

(1983) 12 DEL CK 0019

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 679 of 1982

Chander Bhan Soni

APPELLANT

Vs

The Administration of Delhi

RESPONDENT

Date of Decision : 05-12-1983

Acts Referred:

Citation : (1984) 3 Crimes 409 : (1984) 25 DLT 343 : (1984) 6 DRJ 231 : (1984) RLR 171

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : Anita Sachdeva and G.S. Sharma, for the Appellant;

Judgement

M.L. Jain, J.

(1) Upon a request by the Sho Moti Nagar for extern" ment of the petitioner, a notice was issued on 31-7-1982 to the petitioner Chander Bhan Soni of Karampura u/s 50 of the Delhi Police Act, 1978 that he was from 1972 to 1982 involved in several criminal cases in" eluding attempt to murder, robbery, theft, keeping and receiving stolen property, harbouring criminals, keeping of arms, etc. and his presence was hazardous to the community in the Union Territory of Delhi. His movement and acts were causing harm and danger to the persons and property. There were reasonable grounds for believing that he was engaged in the commission of offences punishable under Chapters Xvi and Xvii of the Penal Code. A list of 38 such cases was also incorporated. It was further alleged in the notice that witnesses did not come forward to depose against him in public for fear of their persons and property. He was, therefore) directed to show cause why he should not be extended from the limits of the Union Territory for a period of two years.

(2) On 14-10-1982 the Deputy Commissioner of Police made an order that Chander Bhan was given ample opportunity to defend himself but he failed to do so. After considering the evidence and material on record, the Deputy

Commissioner was satisfied (1) that the petitioner was still engaged in the commission of offences, (2) that witnesses are not willing to come forward to give evidence in the public against him, (3) that in the interest of Public, and (4) that in order to prevent breach of peace in Delhi) It Was necessary to extern him u/s 47 of the Police Act. He directed him to remove himself outside the limits of the Union Territory of Delhi for a period of one year and not to enter or return to the Union Territory for a period of one year from the date of his removal without his prior permission. It appears that the petitioner is at present lodged in Jail. He did not file an appeal u/s 51 of the Police Act and has now challenged the aforesaid order by means of this petition.

(3) Though ordinarily the petitioner must exhaust the remedy of appeal, yet where the question of liberty is involved, the aggrieved person can move the court and be heard under Articles 226 and 227 of the Constitution.

(4) The petitioner states that he was falsely involved into several cases. As a matter of fact, Ch. Gian Chand, Assistant Commissioner of Police, is interested in keeping him in jail throughout his life, in one way or the other. He was extern from Delhi area though he was not a resident of Delhi and the Delhi Police had no jurisdiction on him. Though the petitioner was confined in Jail, yet the order said that he was engaged in the commission of offences. The order of the Commissioner was, thus, passed without application of mind. He was not even allowed to consult or engaged a lawyer. The police has denied all these allegations.

(5) Section 47 of the Police Act lays down that an externment order can be passed :-

"Whether it appears to the Commissioner of Police :-

(A) that the movements or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property; or

(B) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence of an offence punishable under Chapter Xii, Chapter Xvi, Chapter Xvii or Chapter Xxii of the Indian Penal Code, 1860 (45 of 1860) or u/s 290 or Sections 489A to 489E (both inclusive) of that code or in the abetment of any such offence; or

(C) that such person :-

(I) is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community; or

(II) has been found habitually intimidating other persons by acts of violence or by show of force; or

(III) habitually commits affray or breach of peace or riot, or habitually makes forcible collection of subscription or threatens people for illegal Pecuniary gain for

himself or for others; or

(IV)has been habitually passing indecent remarks on women and girls, or teasing them by overtures;

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, etc."" Section 50 requires that before such an order can be passed against a person a notice in writing shall be given to him to inform him of the general nature of the material allegations against him, give him a reasonable opportunity to tender an Explanation ,engage a counsel and lead evidence. I have the learned amices curiae and the Additional Public Prosecutor in the light of the above provision. Though the period of externment has expired, yet the merits of the order have got to be examined. There is nothing in the act which prohibits externment of a person who is not a resident of Delhi. All that is required to give jurisdiction to the Commissioner of Police is that he was a person of the type described in Section 47.

(6) The learned amices curiae, however, submitted that there was no evidence of any kind that witnesses were not coming forward to depose against him in public because they apprehended danger to their person and property and until there is such evidence, no externment order could be passed. It was also urged that when admittedly the petitioner was in jail ,there was no point in making the impugned order which could not be complied with.

(7) The learned counsel for the State submitted that the criminal record of the petitioner makes it quite clear that he is a person of the type described in Section 47 and is a bad character and the people of the locality are afraid of him and, Therefore, the order made by the Deputy Commissioner was justified.

(8) It is true that as held in Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, , it is a matter within the subjective satisfaction of the officer. But that is no answer to the contention of the learned amices curiae. It will be noticed that the main purpose of externment is to remove the person from the area so that witnesses may freely and fearlessly depose about his activities. One of the essential conditions for passing an externment order, Therefore, is that in the opinion of the Commissioner witnesses do not come forward to give evidence against him. The Assistant Commissioner of Police claims to have considered the evidence and material on the record. But what he had before him was nothing except the report of the Sho Moti nagar and a list of the cases showing his involvement. Besides, he also added that it was necessary to extern him in public interest and maintenance of peace. These certainly are considerations not covered by the section and betray over zealalousness on his part. As required by Section 50 of the Police Act, the show cause notice must contain a general nature of material allegations, though it need not contain particulars : State of Gujarat and another v.Mehbub Khan and others, Air 1968

Sc 1468, and Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, . The notice of externment order does not show in which case the witnesses declined to appear and if appeared, did not give evidence against him and that too because they were afraid of him and the case ended in his favor. It must set out in general the material allegations without giving details. The petitioner is not expected to meet a case upon a mere reproduction of the words of the section or upon enumerating the cases registered against him. It must, Therefore, be held that the petitioner was denied a reasonable opportunity to explain. Section 47 curbs the freedom of movement and leaves much to the subjective satisfaction of the Police Commissioner. He must, Therefore, follow the law strictly and if he fails, he must be asked to do so.

(9) There is also considerable force in the argument that in the very nature of things the order was mindless because one cannot frighten witnesses or comply with externment if one is in jail.

(10) 1. Therefore, hold that the order is not in accordance with the provisions of the Police Act. I accept this petition and quash the impugned order.