

(1952) 02 GUJ CK 0001
In the Gujarat High Court

Bharwad Chania Meru

APPELLANT

Vs

State of Saurashtra and Another

RESPONDENT

Date of Decision : 08-02-1952

Acts Referred:

Penal Code, 1860 (IPC) — Section 393

Citation : AIR 1953 Guj 3 : AIR 1952 Guj 3 : (1953) CriLJ 86

Hon'ble Judges : Mohanlal Ujamshi Shah, C.J.;J.A. Baxi, J

Bench : Division Bench

Judgement

Baxi, J.—The District Magistrate, Central Saurashtra Division served an order on the petitioner u/s 47-C of the Saurashtra District Police Ordinance as amended by the Saurashtra Act, 23 of 1951 directing him to remove himself outside the limits of the Central Saurashtra Division for a period of two years within four days. In default of compliance of the order the learned District Magistrate directed that the Police Department should arrange to take him to Junagadh. Before making the order, the District Magistrate had served a notice on the petitioner dated 25.8.51 asking him to explain why he should not be ordered to remove himself u/s 47-C. He was directed to appear on 3.9.51 accompanied by a pleader if he so wished. He was also informed that no adjournment would be granted. After removing himself from the limits of the Central Saurashtra Division in compliance with the order, the petitioner applied to the District Magistrate for permission to return to Rajkot for a week for domestic work. This permission was granted on certain conditions. He then made another application for extension of the period of his stay. This extension was also granted to him.

He has now applied to this Court for a writ declaring that the District Magistrate's order is without jurisdiction, illegal and in contravention of the fundamental rights of the petitioner and has prayed for a direction that the opponents should not enforce the order.

2. It was contended that the order in question was in contravention of the provisions of Section 47-C of the Saurashtra District Police Ordinance which is in

the following terms:

If a person has been convicted-

(a) of an offence under Chapter XII, XVI or XVII of the Indian Penal Code, or

(b) thrice of an offence within a period of three years u/s 4 or 12-A of the Bombay Prevention of Gambling Act, 1887 or under the Bombay Prohibition Act, 1949, both as adapted and applied to the State of Saurashtra, the District Magistrate or the Sub-Divisional Magistrate specially empowered by the State Government in this behalf, if he 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, by such route and within such time as the said Officer may prescribe and not to enter or return to the area from which he was directed to remove himself.

3. The District Magistrate's Order must therefore comply with two conditions viz. that the person against whom it is proposed to make the order should have been convicted of certain offences under the I.P.C. or should have been thrice convicted u/s 4 or 12-A of the Gambling Act or the Prohibition Act and the District Magistrate should have 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. In the present case, the petitioner has 7 convictions to his credit under the Prohibition Act. This Act was applied to Saurashtra in 1949 and the first condition that he should have been convicted thrice in three years under the Prohibition Act has been complied with. The order proceeds further and states that the petitioner is a bully habitually engaged in committing breaches of peace, a drunkard and a habitual gambler and has been convicted under the Gambling Act as well as the Prohibition Act and has also been sentenced u/s 393 I.P.C. that complaints were pending against him and taking into account his conduct he was found to be a habitual offender and a convicted person and therefore in order to prevent him from committing offences, it was expedient that an order of externment u/s 47-C of the Ordinance should be passed against him.

This order very clearly shows that the object of the learned District Magistrate in making the order was to prevent the petitioner from committing offences in future. u/s 47-C however it is not enough that the person must be found to be habitual offender and the order is made as a general preventive measure intended to prevent him from committing offences in general. The order can only be made when the District Magistrate has reason to believe that the person is about to commit offences similar to those of which he has been convicted and the object of the order is to prevent him from committing such offences. There is not a word in the order showing that its object was to prevent the petitioner from committing offences similar to those for which he was convicted and that the District Magistrate had reason to believe that the petitioner was likely to engage himself again in the commission of such offences. In para 6 of his reply the

learned District Magistrate does state that he had reason to believe that the petitioner was likely again to engage himself in the commission of an offences similar to those for which he was convicted but this averment should have found place in the order itself. The omission to mention this ground in the order cannot be rectified by stating it in a subsequent affidavit in answer to this Court's notice. The petitioner is entitled to know the grounds upon which he has been externed and therefore the order which is served upon him should state all the grounds which give jurisdiction to the externing Authority to make the order.

4. The learned Advocate General argued that the District Magistrate had inherent jurisdiction to proceed u/s 47-C and if he committed an error in the exercise of the powers vested in him, the petitioner's remedy was to have approached the Government in an appeal, u/s 47-F. He further submitted that the Order of the District Magistrate was final u/s 47-G and could not be called in question by this Court. It is true that the Act gives the petitioner the right of appeal against the District Magistrate's order. When an appeal is provided, the Court will not issue a writ as a general rule but if the High Court is satisfied that the District Magistrate purported to act under this Section without applying his mind to the question whether the conditions which gave him jurisdiction existed or not he contravenes the fundamental rights of a citizen and it becomes the duty of the High Court to interfere. The cases cited by the learned Advocate General do not lay down the law that the High Court has no jurisdiction under any circumstances to issue a writ if the law under which the impugned order is made provides on appeal against the order.

5. We may refer here to Section 47-H of the Ordinance. This section requires the District Magistrate to inform the person in writing of the general nature of the material allegations against him and to give him a reasonable opportunity of tendering an explanation regarding them. The person against whom it is proposed to make the order has thus been given a right to tender an explanation of his conduct before an order is made and he can do so only if he is informed of the general nature of the material allegations against him. If the notice does not contain these material allegations, then it is obvious that the order cannot be sustained because the person has not been given an opportunity of tendering an explanation. The notice which was served on the petitioner recites that the District Magistrate had received information that the petitioner was convicted of offences under the Gambling Act, Prohibition Act and Section 393 I.P.C. Certain prosecutions were pending against him. in Courts. The petitioner was a bully and an excitable person and habitually committed affrays. He extracted money from people under threats but no one was able to depose against him in Courts on account of fear. The petitioner's presence was thus a source of fear or danger to the public and therefore he should explain why he should not be externed u/s 47-C of the Ordinance.

The petitioner was thus called upon to show cause against his externment because on the information received by the District Magistrate about his

antecedents the latter thought that the petitioner's presence was a source of danger and annoyance to the public, but he was not informed that the District Magistrate had reason to believe or had information that the petitioner was about to engage himself again in offences similar to those for which he was convicted nor were the circumstances which conveyed the above suggestion notified to him. It is obvious that in the absence of any instruction in the notice on the point it was impossible for the petitioner to tender any explanation, and the order of externment made without giving him an opportunity of tendering an explanation is obviously without jurisdiction and cannot be regarded as an order passed under the Saurashtra District Police Ordinance. The learned District Magistrate states in para. 3 of his reply that the order was passed after considering the facts and materials on record and after fully hearing the petitioner and after giving him an opportunity and a notice to be heard.

We have already pointed out how the notice served on the petitioner omitted to mention the ground which alone could give jurisdiction to the learned District Magistrate. The petitioner was no doubt examined by him. Copy of his examination on oath has been filed on behalf of the Government. He has been questioned about the previous convictions. He has also been questioned about his property but not a question has been put to him that the District Magistrate had any information against the petitioner which suggested that the petitioner was about to engage himself again in offences against property or Prohibition Act or the Gambling Act. It is therefore clear beyond doubt that the learned Magistrate did not apply his mind to the question whether from the materials before him he had reason to believe that the petitioner was about to be engaged in the commission of similar offences nor did he give the petitioner an opportunity to give an explanation about the information in his possession on this point. The order therefore cannot be sustained.

6. It was pointed out on behalf of the petitioner that the notice required the petitioner to appear before the District Magistrate on 3.9.51. The petitioner was at this time in jail to the knowledge of the learned District Magistrate. The notice was served on the petitioner on 30.8.51 and thus he had barely two clear days within which to tender an explanation, engage a pleader if he so wished and decide whether he should examine any witnesses on his behalf. The time given to the petitioner was thus not reasonable, particularly as he was in jail. We cannot accept the contention that the petitioner was given time (sic) to tender an explanation. Whether that time was reasonable or not is a question of fact which the learned District Magistrate was alone competent to decide and this Court cannot interfere except where the time given is so short that no rational person can say that the person has been given reasonable time. If the petitioner thought that the time given to him was too short to enable him to prepare his defence, it was his duty to have applied to the learned District magistrate for extension. He had a right of appeal and could have attacked the order in appeal on this ground.

7. We are satisfied that the learned District Magistrate's order does not comply

with the mandatory provisions of Section 47-C of the Saurashtra District Police Ordinance and is consequently without jurisdiction. We set aside the order and direct the opponents not to enforce it against the petitioner.

Shah, C.J.

8. I agree.