
(1988) 08 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Appeal No. 1564 of 1986

Chameli

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 17-08-1988

Acts Referred:

Citation : (1988) 15 DRJ 313 : (1988) 2 RCR(Criminal) 501

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : H.L. Gurnami and A. Ahlawat, for the Appellant;

Judgement

P.K. Bahri, J.

(1) At the outset I may mention that this matter should have been listed as Criminal Writ because the petitioner has sought writ of certiorari seeking quashing of a notice issued u/s 50 of the Delhi Police Act for taking action against the petitioner u/s 47 of the Act. Mr. Vimla Mehta, Additional Deputy Commissioner of Police, South District, New Delhi had issued notice dated 13th May, 1986 u/s 50 of the Delhi Police Act informing the petitioner that she has to be proceeded against u/s 47 of the Act and then the notice reproduces the allegation that since 1977 the petitioner has been committing acts and movements which are causing alarm, harm and danger to the residents of the localities of Mehrauli, Vasant Vihar and adjoining police. stations .It was also mentioned in the notice that the petitioner has been involved in 18 criminal cases, most of them are under the Punjab Excise Act, a few under N.D.P.S. Act and one u/s 307 of the Indian Penal Code and one under the Dangerous Drugs Act. in some of cases .she has been convicted and some of them are pending trial and in some she has been acquitted. It was mentioned in the notice that the witnesses including the camera witnesses are not willing to come forward to give evidence against the petitioner in public by reason of apprehension on their part as regards the safety of their persons and they also apprehend that they would be assaulted by the petitioner if they give evidence against her.

(2) This notice has been challenged by the petitioner on the score that this has been issued in a mala fide manner inasmuch as one constable Pradeep Kumar of Police Post Mahipalpur on 27th July, 1985 in the absence of the petitioner entered jhuggi with the intention to outrage the modesty of her daughter-in-law named Babita but he failed to succeed in his attempt and thereafter two police officials came and demolished her jhuggi and a complaint had been made to higher authority in that respect and that she has been involved in false criminal cases due to enmity and that the local police has prevailed upon the Additional Deputy Commissioner of Police to start the proceedings against her under the Delhi Police Act. It is pleaded in the petition that the allegation made in the notice are baseless and the Additional Deputy Commissioner of Police concerned has acted in a mechanical manner without applying her mind in issuing the said notice. A plea was also taken that the provisions of the said Act and the issuance of a notice under the said provisions are violative of Articles 14, 19 and 21 of the Constitution as they impose undue and unreasonable restrictions on the liberty of the petitioner. It was also pleaded that notice is also bad as it fails to comply with the mandatory provisions of Section 47 of the Act inasmuch as no names of witnesses had been given who have been threatened by the petitioner or who apprehend any assault at the hands of the petitioner and even names of the public persons have not been given to whom alarm and danger had been caused due to acts and movements of the petitioner. It was also pleaded that in most of the cases the petitioner has been acquitted so those cases could not be taken cognizance of for issuance of notice u/s 50 of the Act.

(3) In the counter filed by the Additional Deputy Commissioner of Police concerned the averments of the petitioner have been controverted and it has been pleaded that the petitioner is a B.C, Bundle A of Police Station Mehrauli and she is a habitual offender and is engaged in the sale of narcotics and she has been indulging in these criminal activities since 1977 and that the S.H.O. of Police Station Mehrauli has put up the proposal dated 25th April, 1986 seeking her externment from Delhi for two years and that she being satisfied from the material placed before her thought it fit to start the proceedings against her u/s 47 of the Act. It was controverted that notice is bad in any manner. It was denied that notice has been issued in mala fide manner and it was also pleaded by her that the complaints made by the petitioners against the police whenever cases are registered against her have been examined and found to be false and baseless.

(4) Learned counsel for the petitioner, Mr. H.L. Gurnani, has not at all referred to the charge of mala fide. He has challenged the impugned notice on following grounds : (i) that notice is bad inasmuch as notice by itself does not show as to which of the options available to the police are to be exercised u/s 47 of the Act; (ii) that notice is bad inasmuch as the names of the public persons have not been disclosed in the notice who have been affected adversely by the so called acts and movements of the petitioner; (iii) notice is bad because of acts of the petitioner in committing under the Excise and/or N.D.P.S. Act are not such which

could be taken notice of for the purpose of taking action u/s 47 of the Act; and (iv) that the Additional Deputy Commissioner of Police has no power to issue such a notice.

(5) I will deal with these contentions in Seriatim .

(6) Section 47 of the Act lays down that if it appears to the Commissioner of Police (a) that the movements and acts of any person are causing or are calculated to cause alarm, danger or harm to person or property...and that in the opinion of the Commissioner of Police witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, the Commissioner of Police may, by order in writing...direct such person to so conduct himself as shall seem necessary in order to prevent violence and alarm or to remove himself outside Delhi or any part thereof...The learned counsel for the petitioner has contended that in the notice issued u/s 50 of the Act it was incumbent upon the authority to have indicated as to what was the proposed action to be taken against the petitioner whether the petitioner was to be asked to conduct herself in the manner indicated in the section itself or she was to be extended from Delhi or part thereof. As the notice did not itself show the proposed action, so, the same is invalid. He has placed reliance on *Mrs. Marry Kutty Thomas v. State of Maharashtra and others* 1987 Cri. LJ. 1612. This was a case u/s 56 and Section 59 of Bombay Police Act, 1951. These sections are somewhat similar to Sections 47 and 50 of the Delhi Police Act but there are certain vital differences on some points which I shall refer presently. Section 56 of the Bombay Act also gives two alternative actions : firstly that a person can be asked to conduct in a particular manner and secondly he can be directed to remove himself from any area or areas specified. The Division Bench of the said High Court opined in paragraph 5 of the judgment that if the purpose of the enquiry is not stated in the notice, the person concerned need not even appear in the enquiry at all, as he is entitled to presume that nothing of any consequence would happen to him even if he does not appear. It was held that in the notice itself the proposed action must be indicated to the person concerned. In support of this opinion the court made reference to Section 59(2) which lays down that if a person fails to appear that it shall be lawful for the officer to proceed with the enquiry and to pass such order as was proposed to be passed against him. Section 59(2) of the Bombay Act is not *pari materia* with any provisions given in Section 47 of the Delhi Police. It is the specific provisions incorporated in Section 59(2) which led the Bombay High Court to hold that in the notice itself it must be indicated as to what action is proposed to be taken against the petitioner concerned. However, either in Section 47 or Section 50 of the Act there is no such requirement that if a particular person, does not appear then the authority concerned can proceed to impose the direction as proposed in the notice. After all the purpose of initiating proceedings u/s 47 are to safeguard the interest of the general public. The proceedings u/s 50 are to be resorted to in order to help the authority issuing the notice to determine as to what action should be taken against the concerned

person. Two alternatives visualised in Section 47 would come into play only if after holding an enquiry contemplated by Section 50 satisfied the authority concerned that it is a fit case for making a direction of the nature mentioned in Section 47 and at that stage the authority is to decide whether the person concerned is to be directed to conduct himself in a particular manner so as to prevent violence and alarm or he has to be extended from Delhi or any part thereof. So it is not necessary or mandatory to mention in the notice as to what specific proposed action is contemplated to be taken against the person concerned. Even otherwise in the case of Marry Kutty Thomas (supra) the Bombay High Court did not hold that in case such proposed action is not incorporated in the notice, the notice would become bad on the face of it rather it was held that the facts of each particular case have to be examined in order to know whether omission to indicate the proposed action in the notice has resulted in any prejudice to the concerned person or not. In the present case such a position has not arisen because the petitioner has challenged the notice itself and yet necessary enquiry has to be made by the authority concerned and final order is yet to be made by the authority concerned. So, it cannot be held that omission to mention the proposed specific action against the petitioner in the notice has resulted in any prejudice to the petitioner. Counsel for the petitioner has made reference to *Tukaram Kalu Madhvi v. P.P. Srivastam and another* (1988-1 Crimes 631) in which it was held that though all details and particulars need not and cannot be given in the notice u/s 59 of the Bombay Police Act still the Section enjoins the extending authority to give at least generally the materials allegations in the said notice. In the impugned notice it was found by the Bombay High Court that no such material allegations in general way at all have been given. Such is not the case here. Therefore, this judgment is of no help to the petitioner. I negative the first contention of the learned counsel for the petitioner.

(7) Learned counsel for the petitioner vehemently argued that no indication has been given in the notice that who are public persons or the witnesses who apprehend harm at the hands of petitioner and who were not willing to come forward to become witnesses due to any threats given by the petitioner. I do not think that the law requires giving of such details in the notice. Section 50 only contemplates giving of information to the concerned person regarding the general nature of the material allegations. If the names of the witnesses are given in the notice itself then the apprehension that the petitioner would overawe those witnesses cannot be completely overruled. In *Kaushalya v. State* 1987 Rlr 505 a Division Bench of this Court examining the same point observed as follows :

"WE have earlier observed that in cases where bad characters are involved firstly no one is willing to come forward to become a witness to the crime and even if a person become a witness he is not willing to testify against the accused because of the apprehension on his part as regards the safety of his person."

It was also observed in this judgment that :

"IT would not be safe at all to mention the names of these witnesses in the notice. If that is done where is the secrecy left. The witnesses could be threatened and overawed."

So, there is no merit in the contention of the learned counsel for the petitioner and I reject the same.

(8) Counsel for the petitioner then argued that mere fact that the petitioner is involved in case under the Excise and/or N.D.P.S. Act would not show that activities and the movements of the petitioner are likely to cause any alarm or harm to anyone, in particular area or general public. Again, there is no merit in this contention. In the case of Kaushalya (supra) the Division Bench of this court held noticing the facts of that case that the petitioner in that case was indulging repeatedly in the commission of offences punishable under the Excise Act that there could be no doubt that if a person indulges in the commission of offence under the Excise Act this would be dangerous and harmful to the person and the property of the public generally. It was held that the kind of the activities in which the petitioner is alleged to be indulging from the very nature could never be confined to a few individuals and such activities always affect a very large section of the people. The present petitioner has now started dealing in narcotics as she has been involved in a few cases recently under N.D.P.S. Act. The offences under the said Act are quite grave and serious and the Parliament in its wisdom has provided for very stern punishments for the offences under the said Act. The dealings in such prohibited drugs result in adverse effect on the health of the society particularly the youth of the society.

(9) Counsel for the petitioner cited Ravi Kumar v. Deputy Commissioner of Police, West District, Delhi (1984-25 Dlt 285). In the said case the material which was the basis for initiating the proceedings under Sections 47 and 50 of the Act was too remote in time and on that score the proceedings were quashed, although a mention was also made that in those old cases the petitioner also stood acquitted or discharged. In the present case the petitioner has been indulging in nefarious activities even in the recent past. Therefore, it cannot be held that the material being relied upon in the notice is too remote in time. So, I do not find any force in this contention of the petitioner which is also negatived.

(10) Counsel for the petitioner also argued that as the petitioner has been acquitted in most of the cases, so those cases in which the petitioner stood acquitted could not be the basis for initiating such proceedings. He has placed reliance in the aforesaid case of Ravi Kumar (supra) and Swaran Lal v. State and another (1981-20 Dlt 252). However, in the case of Kaushalya (supra) the Division Bench of this court has clearly held that the cases in which the person has been acquitted, can form the basis of the material for initiating the proceedings under the Act. Reliance is placed by the Division Bench on Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, . It

was opined by the Division Bench that the acquittal in the cases could be because of the reason that there may not be sufficient evidence to bring charge home to the accused or witnesses may not be available or willing to depose. The court further observed that a judicial notice can be taken of the fact that in cases where the accused is of bad character the witnesses are terrified and they are not willing to become witness to the crime. As far as the petitioner is concerned she has also been convicted in a good number of cases while in some of the cases she has been acquitted. So, that by itself would not make the notice invalid.

(11) Lastly counsel for the petitioner has argued that the Additional Deputy Commissioner of Police has no power to issue the said notice. Such a plea was also raised in the case of Kaushalya (supra) but the same was negated by the Division Bench on the basis of the orders shown to the Division Bench by which the Commissioner of Police had delegated his powers u/s 8(2) to the Deputy Commissioner of Police and Additional Deputy Commissioner of Police and Assistant Commissioner of Police. So, I negate this plea of the petitioner also.

(12) The constitutional validity of the aforesaid provision of Delhi Police Act cannot now be challenged in view of the judgment of the Supreme Court in Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, . In the said case the Supreme Court while construing the provisions of Bombay Police Act of similar nature had clearly held that such provisions are not unconstitutional.

(13) I find no merit in this petition which I hereby dismiss with no order as to costs.