
(1979) 11 DEL CK 0030

In the Delhi High Court

Case No : Criminal Writ Appeal No. 39 of 1979

Dev Raj Diwan

APPELLANT

Vs

T.R. Kakkar and Others

RESPONDENT

Date of Decision : 02-11-1979

Acts Referred:

Citation : (1980) 17 DLT 128

Hon'ble Judges : V.D. Misra, J;J.D. Jain, J

Bench : Division Bench

Judgement

V.D. Misra, J.

(1) By this Petition under Articles 226 of the Constitution of India the petitioner challenges the notice dated June 23, 1979 issued by the Deputy Commissioner of Police, Central District, Delhi (respondent No. 1) u/s 50 of the Delhi Police Act, 1978. The petitioner is running a restaurant under the name and style of "Kamal Restaurant" at Anand Parbat, New Rohtak Road, New Delhi. It is averred that, because of the nature of his business, various local police-officers started troubling him and foisting false cases against him. It is also averred that the petitioner had contested the local Municipal elections in June, 1977 as an independent candidate and lost it by a very narrow margin.

(2) The Petitioner alleges that his place of business was raided by a Police party headed by respondent No. 1. The police is stated to have ransacked the premises, damaged the property and even took away the valuables. It is thus stated that the police in order to wreak their vengeance issued a notice u/s 50 of the Act on June 23, 1979 calling upon the Petitioner to show why he should not be expelled from the Union Territory of Delhi for a period of two years u/s 47 of the Act.

(3) The respondents deny that any action was at any time taken against the petitioner to falsely implicate him in any case to wreak their vengeance. It is, however, admitted that on the night of 23rd/24th June, 1979 the premises of the

Petitioner were raided but it was done bona-fide on the basis of various complaints.

(4) One of the contentions advances by Mr. D.C. Mathur, learned counsel for the petitioner, is that the petitioner had earlier been served with notice for externment under the then Bombay Police Act, as extended to Delhi, on the same ground on which the present notice has been issued. It is submitted that the previous notices were discharged. Order of Mr. V.K. Duggal, Additional District Magistrate (Central) Annexure "G" of the Writ Petition) is referred to by Mr. Mathur. We have perused this order. In our opinion this order has no relevance. The present notice has been issued on the basis of additional cases which have been registered against the petitioner.

(5) It is true that a notice issued to the Petitioner u/s 57(a) of the Bombay Police Act, as extended to Delhi, was quashed by Mr. Ashok Pradhan, Additional District Magistrate (Central), Delhi by his order dated December 21, 1973. But we find that following the Judgment of this Court holding that a conviction was a condition precedent before a person can be asked to leave Delhi u/s 57 of the Bombay Police Act, as extended to Delhi, the learned Additional District Magistrate quashed the notice.

(6) Another notice was issued to the petitioner u/s 50 of the Delhi Police Act but quashed by this Court by an order dated March 13 1979 holding that the Deputy Commissioner of Police had not been delegated the powers to issue a notice u/s 50. Obviously the notice was quashed on technical ground.

(7) Mr. Mathur contends that the phrase, ""such local limits" used in sub-section (2) of the Section 8 does not include the whole of the Union Territory of Delhi. It is submitted that u/s 10 the Commissioner of Police is required to constitute "police districts within Delhi; divide such Police districts into police sub-divisions; and define the limits and extent of such police districts, police sub-divisions and police stations. It is, Therefore, contended that the use of the phrase "such local limits" cannot include all the police districts. "Sub-section (2) of section 8 read thus :

"8(1)(2) Without prejudice to the other provisions of this act and subject to any general or special orders made by the Administrator in this behalf, every Deputy Commissioner of police or Additional Deputy Commissioner of Police or Assistant Commissioner of Police shall, under the orders of the Commissioner of Police, exercise such of the powers (except the power to make regulations) and perform such of the duties of the Commissioner of Police and within such local limits as may be specified in such orders."

(8) This sub-section empowers the Commissioner of police to delegate some of his powers to perform such of the duties to the Officers mentioned in this sub-section. It is up to the Commissioner of Police to define the limits within which the delegate can exercise the powers. These limits may be with reference to Police-stations or police-sub-divisions or districts. In other words, the

Commissioner of Police has the power to authorise his delegate to exercise the powers within all the Police districts which would, in other words, be the Union Territory of Delhi. Of course, as the sub-section lays down, the Commissioner's power to delegate has to be subject to any general or special orders made by the Administrator. We have, Therefore, no reason to hold that sub-section (2) does not authorise the Police Commissioner to authorise his delegate to exercise the powers within the whole of the Union Territory of Delhi.

(9) Lastly it is contended that the cases shown at items Nos. 16 to 23 of the notice in question and relating to daily diary numbers of various dates are all fictions and do not show that the petitioner is in the habit of intimidating other persons for illegal pecuniary gain for himself or for others, or that they satisfy the conditions of Section 47 of the Act. This is a question of fact. It will be open to the petitioner to show to the Deputy Commissioner of Police about the falsity or otherwise of the report. We have no reason to doubt that the Deputy Commissioner of Police will not act fairly. The result is that the petition is dismissed.