
(2006) 11 MP CK 0092
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8931 of 2006

Arman Khan

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 — Section 8

Citation : (2007) 1 MPLJ 424

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Paritosh Trivedi, for the Appellant; Vinod Mehta, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

The writ petition has been preferred against the order of externment dated 1-5-2006 (Annx.P/3) confirmed by the Court of Commissioner, Jabalpur Division, vide Annx.P/4 dated 20-6-2006.

Case of the Petitioner is that earlier he was externed vide order dated 25-11-2003 contained in Annx.P/5. The order was successfully challenged before this Court in Writ Petition No. 2234/04, Arman Khan v. State of M.P. and others and two other writ petitions which is revealed in Annx.P/6 dated 26-8-2004 containing the following conclusions:

Perusal of the proceedings of all the three cases indicates that Petitioners were incarcerated in jail when the proceedings were drawn on 4-11-2003. They were released on 22-11-2003/23-11-2003. For the first time they appeared before the District Magistrate on 25-11-2003. District Magistrate did not grant time for obtaining the certified copies of the documents and has passed the order on 25-11-2003 which was not the date fixed for final arguments. Date was for appearance of Petitioners. It appears that statements of the witnesses were

recorded behind the back. Petitioners were not afforded due and proper opportunity of defending themselves; when they had appeared through counsel on 25-11-2003 after being released from jail, reasonable opportunity ought to have been granted by the District Magistrate to file reply and to support the case by adducing evidence. Hence, in my opinion, the orders of externment passed by the District Magistrate which have been affirmed in appeal by the State, cannot be allowed to sustain. Liberty cannot be tampered with in arbitrary manner which has been projected in the instant cases. District Magistrate to be careful in future in not passing such an order of externment in undue haste which has been projected in the instant cases.

Shri T.S. Ruprah, learned AAG, has prayed that liberty be granted to the State now to proceed in accordance with law. As the Petitioners have suffered the order for last about more than 9 months and have virtually suffered the externment order which were passed, hence, liberty prayed for to continue with same show cause notice is declined.

Fresh show cause notice under the said Act was issued on 8-3-2006 to the Petitioner that why he should not be externed in view of his criminal and antisocial activities. A reply was duly filed as contained in Annx.P/2.

Learned District Magistrate Balaghat, passed an order dated 1-5-2006 externing thereby the Petitioner from the District of Balaghat, Seoni, Mandla, Jabalpur and Chhindwara. The order was challenged in appeal before the Commissioner, Jabalpur Division, which, too, was dismissed on 20-6-2006.

Shri Paritosh Trivedi, Learned Counsel appearing for the Petitioner contended that all the incidences included in the show cause notice Annx.P/I were subject-matter of the earlier proceedings for externment as revealed in the order dated 25-11-2003 contained in Annx.P/5. It has been contended by the Learned Counsel that on account of the earlier writ petition having been allowed, it is not open to the Respondents to consider the said incidences for the impugned externment. Next contention of the [earned counsel for Petitioner is that the Petitioner is law abiding citizen and there was no material before the Courts below for passing an order of externment. In this view of the matter, a prayer for quashment of the order of externment and the appellate order has been made.

Shri Vinod Mehta, learned Govt. Advocate, supported the impugned order. It has been urged by him that the earlier incidences would have been rightly considered while taking into consideration the past conduct of the Petitioner. He further contended that besides the earlier incidences, a number of such incidences took place subsequently and the impugned order of externment does not suffer from any illegality, none the less for invoking the writ jurisdiction of this Court.

Shri Trivedi, Learned Counsel appearing for the Petitioners, drew attention of this Court to the effect that there were 33 incidences (Criminal cases) against the Petitioner Arman Khan and few out of them were terminated in favour of the Petitioner. However, it may be seen that 33 incidences have been quoted in the

show cause notice contained in Annx.P/1.

this Court while passing the order contained in Annx.P/6 has made the following observations:

Shri T.S. Ruprah, learned AAG, has prayed that liberty be granted to the State now to proceed in accordance with law. As the Petitioners have suffered the order for last about more than 9 months and have virtually suffered the externment order which were passed, hence, liberty prayed for to continue with same show cause notice is declined.

Cumulative effect of the aforesaid direction is that merely on the same cause of action, Respondents are not permitted to proceed against the Petitioners under the provisions of the said Act. The Apex Court in the case of Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, has held:

The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed usually from prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order. Of course, such prejudicial conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary.

Considering the aforesaid, I am of the view that although the order of externment could not have been solely based on the incidences referred to in the earlier order of externment, yet the same may be taken into consideration in support of subsequent incidences to adjudge the past conduct or antecedent history of the Petitioner. Since there were number of cases in addition to the incidences referred to in Annx.P/5, the District Magistrate is not found to have committed any error in taking the same into consideration for determining the conduct for antecedent history of the Petitioner.

As regards attack on merits of the order, it is seen that 33 criminal cases were registered against the Petitioner from time to time during the period of last more than fifteen years. Later cases were registered on 13-10-2005, 21-12-2005 and 7-1-2006. Thus, obviously there was material before the learned District Magistrate, who after satisfying himself in accordance with law has passed the impugned order.

Learned Counsel for Petitioner Shri Trivedi, relying upon the single Bench decision in the case of Kala v. State of M.P. and Anr. 2004 (4) MPLJ 234 and Asaf Ali v. State of M.P. and others, 2006 (3) MPLJ 592, has contended that the order of externment is not liable to be sustained since there was no material before the District Magistrate to fulfil the ingredients of Section 5 of the said Act.

In the case of Kola (supra), it was found that there was no material to arrive at a finding that the externment of the Petitioner was warranted. On the contrary, in the present case, it is found that the learned District Magistrate had the requisite

material before him to record his own satisfaction for the purpose of externment of the Petitioner. It is a trite law in such matters that sufficiency of the material on record cannot be made a basis for challenging the order of externment, but the externment order can be challenged on the basis that there was no material at all for directing externment.

It may be seen from various Sub-sections of Section 8 of the M.P. (Rajya) Suraksha Adhiniyam, that the District Magistrate was obliged to inform a person in writing of the changed nature of the material allegation against him and give him a reasonable opportunity of tendering an explanation regarding them. No right of cross-examination has been given to the Petitioner. Under Sub-section (2) of Section 8 of the said Act, a right has been given to the Petitioner to make an application for the examination of any witness produced by him. This provision also does not confer a right on the Petitioner to cross-examine on the basis of the material before the District Magistrate. The Hon'ble Supreme Court of India in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, , while dealing a matter under the National Security Act, has held that:

We do not suggest that the principles of natural justice, vague and variable as they may be, are not worthy of preservation. As observed by Lord Reid in *Ridge v. Baldwin*, (1964) AC 40, 64-65, the view that "natural justice is so vague as to be practically meaningless" is tainted by "the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist." But the importance of the realisation that the rules of natural justice are not rigid norms of unchanging content, consists in the fact that the ambit of those rules must vary according to the context, and they have to be tailored to suit the nature of the proceeding in relation to which the particular right is claimed as a component of natural justice. Judged by this test, it seems to us difficult to hold that a detenu can claim the right of cross-examination in the proceeding before the Advisory Board. First and foremost, cross-examination of whom? The principle that witnesses must be confronted and offered for cross-examination applied generally to proceedings in which witnesses are examined to documents are adduced in evidence in order to prove a point. Cross-examination then becomes a powerful weapon for showing the untruthfulness of that evidence. In proceedings before the Advisory Board, the question for consideration of the Board is not whether the detenu is guilty of any charge but whether there is sufficient cause for the detention of the person concerned. The detention, it must be remembered is based not on facts proved either by applying the test of preponderance of probabilities or of reasonable doubt. The detention is based on the subjective satisfaction of the detaining authority that it is necessary to detain a particular person in order to prevent him from acting in a manner prejudicial to certain stated objects. The proceeding of the Advisory Board has therefore to be structured differently from the proceeding of judicial or quasi-judicial tribunals, before which there is a lis to adjudicate upon.

Apart from this consideration, it is a matter of common experience that in cases

of preventive detention, witnesses are either unwilling to come forward or the sources of information of the detaining authority cannot be disclosed without detriment to public interest. Indeed, the disclosure of the identity of the informant may abort the very process of preventive detention because, no one will be willing to come forward to give information of any prejudicial activity if his identity is going to be disclosed, which may have to be done under the stress of cross-examination. It is, therefore, difficult in the very nature of things, to give to the detenu the full panoply of rights which an accused is entitled to have in order to disprove the charges against him. That is the importance of the statement that the concept of what is just and reasonable is flexible in its scope and calls for such procedural protections as the particular situation demands. Just as there can be an effective hearing without legal representation even so, there can be an effective hearing without the right of cross-examination. The nature of the inquiry involved in the proceeding in relation to which these rights are claimed determines whether these rights must be given as components of natural justice.

Shri Vinod Mehta, learned Govt. Advocate, further placed reliance on the Division Bench decision of this Court in the case of Mahabir Prasad Gupta v. State of M.P. and Anr. 1989 MPLJ 218, wherein it has been observed:

The past conduct or antecedents and record only referred as guide for the future for drawing an inference that the witnesses are not coming forward to give evidence against such persons by reason of apprehension as regards their safety of their person or property as provided in Sub-clause (b) of Section 12 whereas the D.M. passed impugned orders on consideration of material before him.

He further placed reliance on another Division Bench decision of this Court in the case of Nafeez Ahmad v. State of M.P., 1982 MPWN 491, wherein it has been observed:

What we find from notice is that after mentioning the Petitioner's offending activities, the District Magistrate has recorded a tentative opinion that action of externment of the Petitioner would be necessary. After forming this tentative opinion, the Petitioner was given opportunity to show cause which the Petitioner did. Not only this, the Petitioner appeared before the District Magistrate, participated in the proceedings and also examined as many as seven witnesses in defence. The externment order shows that the District Magistrate considered all the material before him and applied his mind afresh in the light of the material before him before passing the final order. It is, therefore, not possible to agree with the Learned Counsel for the Petitioner that the District Magistrate pre-Judged the matter. There appears to be sufficient materia] on record which could permit the District Magistrate to record a satisfaction that an action of externment against the Petitioner was necessary. This satisfaction being subjective, we cannot objectively examine the merits and propriety of the order unless it could be shown that either there was no material or that the order was malicious, arbitrary or capricious or that it suffered from some procedural

irregularities.

After going through the record, I am of the considered opinion that there was sufficient material before the District Magistrate to pass an order of externment and the same has been rightly confirmed by the Appellate Court of Commissioner, Jabalpur Division.

No other point is pressed. The petition is, accordingly, dismissed, however, without order as to costs.