Law & Order-II) Department, dated 19-8-1996 and that the detention orders, therefore, cannot be questioned.

5. The point for consideration is whether the detention orders passed by the first respondent are not valid and are liable to be quashed?

6. It is seen from a perusal of the detention orders and the grounds of detention that such detention orders are sought to be passed by the first respondent on the ground that the detenu is a boot-legger as defined in the Act and is indulging in illegal transportation of liquor violating the provisions of the A.P. Excise Act and A.P. Prohibition Act and that such conduct on his part amounts to "acting in a manner prejudicial to the maintenance of public order" as defined in Section 2(a) of the Act. It is to be seen from the grounds of detention that the detention orders are passed by the first respondent on the basis of the information supplied to him by the second respondent who is the Assistant Commissioner of Prohibition and Excise, East Godavari District, relating to some offences under A.F. Excise Act and A.P. Prohibition Act alleged to have been committed by the detenu on different occasions relating to five cases, the particulars of which are also enumerated in the grounds of detention. Five such instances are found mentioned in the grounds of detention. The first instance relates to the offence in Cr. No: 157/95 dated 28-12-1991 of Ravulapalem Police Station and the offence alleged in that case is seizure of 60 bottles of Brandi that was being carried in a motor car proceeding towards Ravulapalem. The detenu was admittedly not present in the car and he is sought to be impleaded as an accused in that case on the basis of the alleged confessional statements said to have been made by

the persons present in that vehicle. The second instance relates to Cr. No. 27/95-96 dated 14-11-1995 for the offence relating to Prohibition and Excise Station, Eluru. In the said case some bottles containing Indian Made Liquor (IML) were alleged to have been seized when they were being transported in a mini lorry going towards Eluru in West Godavari District. Even in that case the detenu was not present at the time of the alleged seizure and he is sought to be made an accused on the basis of some alleged confessional statements said to have been made by the driver and other persons present in the vehicle. "The third instance relates to Cr. No. 31 /96 dated 28-1-96 of Bheemavaram 1 Town Police Station and 47 bottles of whisky and I.M.L. concealed in a zip bag carried on a scooter were said to have been recovered from the person driving the scooter. Even in this case the detenu is sought to be made an accused on the basis of the alleged confessional statement of the person carrying such contraband. The 4th instance relates to Cr.No. 37/96 dated 14-2-1996 of Bheemavaram I Town Police Station and 1,074 whisky bottles concealed in a gunny bag were said to have been seized from a tanker which was proceeding towards Bheemavaram in West Godavari District and in this case also the detenu was not present and he is sought to be made an accused on the basis of some alleged confessional statements made by two persons who were alleged to be travelling in that vehicle. The 5th instance relates to Cr. No. 4/94-95 dated 28-10-1994 of Ravulapalem Excise Range and the property concerned in that case is said to consist of non-duty paid liquor said to have been stored in the house belonging to the detenu and another person. It is specifically mentioned in the grounds of detention by the first respondent that in view of such instances where the detenu is figuring as an accused for various offences under the A.P. Excise Act and A.P. Prohibition Act, he is satisfied that the detenu is a boot-legger indulging in illegal transportation of liquor violating the provisions of A.P. Excise Act and A.P. Prohibition Act and that he is acting in a manner prejudicial to the maintenance of public order as defined in Section 2(a) of the Act. It will be useful to extract the relevant observations made by the first respondent in the grounds of detention which are as follows:

"From the material placed before me and the circumstances spelt out by the facts stated above, I am fully satisfied and have reason to believe that you are a boot-legger, organising a racket of bootlegging in and around Ravulapalem Village has been violating the provisions of A.P. Excise Act 1968 and A.P. Prohibition Act, 1995 and acting in a manner which is prejudicial to the maintenance of public order as defined in Section 2(a) of the Act 1/1986 as the sale of I.M.L. is banned and which will adversely affect public order as defined in Section 2(a) read with the explanation given under the said Section of the Act 1 /86."

It is clear from such observations made by the first respondent and the other reasons given and circumstances enumerated by him in the detention orders and the grounds of detention, that he came to the opinion that the detenu is acting in a manner prejudicial to the maintenance of public order only on the ground that

he is indulging in illegal transportation of liquor into the districts of West Godavari and East Godavari where the prohibition introduced recently is in force that such activities of the detenu amount to offences punishable under the provisions of A.P. Excise Act and A.P. Prohibition Act and that he is, therefore, to be considered as a "boot-legger" as defined in the Act. But such activities and conduct attributed to the detenu, even if to be taken as true, for argument sake, cannot be said to amount to "acting in any manner prejudicial to the maintenance of public order" as defined in Section 2(a) of the Act and that, therefore, the orders of detention cannot be sustained as they are evidently arbitrary and illegal and also violative of the provisions of the Constitution of India.

7. In order to better appreciate the validity of the detention orders passed by the first respondent, it will be useful to refer to the relevant provisions of the Act and the various decisions rendered by the Supreme Court as well as this Court on different occasions under similar circumstances relating to similar facts. Section 2(a) of the Act refers to the circumstances under which the activities of a person can be said to be prejudicial to the maintenance of public order. The provisions of Section 2(a) of the Act are as follows:

""(a) "Acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:

Explanation:- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or widespread danger to life or public health."

Boot-legger is defined in Section 2(b) of the Act as follows:-

"2(b) "Boot-legger" means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other Intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the Rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing."

Section 3 of the Act relates to the powers to pass orders of detention under the Act. The provisions of Section 3 are as follows:-

"3. Power to make orders detaining certain persons:-

(1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land- grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub- section;

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3)..... .."

The detention orders in the present case are evidently passed by the first respondent u/s 3(2) r/w. Section 3(1) of the Act. Section 3(1) clearly shows that in order to pass the orders of detention, it is not sufficient that the detenu is proved to be a boot-legger or any other person belonging to the other categories enumerated therein. It is further essential to show that the authority passing the orders of detention must be satisfied that the detenu has been acting in any manner prejudicial to the maintenance of public order and as such there is the necessity to prevent him from acting in such manner by passing the required orders of detention,

8. In the decision of the Supreme Court reported in Ahmedhussain Shaikhhussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another, in which similar provisions relating to the orders of detention passed under the Gujarat Prevention of Anti-Social Activities Act came up for consideration before their Lordships, it is observed by their Lordships in para-12 of the Judgment:

"Apart from these, in the instant case, the material disclosed is quite vague with reference to the persons affected or victimised as also the time and place of such victimisation. This Court has on several occasions indicated that there is a wide gap between law and order and public order. The criminal offence may relate to the field of law and order but such an offence would not necessarily give rise to a situation of public order. Depending upon peculiar situations an act which may otherwise have been overlooked as innocuous might constitute a problem of public order. Selling of liquor by the petitioner would certainly amount to an

offence under the Prohibition Act but without something more would not give rise to a problem of public order. Similarly commission of any other criminal offence-even assault or threat of assault-would not bring the matter within the ambit of public order."

In the present case also it is clear even as per the grounds of detention that the only activities attributed to the detenu are some acts which are said to amount to some offences punishable under the provisions of A.P. Excise Act and A.P. Prohibition Act as the detenu is said to be indulging in transportation of Indian Made Liquor, whisky and brandi into the Districts of East Godavari and West Godavari in contravention of the provisions of the A.P. Prohibition Act and A.P. Excise Act after prohibition was introduced recently in the two districts. Nothing more is alleged in the grounds to show that such activities attributed to the detenu would give rise to a problem of public order and would bring the matter within the ambit of such public order even if it is to be said that such activities may amount to any offence under the A.P. Prohibition Act or A.P. Excise Act.

9. In the said decision of the Supreme Court it is further observed in para-8 of the Judgment by Their Lordships after refering to the various grounds of detention communicated to the detenu in that particular case, as follows:

"We have extracted a substantial portion of the grounds of detention communicated to the petitioner to show how helpless the authorities feel in the matter of enforcing prohibition within the State. Obviously neither the Prohibition Act nor the other statutes referred to by the detaining authority could be called in aid to meet the requirements of the situation. On his own showing, afraid of the petitioner being released on bail and resorting to anti-social activities, and with a view to ensuring his detention in jail the impugned order has been made."

It is further observed by Their Lordships in para-9 of the Judgment:

"The satisfaction of the detaining authority is not open to judicial review but as has been pointed out by several Constitution Bench decisions of this Court a citizen is entitled to protection within the meaning of Article 22(5) of the Constitution of the procedural guarantees envisaged by law. The Court frowns upon any deviation or infraction of the procedural requirements. That in fact is the only guarantee to the citizen against the State's action of preventive detention."

In the present case also the first respondent, on the basis of the information supplied by the second respondent relating to the various offences alleged to have been committed by the detenu in the five instances enumerated in the grounds, had chosen to take recourse to the provisions of the Act with a view to detain him in jail thereby infringing his liberty which is to be protected under the relevant provisions of the Constitution in spite of the fact that there is nothing more to be seen in the alleged activities of the detenu to indicate that he has acted in any manner or is likely to act in a manner prejudicial to the maintenance of public order.

10. The above said decision of the Supreme Court is followed by this Court in various cases, the facts in which are similar to the present facts. In the two Division Bench decisions of this Court rendered on 8-8-1995 in W.P.No. 13665 of 1995 and W.P.No. 14251 of 1995, the detenus were said to have been engaged in illegal transportation, storage and sale of liquor and criminal cases were filed against them also under the relevant provisions of A.P. Excise Act and A.P. Prohibition Act. On the basis of such activities of the detenus, the detention orders were passed under the Act alleging that such conduct amounts to activities prejudicial to the maintenance of public order as defined in Section 2(a) of the Act. After referring to the above quoted observations of the Supreme Court, it is observed by this Court in the said two decisions that even if the detenus are said to have been involved in some offences punishable under A.P. Excise Act and A.P. Prohibition Act for transporting, storing or selling liquor, it cannot be said that there is any problem of maintenance of public order attracting Section 3 of the Act unless something more is attributed to them to show that their activities tantamount to the problem of maintenance of public order.

11. In another recent decision of this Court reported in Smt. Vellampalli Narsamma v. The Sub Inspector of Excise, Nellore 1995 (2) ALT 514 : 1996 (1) APLJ 129 rendered by a Division Bench of which one of us, Justice Syed Shah Mohammed Quadri was a member, it is observed, following the above said decision of the Supreme Court, that there is gap between law and order and public order and that criminal offence may relate to the field of law and order but such offence would not necessarily give rise to a situation of public order and that selling of liquor, though amounts to violation of the provisions of the Prohibition Act but without something more, would not give rise to a problem of public order. In the present case also, as already stated above, even if the detenu can be said to have indulged in some illegal activities such as, transportation, storage and sale of liquor, brandi or whisky, as the case may be, for which he has been already impleaded as an accused in the relevant criminal cases for the offences under the provisions of A.P. Excise Act and A.P. Prohibition Act, and even if the detenu can be considered as a "boot-legger" within the meaning of the Act on account of such conduct, such activities attributed to him by themselves cannot be considered as activities prejudicial to the maintenance of public order as defined in Section 2(a) of the Act as nothing more is alleged against him in the grounds of detention or in the detention orders to show that his activities would give rise to a problem of public order,

12. It is also to be seen in the present case that the contraband said to have been concerned in the various offences alleged against the detenu consists only of Indian Made Liquor, Brandi and Whisky as seen from the contents of the relevant First Information Reports and the grounds of detention orders in which the particulars of those offences are enumerated. In the first case concerned in Cr. No. 157/95 the property consists of 60 bottles of Brandi and samples of the same were alleged to have been obtained and sent for chemical analysis as per

the grounds mentioned in the detention order. But nothing more is alleged in the grounds regarding the nature of the report received in that particular case from the chemical examiner. The property concerned in the second case in Cr. No. 27/95-96 consists of Indian Made Liquor, and the chemical examiner's report in that case revealed, as mentioned in the grounds of detention, that it was only "Indian Made Liquor". The contraband concerned in Cr. No. 31/96 which is the third instance, consists of whisky and Indian Made Liquor and the chemical examiner is said to have opined that the property was "Indian Made Liquor". The property concerned in the 4th instance in Cr. No. 37/96 consists of Whisky which was also opined by the Chemical Examiner as "Indian Made Liquor". The property in the 5th instance concerned in Cr. No. 4/94-95 consists of Indian Made Liquor and the Chemical Examiner's report is also to the same effect. It is clear from such observations made in the grounds of detention order itself, that the contraband in which the detenu is said to have been indulged in transporting, storing and selling consists only of "Indian Made Liquor" and it does not contain any harmful and spurious substances which constitute grave danger to life or public health. As such, the detenu, even if he is said to have indulged in transportation, storage and sale of the liquor and other commodities which amount to some offences under the provisions of the A.P. Excise Act and A.P. Prohibition Act, and even if he is to be considered as a "boot-legger" on account of such activities, cannot be said to have acted in a manner prejudicial to the maintenance of public order inasmuch as the contraband is not even alleged to contain any spurious and harmful substances constituting grave danger to life or public health.

13. In the above cited decision of this Court reported in Smt. Vellampalli Narsamma v. The Sub Inspector of Excise. Nellore (2 supra), it is observed by this court, after referring to the observations made in an earlier Division Bench decision of this Court reported in B.C. Subbarayudu v. District Collector 1995(1) ALT 58 as follows:-

"From the excerpts of the order of detention, quoted above, it is clear that spurious liquor is injurious to health and unfit for human consumption, was taken as a ground for detention. Nothing was mentioned in the order of grounds of detention as to the nature of the components in the spurious liquor and to what extent those materials would cause danger to the public health. In the absence of any such report from the Chemical Examiner and in the absence of specific mention of the same, the order of detention cannot be sustained."

In another Full Bench decision of this Court reported in E. Sumathamma Vs. The State of A.P. and Others, also it is observed by this Court that unless the liquor which is said to have been seized from the possession of the detenu is proved to be spurious, it cannot be said that he has indulged 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 for sale and that such acts attributed to the detenu may amount to an offence under the Excise Law but it will not justify preventive

detention under the Act

14. In another Division Bench decision of this Court reported in *Boya Chinna Subbarayudu Vs. The Collector and District Magistrate, Kurnool and Others*, the contraband said to have been seized from the possession of the detenu consisted of fermented jaggery wash for which an offence u/s 34(a) of the A.P. Excise Act was alleged against him. Under such circumstances it is observed by this Court in that decision that everyone who answers the description of "boot-legger" cannot be detained preventively under the Act, and that 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" before the orders of detention are passed. It is observed by the Court in the said decision at page 471:

"It is therefore clear that a person who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P. Excise Act, the rules and the notification 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 boot-legger cause "grave or widespread danger to life or public health" he can be detained. If a boot- legger 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.

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."

15. In another Division Bench decision of this Court reported in *K. Chinnappa Reddy v. The District Collector-Cum-District Magistrate* 1995(1)ALT 26 : 1995(1) ALT 454 : 1995(1) An. W.R. 407 : 1995(1) ALD 286 where the contraband consisted of illicitly distilled arrack for which criminal cases were registered against the detenu under the relevant provisions of the A.P. Excise Act, it is observed that the detaining authority has not mentioned in the grounds of detention that the arrack seized from the detenu, the sales of which are attributed to him, if consumed, would result in grave or wide spread danger to life or publichealth, and the reports of the Chemical Examiners also do not show that the arrack contains any harmful substances and that under such circumstances, the order of detention passed against the detenu cannot be said to be valid and legal as there is nothing to indicate that such sale of liquor will endanger maintenance of public order as defined in Section 2(a) of the Act.

16. In the present case also neither the grounds of detention nor the contents of the counter-affidavit filed by the first respondent reveal that there were any spurious and harmful substances noticed in the contraband consisting of liquor,

brandi and whisky said to have been seized in the five instances enumerated in the grounds of detention, to show that such contraband, if consumed, will result in grave or widespread danger to life or health. As already stated above, it is not sufficient for sustaining the detention order under the Act to merely allege that the detenu is engaged in dealing with liquor or other contraband thereby violating the provisions of the A.P. Excise Act or the A.P. Prohibition Act, or that he is to be considered as a "boot-legger" in view of such activities attributed to him. Something more beyond such allegation is necessary to be attributed to the detenu to show that his activities are prejudicial to the maintenance of public order. In the present case there are no such allegations made either in the grounds of detention order or even in the counter affidavit of the first respondent to show that the activities of the detenu are prejudicial to the maintenance of public order. Time and again, the Courts right from the Apex Court, have been laying down the principles and reiterating such principles in case after case narrating the circumstances under which alone preventive detention orders can be justified, and this is clear from some of the decisions enumerated above. But the authorities have been blindly passing the detention orders without having any respect for such principles laid down by the Courts and without making any effort to show that the detention orders sought to be passed by them are in accordance with law and the principles laid down by the courts. It is high time that the concerned authorities intending to pass such detention orders should show respect to such principles laid down by the Courts and satisfy themselves that the detention orders that will be passed by them will stand the test of scrutiny by the Courts when they are questioned in a Court of law. The present orders of detention which are not in accordance with law, cannot be sustained and are, therefore, liable to be quashed.

17. The writ petition is, therefore, allowed with costs and the detention orders passed by the first respondent are quashed as they are violative of the provisions of the Constitution of India, and it is ordered that the detenu shall be set at liberty forthwith if he is not required in any case.