

**(1954) 02 GUJ CK 0002**  
**In the Gujarat High Court**

Babulal Chakubhai

APPELLANT

Vs

Saurashtra State

RESPONDENT

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**Date of Decision :** 25-02-1954

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

**Citation :** (1955) CriLJ 267

**Hon'ble Judges :** Chhatpar, J;Baxi, J

**Bench :** Division Bench

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**Judgement**

Baxi, J.

(1) This writ petition is against the order of ex-ternment passed against the petitioner by the District Magistrate, Central Saurashtra, u/s 47 (B) of the Saurashtra District Police (Amendment) Act, 1951.

(2) A notice u/s 47(E) was served on the petitioner and after hearing his explanation and examining a witness produced by him the learned District Magistrate passed the above order on 29-7-52 ordering the petitioner to remove himself from the limits of the Central Saurashtra Division by a specified route to Bhavnagar and not to re-enter the said limits for a period of two years without permission in writing from the Government.

(3) The petitioner's learned advocate challenged the order on various grounds. His first objection was that the material allegations against the petitioner mentioned in the notice were vague and lacked sufficient particulars to enable him to give an effective and complete explanation. His second contention was that these allegations did not bring his case within the scope and ambit of Section 47 (B). His third contention was that the order was bad as the inquiry, which preceded the notice, was ex parte and that before making the order, the learned District Magistrate should have afforded the petitioner an opportunity to cross-examine the witnesses examined by him. Some of the witnesses were Police Officers and it was contended that at least these officers should have been

produced for the petitioner's cross-examination.

It was further submitted that the evidence on which the learned District Magistrate relied was perjured evidence which was obtained by the police by intimidating and coercing the witnesses. The petitioner has filed affidavits of two of such witnesses in support of his contention. It was also contended that the petitioner had been denied the due process of law because he had preferred an appeal to the Government against the District Magistrate's order u/s 47(P) of the Act, but the Government had not only not disposed of the appeal but had not even acknowledged it. It was finally urged that a prosecution was pending against the petitioner in the Court of the First Class Magistrate, Rajkot, and several prosecutions were started against him thereafter, and although the petitioner repeatedly requested for permission to return to Rajkot to answer the charges against him, the permission was not granted except after a long delay under unduly harsh conditions. The District Magistrate filed a return on behalf of the opponent State in which the various contentions raised on behalf of the petitioner have been answered. This return, it may be stated, does not answer the charge that the petitioner's appeal has not been acknowledged nor disposed of by the Government.

(4) One more ground was taken up in the petition itself viz., that the petitioner was not given sufficient opportunity to tender his explanation or to examine the defence witnesses. This ground appears to be without substance. The notice was served on the petitioner on 30-6-52 by which he was ordered to appear before the District Magistrate on 5-7-52. He actually appeared on that date and offered his explanation and further time till 11-7-52 was given to him to produce his defence witnesses. The petitioner was defended by an advocate in these proceedings. Under the circumstances it cannot be stated that the petitioner had not been given sufficient time to answer the various allegations made against him. In fact the petitioner's learned advocate did not urge this ground during arguments.

(5) We shall now consider the petitioner's contention that the allegations set out in the District Magistrate's notice were very vague and did not fall within the ambit of Section 47(B) of the Saurashtra District Police (Amendment) Act. The notice Ex. 2 sets out that the following charges had been received by the District Magistrate against the petitioner, viz., that the petitioner was a desperado, that he was involved and continued to be involved in the commission of offences of beating and causing hurt with knives and the offences of gambling and theft, that he was the leader of a gang of persons involved in the commission of these offences and he was engaged in systematic pickpocketing by employing boys and that his activities were causing alarm and danger to person and property in the District. These charges no doubt do not mention the names of the persons, who have been subjected to these offences, or the names of the petitioner's associates or of the boys employed by him or the dates or places of the commission of the alleged offences; but they are, in our opinion, sufficient to

enable the petitioner to give an effective reply and he has in fact answered them.

Paragraphs 9, 10, 14 and 15 of his memo of appeal, which were produced during arguments by the learned Advocate General, clearly deny the various allegations made against him. The petitioner has stated in the memo that there was only one prosecution pending against him and that he was employed by a broker Ratilal for the last 10 years and had to attend his employer's shop from 9 or 10 a.m. to 6 or 7 p.m. daily suggesting that he had no leisure to indulge in the acts alleged against him. Several affidavits have been filed along with the petition in which the deponents have denied that the petitioner is a goonda or a desperado or that he was without any occupation or was engaged in pick-pocketing or other offences. The petitioner therefore fully understood the nature of the allegations against him and has denied them and has produced evidence in support of his denial. It cannot therefore be said that the allegations which were supplied to him were vague.

In *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, which was a case under the Preventive Detention Act, his Lordship the Chief Justice of India delivering the judgment of the majority interpreted the word "vague" in the following terms at p. 164:

....The contention that the grounds are vague requires some clarification. Vague can be considered as the antonym of "definite". If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague...It must vary according to the circumstances of the case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it.... If on reading the ground furnished it is capable of being intelligently understood and it is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention, it cannot be called vague.

The material allegations to be supplied to the suspected persons u/s 47 (E) do not call for a greater measure of precision. Section 47 (E) of the Saurashtra District Police (Amendment) Act requires that the suspected person should be furnished with the general nature of the material: allegations against him. If the allegations mentioned in the notice are sufficient to enable him to understand their nature and tender an explanation to the Government, the provisions of the Section are satisfied and it is not necessary to give the dates and other particulars of the offence. The law is certainly an extraordinary one and has been made to meet those exceptional cases where witnesses are not willing to come forward for fear of violence to their person or property and the whole object of the law would be frustrated if particulars about the offences were disclosed to the petitioner. We do not see any substance in this contention and it must be rejected.

(6) It was next urged that the learned District Magistrate acted upon ex parte statements of witnesses and the petitioner was not given an opportunity to cross-

examine them particularly the police witnesses who should have entertained no fear about the petitioner. This argument is directly answered by the Supreme Court in ? Gurbachan Singh Vs. The State of Bombay and Another, , a case of externment under the City of Bombay Police Act, where their Lordships state as follows at p. 224:

The only point which Mr. Umrigar attempts to make in regard to the reasonableness of this procedure is that the suspected person is not allowed to cross-examine the witnesses who deposed against him and on whose evidence the proceedings were started. In our opinion, this by itself, would not make the procedure unreasonable having regard to the avowed intention of the legislature in making the enactment. The law is certainly an extraordinary one and has been made only to meet those exceptional cases where no witnesses for fear of violence to their person or property are willing to depose publicly against certain bad characters whose presence in certain areas constitute a menace to the safety of the public residing therein. This object would be wholly defeated if a right to confront or cross-examine these witnesses was given to the suspect. The power to initiate proceedings under the Act has been vested in a very high and responsible officer and he is expected to act with caution and impartiality while discharging his duties under the Act. This contention of Mr. Umrigar must, therefore, fail.

It is therefore impossible in view of the above observations to contend that the witnesses should have been allowed to be cross-examined by the petitioner.

The objection that the allegation contained in the District Magistrate's notice or his order was outside the purview of Section 47B is equally futile. The contention that the evidence on which the learned District Magistrate acted was perjured evidence has no substance either. Out of the several witnesses examined before the District Magistrate the petitioner produced affidavits of Liladhar Hansraj and Champaklal Devji Mehta, who deposed to being forced by the Police to give their statements against the petitioner. An affidavit by the then Sub-Inspector of Police, Rajkot City, who recorded the statements of witnesses, had been produced on behalf of the opponent State denying all charges of coercion and intimidation. It may be noted that about 18 witnesses were examined before the District Magistrate and the question whether after considering their cumulative effect he should rely upon them and institute proceedings against the petitioner was entirely one for him to decide and the High Court cannot take upon itself the task of weighing that evidence which in the very nature of things it has no opportunity to hear. We might repeat that the proceedings were initiated by a very responsible officer and the petitioner must remain satisfied with his decision. All that this Court is entitled to consider is whether the authority entrusted with the duty of making the order has followed the procedure laid down by law and has applied its mind to the materials produced before it. If after complying with these conditions it is satisfied that action should be taken against the suspected person, this Court could not sit in appeal against its order and

entertain the objection that the evidence produced before it was perjured evidence.

(7) The next ground of objection is that the Government did not pass orders on the petitioner's appeal and did not even acknowledge it. The petitioner produced a certified copy of the deposition of the Record Keeper in the Home Department recorded in Criminal Case No. 1092 of 1952 against him for disobedience of the District Magistrate's order. The Record Keeper admits that an appeal dated 28-8-52 had been received by the Government but it has not been disposed of nor has it been acknowledged. The opponent State has neither denied nor admitted the truth of this allegation in the District Magistrate's return. This appears to us to have been due to some misunderstanding. During the arguments the learned Advocate General produced an affidavit of the Superintendent of Branch 1, Home Department, enclosing two applications from the petitioner dated respectively 14-8-52 and 17-11-52, and a memo of appeal dated 28-8-52 against the District Magistrate's order of externment. The applications dated 14-8-52 and 17-11-52 are for permission to return to Rajkot, while in the memo of appeal the petitioner has prayed that the District Magistrate's order be set aside or in the alternative the rigour of the order may be relaxed by reducing the period of externment or by allowing the appellant to stay in Rajkot after furnishing bail u/s 47(1). A consolidated order on these applications and the memo of appeal was passed on 29-11-52 by which the petitioner was allowed to return and stay in Rajkot upto the midnight of 31-12-52 subject to certain conditions.

In this order the petitioner's appeal has been described as "application dated 18-8-52". The order was served on the petitioner's advocate on the same date viz., 29-11-52 and a signed acknowledgment from him of the rece."Pt of the order is produced. The learned advocate did not deny the receipt of the order but relying on this mis-description of the appeal as an application, he argued that the appeal still remained undisposed of for no order on the "appeal" was produced by the Government. We are however satisfied that this order disposes of the appeal. The petitioner's learned advocate was not able to show that any other application dated 28-2-52 except the memo of appeal was presented to the Government. In the appeal two alternative reliefs were prayed for viz., that the District Magistrate's order should be altogether set aside or that he should be allowed to stay in Rajkot on his furnishing bail. The order however allows him to return to Rajkot and stay there not for good but for a specified period only. It cannot therefore be said that the appeal had not been disposed of by the Government. It would have been much better if the Government's order had been drafted more accurately and the petitioner's prayer for setting aside the District Magistrate's order had been formally rejected; but omission to do that cannot justifiably lead one to conclude that the appeal still remains pending. This ground of petition must therefore fail.

(8) The last contention is that the petitioner was hampered in his defence in a

criminal prosecution pending against him at the time of the order and which was started thereafter. The petition mentions a prosecution u/s 324, IPC and another u/s 332, IPC In his application to the Government dated 17-11-52 he refers to one more prosecution for disobedience of the District Magistrate's order. The Sub-Inspector of Police has mentioned in his affidavit that the petitioner was prosecuted u/s 326, IPC in Criminal Regular Cases Nos. 136 of 1950 and 137 of 1950 and was acquitted. He was prosecuted Under Sections 147, 148, 149, 307, 451-34, IPC with 8 others and fined Rs. 10/- in Criminal Case No. 144 of 1951. It is however not stated under what Section the petitioner was convicted.

Another prosecution against the petitioner and 8 others Under Sections 147, 148, 149, 307-34, IPC in Criminal Case No. 178 of 1952 resulted in his conviction u/s 324-34 and he was sentenced to six weeks' rigorous imprisonment and a fine of Rs. 40/-. It is nowhere suggested that the petitioner's bail was cancelled by the Court in any of these cases. On the contrary it appears that he fared very well and must have been able to defend himself unhampered by the District Magistrate's order and he was allowed to stay in Rajkot for more than a month after his application dated 17-11-52 as the Government's order dated 26-11-52 shows.

The petitioner has made a grievance in the petition that he intended to file a writ application in this Court and had requested the Government to allow him to return to Rajkot for the purpose but the permission was granted after much delay. The first reference to the intended writ application however appears in his application dated 17-11-52 and within 12 days of the application he was allowed to return to Rajkot. We are therefore satisfied on materials before us that the objection that he has been hampered in his defence in criminal cases or that he was unreasonably delayed in presenting the petition must be rejected. In the result the petition fails and is ordered to be dismissed.

Chhatpar, J.

(9) I agree.