

(2014) 03 AP CK 0111
In the Andhra Pradesh High Court
Case No : W.P. No. 4686 of 2014

Smt. Sheela Bai

APPELLANT

Vs

The State of A.P. and Another

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Constitution of India, 1950 — Article 19, 21

Citation : (2014) CriLJ 3341

Hon'ble Judges : Nooty. Ramamohana Rao, J

Bench : Single Bench

Advocate : M. Laxman Rao, Advocate for the Appellant

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao, J.—The petitioner is the wife of the detenu and hence, challenges the Order of Preventive Detention, passed by the 2nd respondent on 24-09-2013, in this Writ Petition.

2. It is stated that the detenu has been indulging in paddling prohibited intoxicants, such as sale of arrack and spurious and illicit liquor. It also appears that he is being prosecuted in Crime No. 202 of 2011/12 of Prohibition & Excise Station, Saroornagar, Ranga Reddy District, which case was booked against him after the Task Force raided his premises and detected 70 illicit liquor sachets, each containing 100 milli liters. The criminal Court concerned has released him on bail in the said case. The Government Chemical Examiner, who analyzed the sample, declared it as "illicitly distilled liquor", which is unfit for potable purposes. The detenu was again booked in Crime No. 396 of 2011/12 registered on 25-10-2011, after another raid on his premises resulted in detecting 106 illicit liquor sachets, each containing 100 milli liters. Even in this case, he was enlarged on bail later on. The Government Chemical Examiner filed his report disclosing that the material is illicitly distilled liquor and the same is unfit for human consumption. Again, on 02-11-2011, another raid on the premises of the detenu has helped in detecting 100 illicitly distilled liquor sachets, each

containing 100 milli liters. He was released on bail in this case also. On 04-03-2013, again, the Enforcement Directorate, when raided the premises of the detenu, it resulted in detecting 170 illicit liquor sachets, each containing 100 milli liters. Similarly, cases were booked against him on 15-05-2013 and 28-05-2013. The detenu was again enlarged on bail by the criminal Court concerned. It appears that when the Detaining Authority sought for the opinion of the Professor of Medicine & Chief Physician, Osmania General Hospital, Hyderabad, he has pointed out the ill-effects of consumption of illicit liquor on the health of the consumers. The Detaining Authority, after considering this material, had formed an opinion that the detenu was engaged in preparation and sale of illicitly distilled liquor, which would have adverse effect in maintenance of public order and also is a source for grave and wide-spread danger to the public health. Therefore, the Detaining Authority is satisfied that the Provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (henceforth referred to as "the Act"), should be invoked and he should be detained in custody. The Detaining Authority has formed his opinion, based upon subjective satisfaction of the factors spelt out by him in the following manner:

It is imperative to prevent you from acting in any manner prejudicial to maintenance of Public Order, but I feel that recourse to normal law would involve considerable time and may not be effective deterrent in preventing you from indulging in further activities prejudicial to maintenance of public order in and around Janardhanreddy Nagar of Jillellaguda, Saroornagar Rangareddy District under Excise Station limits of Saroornagar, Rangareddy District.

3. It appears that the State Government had accorded its approval to the said Detention Order, in terms of sub-section (3) of Section 3 of the said Act. Subsequently, the Advisory Board on Preventive Detentions, constituted u/s 9 of the said Act, reviewed the case of the detenu on 11-10-2013 and tendered an opinion that there is sufficient cause for the preventive detention of the detenu. Thus, these orders have given rise to the present Writ Petition.

4. Heard Sri M. Laxman Rao, learned counsel for the petitioner and Sri Y.V. Vivekananda, learned Special Government Pleader attached to the learned Advocate General for the respondents.

5. Sri Laxman Rao, learned counsel for the petitioner would urge that in exactly identical fact situation prevailing in *Munagala Yadamma Vs. State of A.P. and Others*, , the Supreme Court, after considering the earlier Judgments rendered by it in *G. Reddeiah Vs. The Government of Andhra Pradesh and Another*, and *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, , had come to the conclusion that where the offences complained of against the detenu are liable to be tried by the ordinary law of the land, the preventive detention shall not be resorted to by the State. He, therefore, submits that the present case is squarely covered by the ratio laid down by the Supreme Court in *Munagala Yadamma Vs. State of A.P. and Others*, .

6. Per contra, Sri Vivekanda, learned Special Government Pleader appearing for the respondents, would submit that a close look at the Provisions of the Act in question will clearly bring out a distinction in the instant case. According to him, Section 2(a) of the Act defined the expressions "Acting in any manner prejudicial to the maintenance of public order" in the following words:

2(a) "Acting in any manner prejudicial to the maintenance of public order" means when a bootlegger, 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.

7. Based thereon, Sri Vivekananda would contend that a habitual offender, who has taken to bootlegging activities, is liable to be detained so as to prevent him from engaging in future or making preparations for engaging in any such bootlegging activity, which would be prejudicial to the maintenance of public order. Therefore, the exercise of power by the Detaining Authority in terms of and in accordance with Section 3 of the Act cannot be taken exception to. Sri Vivekananda would further contend that when this distinction is kept in view, the Judgment of the Supreme Court in MUNAGALA YADAMMA's case, is clearly distinguishable.

8. It would be essential to notice that the Supreme Court in Haradhan Saha Vs. The State of West Bengal and Others, , has crisply drawn the distinction between the preventive detention and criminal prosecution, in the following manner:

The essential concept of preventive detention is that detention of a person is not to punish him for something he has done, but to prevent him from doing it.

9. In view of this principle, the Preventive Detention Order passed by the Detaining Authority has got to be judged on the touchstone of its sustainability, but however, it should also be kept in view that a three-Judge Bench of the Supreme Court in Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another, , after exhaustively reviewing the earlier Judgments rendered by it, had held in para 32 that, the view expressed by it earlier in Haradhan Saha Vs. The State of West Bengal and Others, , does not mean that it was laid down that in all cases the authorities can take recourse to both criminal proceedings as well as the preventive detention, even though, in the view of the Court, the former is sufficient to deal with the situation. Thus, the principle enunciated by the Constitution Bench in HARADHAN's case has been explained in REKHA's case. In REKHA's case, it was clearly held that the right to liberty guaranteed by our Constitution by Article 21 means that, before sending a person to a prison, a trial must ordinarily be held giving him an opportunity of placing his defense through a lawyer. It should also be noted that the Three-Judge Bench of the Supreme Court had an occasion to consider the principle relating to the proximate live link to the preventive detention and the antecedent activities concerned. In Yumman Ongbi Lembi Leima Vs. State of Manipur and Others, , the principle that should

be observed by Courts has been crystallized in the following manner:

As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the scrutiny of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Penal Code, however heinous, is sufficient to make out a case for issuance of an order of preventive detention.

10. In this context, the Supreme Court in *Munagala Yadamma Vs. State of A.P. and Others*, , after noticing Judgments in *REKHA's* case and *Yumman Ongbi's* case, has held as under:

10. Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in *Rekha's* case (*supra*), in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land. Taking recourse to the provisions of preventive detention is contrary to the constitutional guarantees enshrined in Articles 19 and 21 of the Constitution and sufficient grounds have to be made out by the detaining authorities to invoke such provisions. In fact, recently, in Criminal Appeal No. 26 of 2012, *Yumman Ongbi Lembi Leima Vs. State of Manipur & Ors.*, we had occasion to consider the same issue and the three-Judge Bench had held that the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws, as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

11. No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him / her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial. Accordingly, while following the three-Judge Bench decision in *Rekha's* case (*supra*), we allow the appeal and

set aside the order passed by the High Court dated 20th July, 2011, and also quash the Detention Order dated 15th February, 2011, issue by the Collector and District Magistrate, Ranga Reddy District, Andhra Pradesh.

11. The principle is, if an earlier Judgment of the Supreme Court has been understood by subsequent Judgments of the Supreme Court in a particular manner and the principle is also explained, that becomes the legal principle that should be followed by all inferior Courts and Tribunals. In view of the principle enunciated in REKHA's case and YUMMAN ONGBI's case and followed in MUNAGALA's case, it emerges that so long as the ordinary criminal law is adequate to deal with the offences said to have been indulged in by a detenu, then, using the power of preventive detention without subjecting the detenu to the procedure of free and fair trial does not fit into the constitutional scheme of guaranteed liberty.

12. Hence, I am of the opinion that the periodical involvement of the detenu in various excise offences at regular interval, which have been chronicled in the Detention Order do not lend sufficient support for the Detaining Authority to pass a Preventive Detention Order against the husband of the petitioner. The contention canvassed by Sri Vivekananda has, in fact, been effectively answered by the Supreme Court in REKHA's case and that was the reason why in MUNAGALA's case, the Supreme Court has held that preventive detention is not the measure that should be applied merely because several cases have been registered against the detenu earlier. I am bound, in law and on principle, by the ratio laid down in REKHA's case and MUNAGALA's case.

13. Accordingly, the Writ Petition stands allowed at the admission stage, but however, without costs and the detenu shall be set at liberty forthwith.

14. Consequently, the miscellaneous petitions, if any, shall stand disposed of.