

(1990) 11 KAR CK 0037

In the Karnataka High Court

Case No : Criminal Revision Petition No. 415 of 1988

Baburao

APPELLANT

Vs

The Dist. Magistrate, Gulbarga and another

RESPONDENT

Date of Decision : 30-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 54, 55, 56, 57

Citation : (1992) CriLJ 184 : (1991) ILR (Kar) 627 : (1990) 3 KarLJ 413

Hon'ble Judges : R. Ramakrishna, J

Bench : Single Bench

Advocate : P.S. Mali Patil, for the Appellant; K.H.N. Kuranga, S.P.P., for the Respondent

Judgement

1. The petitioner Baburao S/o. Sharanappa Pail is a resident of Shahbazar, Gulbarga. The averments made in the Revision Petition and the records summoned from the Office of the District Magistrate, Gulbarga, discloses that the petitioner required the assistance of this Court to set aside the externment order passed by the District Magistrate as illegal and violative of natural Justice.

2. The District Police Officer, Gulbarga, has sent a report dated 16-9-1986 to the District Magistrate/I respondent stating that the petitioner is continuously and actively indulging in a game called "Matka" by himself and through his agents in Gulbarga town and therefore, during 1986, the police have filed the following cases where he has been convicted and sentenced to pay fine in the Court of the learned JMFC, Gulbarga :

1. Chowk P. S. Gulbarga Cr. No. 148/86 U/s. 78(A) of K.P. Act. fined Rs. 60/- 2. -do- Cr. No. 156/86 -do- fined Rs. 50/- 3. -do- Cr. No. 159/86 -do- fined Rs. 60/- 4. -do- Cr. No. 162/86 -do- fined Rs. 60/- 5. -do- Cr. No. 163/86 -do- fined Rs. 50/- 6. -do- Cr. No. 302/86 -do- fined Rs. 50/-

3. It is further stated that the activity of the petitioner is tempting the people to play "Matka" game, with the result, their social and economic standards are

becoming weak and to eradicate the game of "Matka" at Gulbarga, it is necessary to remove the petitioner for a period of two years from Gulbarga District by invoking S. 56(g) of the Karnataka Police Act (hereinafter referred to as "the Act").

4. After receipt of the above report, the learned District Magistrate has issued a notice in No. DCG.MAG.29/86-87 dated 14-10-1986 alleged to be under S. 58 of the Act, bringing to the attention of the petitioner that the police officer has made a report for externment for having indulged in the game of "Matka", hence necessary action is to be taken for externment. The petitioner was called upon to appear on 10-11-1986 at about 3-00 p.m. along with a surety, failing which, the order will be passed ex parte.

5. The petitioner has challenged the proceedings initiated by the learned District Magistrate on the basis of a police report before this Court in Cr.P. No. 375 of 1987 under S. 482 of the Code of Criminal Procedure. After giving opportunity to the petitioner and the State, this Court following the decision of *Kempaiah H. v. State of Karnataka* (1982) 2 Kant LJ 69 : 1983 Cri LJ 12 has set aside the impugned order and proceedings were quashed vide its order dated 18-3-1987.

6. After quashing the proceedings pending before the learned District Magistrate, the records are sent back. Thereafter, the I respondent issued another Notice bearing No. DCG.MAG.29/86-87 dated 17-7-1987 under S. 58 of the Act, reiterating once again the averments made in the notice dated 14-10-1986 which has been struck down by this Court.

7. It is contended that, under S. 56(g), if any person committed the offences punishable under Ss. 78, 79 and 80 of the Act, he can be externed from the District. Hence why the petitioner should not be sent out of the District for a period of two years under S. 56(g) of the Act. The petitioner has filed an objection to this notice on 15-10-1988 questioning the jurisdiction of the learned District Magistrate in view of the fact that a similar notice on the same averment issued on 14-10-1986 was quashed by this Court and since there is no fresh material for issuing another show cause notice, the notice is bad in law and it is only the measure of harassing the petitioner. Hence he requested the first respondent to drop further proceedings in the interest of justice and equity.

8. The learned District Magistrate having not been satisfied with the reply offered by the petitioner, has passed an order on 29-10-1988 holding that the petitioner is liable for punishment of removal out of Gulbarga District, for a period of two years and that the order will come into force after the expiry of 30 days from the date of pronouncement. It is this order which is impugned in this petition.

9. The learned counsel for the petitioner Sri. P. S. Mali Patil has submitted that, a similar order passed by the District Magistrate previously on the same cause of action was held to be bad in law for non-compliance of the provisions of S. 58 of the Act. Hence issue of another notice on the same cause of action without any fresh materials, on the very face of it, is illegal and unsustainable in law. The

learned counsel further submitted that the first respondent has not assigned any special reason for overlooking the order of this Court for issue of a show-cause notice once again and he has also committed an error in not considering the objection statement of the petitioner.

10. It is not in dispute that the police of Gulbarga have filed cases against the petitioner under S. 78(1)(a)(iii) of the Act (as narrated above) where the petitioner has pleaded guilty and paid the fine amount. The record further discloses that the first five cases are filed during the month of February, 1986 and the last case was filed on May, 1986. There is no material to show whether any fresh case is filed against the petitioner after action initiated for externment.

11. Under S. 56(g) of the Act, if a person has been convicted at any time either before or after the commencement of this Act, thrice of an offence within a period of three years under Ss. 78, 79 and 80 of this Act, the Commissioner, the District Magistrate, or any Sub-Divisional Magistrate specially empowered by the Government in this behalf, has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction or such area or any district or any part thereof contiguous thereto, by such route and within such time as the said officer may specify and not to enter or return to the place from which he was directed to remove himself.

12. Under S. 57 of the Act, a direction made shall in no case exceed a period of two years from the date on which it was made.

13. Section 58 of the Act prescribes as to what are the opportunities to be given before an order is made. According to this section, the concerned officer shall inform in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness, produced by him, the authority or officer concerned shall grant such application and examine such witness, unless for reasons to be recorded in writing to reject such application.

14. Section 59 empowers a person aggrieved by an order made under Ss. 54, 55 or 56 to file an appeal to the Government within thirty days from the date of such order.

15. Under S. 60 of the Act, the orders shall not be called in question except under certain circumstances. For proper understanding, the section is reproduced below.

"60. Finally of orders :- Any order passed under Ss. 54, 55 or 56 or by the Government under S. 59 shall not be called in question in any Court except on the ground that the authority making the order or any officer authorised by it had not followed the procedure laid down in sub-section (1) of S. 58 or that

there was no material before the authority concerned upon which it could have based its order or on the ground that the said authority was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person in respect of whom an order was made under S. 55."

16. The directions contained in the above section required a strict compliance by the authorities concerned as it directly deals with the fundamental rights of an individual as enumerated under Chapter III of the Constitution of India.

17. Though an appeal is provided under S. 59 to the State Government, the aggrieved party is not prevented to file a Revision before this Court. This aspect of the matter has already been settled in a judgment of this Court in *Anjanappa v. State of Karnataka* ILR 1987 Kant 2326 : 1988 Cri LJ 248.

18. The facts enumerated above show that the petitioner was charge-sheeted for the offence enumerated under S. 78, sub-clause (iii) of the Act individually and also with some other persons where he has pleaded guilty and paid the fine amounts imposed by the Court.

19. This Court has quashed the proceedings initiated by the learned District Magistrate and also the notice issued to the petitioner relying on the decision of this Court in *Kempaiah's case* (1983 Cri LJ 12). In the said case, a notice under S. 55, Clause (b) of the Act was issued narrating the involvement of the petitioner and the result of such involvement and why he should not be proceeded with under the Act. When that notice was challenged before this Court, it was held by Patil, J., as he then was,

"to attract Clause (a), the allegations should show that the person's movement or acts are causing or calculated to cause harm. Though past acts may be relevant, it is only the movements and future apprehended acts which are likely to cause harm, to person or property of others, that calls for action under S. 55. Allegation of mere entertaining unlawful designs is not sufficient to take such action. (1976 (2) Kar LJ 329 - relied on)"

"It is not the report of the police that is sufficient, but it is only when it appears to the District Magistrate that such action under S. 55 is necessary that notice could be served."

20. To initiate action under S. 56 of the Act, narrating of a mere conviction of the offences enumerated in sub-cl. (a) to (h) is not sufficient. On a plain reading of the section, it indicates that there should be something more to convince the authority to initiate the proceedings. The authorities should have reason to believe that such person is likely to engage himself again in the commission of similar offences. The term "reason to believe" is a condition precedent to initiate action. The authority should enumerate in the show-cause notice as to what the are materials on which it feels necessary to remove the person from the District. Further, the order should direct the area or any district or districts or any part thereof contiguous thereto, by such route and with which time is to be

mentioned.

21. The general nature of material allegations contemplated under S. 58, though of general nature, but, at the same, it should not be too general or too vague so as to render the person not able to tender explanation in respect of what was alleged against him. This fact is lacking in the order passed by the first respondent. Further, the order does not comply with the mandatory provisions contained in S. 56 as there should be a direction to the person specifying the route and further direction not to enter or return to the place from which he was directed to remove himself.

22. A perusal of the earlier notice issued on 17-7-1987 which has been struck down by this Court in Cr.P. No. 375 of 1987 and the present notice, on which, the first respondent passed the impugned order, does not show as to what fresh material and fresh circumstances which warranted for the first respondent to issue another notice indicating thereon that he is complying with the findings narrated in the order of this Court passed earlier.

23. When the second notice was issued, purporting to be under S. 56 to the petitioner, there was absolutely no material to make the petitioner to understand as to the necessity of the first respondent initiating fresh action against him. Obviously due to the said reason, the petitioner was made to file his objection statement bringing it to the notice of the first respondent that a similar notice issued was quashed in Cr.P. No. 375 of 1987 and there is no fresh material for initiating action once again and it is prejudicially affecting the interest of the petitioner and also it is causing harassment to him.

24. The first respondent has not stated in his second show cause notice dated 17-7-1987 that he is issuing the said notice after taking into consideration the observations made by this Court while disposing of the Criminal Petition No. 375 of 1987 for the same action taken by the first respondent. Only in the impugned order, the first respondent has stated that, after the decision of this Court, action on the request of the complainant, meaning thereby the Superintendent of Police, another show cause notice is issued on 17-7-1987. There is absolutely no material before this Court to show as to any fresh materials gathered by the complainant to initiate action against the petitioner except reiterating the same old cases in the order as the cause for taking action against him. This method adopted by the first respondent is violative of principles of natural Justice and also opposes the common law of the land. The first respondent never expressed in the order impugned that what are the fresh materials placed before him to believe that the petitioner will again indulge in the same offence as admittedly the last case decided against the petitioner was during the month of May, 1986.

25. The material facts shown above disclose that the learned District Magistrate without any fresh materials, initiated proceedings afresh without applying his mind as to the order passed by this Court to the earlier show cause notice issued on the same averments.

26. Since the second show cause notice dated 17-7-1987 has not disclosed any fresh materials to take action against the petitioners, the scope was limited to the petitioner to challenge the said notice by placing proper materials and examine any witnesses in his favour in accordance with the provisions contained in S. 58 of the Act; since the notice is defective, the petitioner was prevented from a reasonable opportunity of tendering explanation. Hence the action of the respondent is opposed to the mandatory provisions contained under S. 58 of the Act.

In the result, this Revision Petition is allowed. The initiation of action and the order passed by the first respondent on the basis of the cases decided in the year 1986 are hereby quashed.

27. Petition allowed.