

(2001) 06 DEL CK 0006
In the Delhi High Court
Case No : Criminal W. No. 176 of 2001

Dheeraj

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 01-06-2001

Acts Referred:

Delhi Police Act, 1978 — Section 46, 47, 48
Punjab Excise Act, 1914 — Section 48, 61

Citation : (2001) 93 DLT 548 : (2001) 59 DRJ 340 : (2002) 3 RCR(Criminal) 536

Hon'ble Judges : Usha Mehra, J; Mahmood Ali Khan, J

Bench : Division Bench

Advocate : Mr. M.R. Chawla, for the Appellant; Ms. Mukta Gupta, for the Respondent

Judgement

Usha Mehra, J.—The petitioner Dheeraj Kumar has assailed the order of his externment passed by respondent u/s 47 of the Delhi Police Act, 1978 (hereinafter called the Act) for a period of six months. The order has been assailed, inter alia, on the grounds that five cases were veiled by the respondent in its notice u/s 50 of the Act and all of those cases were registered under the Excise Act. That as per the administrative instructions issued by the respondent a person could not be externed if he is involved in excise matters. Since the petitioner has been shown to be involved in excise matters, the externment proceedings could not be initiated against him. Secondly the witnesses recorded in ``Camera" could not be used against him because no copy of that evidence was supplied to him. And finally he is neither desperate nor dangerous nor his movements are hazardous to the public at large.

2. In order to appreciate the challenge raised in this petition the brief facts of the case are that the petitioner is resident of Azed Gali, Badarpur, P.S. welcome, Delhi. A report was received from SHO of police Station Welcome indicating the criminal activities of the petitioner. The Addl. Deputy Commissioner of Police (North-East District) after going through the report of the SHO issued show

cause notice dated 25th January, 2000 to the petitioner u/s 50 of the Act indicating the summary of allegation. In response to that show cause notice petitioner appeared before the Addl. Deputy Commissioner of Police on 17th February, 2001. Contents of the notice were explained to him. He after understanding the contents of the notice furnished the bail bond. He was asked to file reply in response to the show cause notice u/s 50 of the Act. On 9th March, 2000 he submitted his reply to the notice. He was asked to produce defense witnesses, if any, but he failed to do so despite number of opportunities having been afforded to him. Thereafter on the basis of the material available on record, the Addl. Deputy Commissioner of Police passed the impugned order u/s 47 of the Act, dated 5th February, 2001 thereby ordering the externment of the petitioner beyond the limit of North East District, Delhi for a period of six months w.e.f. 7th February, 2001. He was further directed not to enter or return to area of North East District, Delhi within the said period without written permission of the competent authority. He was, however, permitted to attend the court at North East District, Delhi on all dates of hearing and thereafter would remove himself outside the limits of North East District. He was further directed not to visit any other place except the Court premises and the relaxation was given only for the date of hearing in the Court for coming and going out of the limits of the North East District, Delhi. Order was duly explained to him and he was informed that he had a right to file appeal against the said order.

3. Petitioner preferred an appeal u/s 51 of the Act before the Lt. Governor of Delhi. By an order dated 7th March, 2001, the Lt. Governor of Delhi, Appellate Authority, dismissed his appeal. Appellate Authority found no infirmity in the order of the Addl. Deputy Commissioner of Police.

4. It is in this background we have to see whether any case is made out for interfering with the impugned orders. It is a well settled principle of law that so far as the period of externment is concerned that is subjective satisfaction of the Competent Authority. It is beyond the purview of writ jurisdiction. What we have to see is whether the order of externment in the circumstances of this case could have been passed?

5. As already pointed out the order has been assailed primarily on three counts; namely (i) that the basis for issuing notice were five cases under the Excise Act which according to counsel for the petitioner could not have been the basis of coming to the conclusion that petitioner is desperate or dangerous. We find no merits in this submission. In similar circumstances in the case of Smt. Sahilender Kaur Vs. Lt. Governor & Ors. CrI.W.No.1041/2000 decided on 27th April, 2001 this court held that even where a person is involved in excise cases by very nature of their activities is calculated to cause danger to society. It was observed:-

"Illegal trafficking and sale of liquor is, undoubtedly, a menace to the public interest, tranquillity, peace and safety. Those who indulge in offenses covered by Section 61 of Punjab Excise Act by very nature of their activities and associations

cause and their acts is calculated to cause danger and harm to the persons and property. Therefore, their acts and movements will fall within the ambit of clause (a) of Section 47. This view finds strength from the provision of Section 48 whereby action for externment could be taken against a person who has been convicted of certain offenses specified in the Section including the offenses u/s 61 of the Punjab Excise Act as in force in Delhi. Such cases, Therefore, cannot be excluded from the material and evidence available against the person against whom the externment order is proposed.

It will be perfectly legal and within the power to the Commissioner of Police and the DCP/Addl. DCP who have been delegated the powers of the Commissioner of Police, to take all the facts and circumstances including the cases covered by the Punjab Excise Act into consideration. He can pass order of externment if adequate credible evidence and material is before him to satisfy him reasonably that the conditions precedent to the passing of the order of externment are in existence."

6. Mr. M.R. Chawla, counsel for the petitioner then contended that Deputy Commissioner of Police(Hqrs.) vide circular dated 11th September, 1998 has held that no case of externment could be initiated on the basis of excise cases. Therefore, for this reason also the impugned order is bad in law. We find no substance in this submission also. While rejecting a similar plea this Court in the case of Smt. Shailender Kaur (Supra) observed as follows:-

"The learned counsel for the petitioner has placed strong reliance on a circular issued by the DCP (Headquarters) on 11.9.1998. The respondent on the other hand had referred to another circular issued by the DCP (Headquarters) on 28.9.2000 which has modified this order. Both the circular and the modification order are extracted as under:-

CIRCULAR DATED 11.09.1998

24/98/C&T AC

no externment proceeding shall be initiated against person is involved in the cases u/s 61-1-14 Ex.Act.

is issued with the approval of C.P., Delhi."

ER DATED 28.9.2000

"In modification of this Hqrs., circular NO. 26/98/C&T, AC-V, issued vide No. 23161-200/C&T. AC-V, dated 11.9.98, regarding externment proceedings against the persons involved in the cases u/s 61/1/14 Excise Act, it is specified that externment proceedings be initiated against the persons convicted under the Excise Act as per provision made in Section 48(f) in the Delhi Police Act."

Indeed the DCP (Headquarters) issued a circular that proceedings for externment be not taken against the persons involved in the offenses u/s 61 of the Punjab Excise Act. The modification order has, on the other hand, modified the above

circular only to the extent that the proceedings may be initiated against the persons who are convicted under the Excise Act in accordance with the provisions of Section 48(f) of the Act. But the circular or the externment order will not take away the statutory power vested in the Commissioner of Police in taking into consideration the cases u/s 61 of the Punjab Excise Act, along with other facts and material for passing externment order after the other conditions are also fulfilled. The administrative order will not over-ride the statutory provision. The Commissioner of Police may be ignoring the administrative instructions of its own office but that would not deprive him of exercising the legal powers which are vested in him to decide the question involved under this provision.

We are, Therefore, of the considered view that the circular dated 11.9.1998 does not debar the Commissioner of Police or the officers who have been delegated powers by him for taking action under the provisions of Sections 46, 47 & 48 of the Act on the basis of involvement of the persons concerned u/s 61 of Punjab Excise Act, as it is in force in Delhi." (underlining is ours)

7. Therefore, on this count also we find no force in the submission of Mr. M.R. Chawla.

8. Mr. Chawla then contended that copy of the evidence recorded in ``camera'' ought to have been supplied to the petitioner. He ought to have been aware as to who made those statements. We find no substance in this contention also because there is no violation of the principle of natural justice in non supply of evidence recorded in ``camera''. In case names of such witnesses are disclosed to the accused person then the very purpose of enactment of Section 47 of the Act would be frustrated because this Section is meant to deal with the desperate type of criminals under extra-ordinary situations who do not allow witnesses to appear against them and so witnesses do not come to depose against them for fear of reprisal. Therefore, recording of camera proceedings is neither illegal nor bad. It is permissible u/s 47 of the Act and the Competent Authority is justified in relying on the same and confirming the subjective satisfaction for passing the externment order. In support reliance can be placed on the following decisions: Surjit Singh Vs. State and Anr. 1998 (1) JCC 191, Ajay Pal Singh Vs. State (NCT of Delhi) & Ors. CrI.W.No. 924/2000 decided on 2nd February, 2001 and Smt. Phulwari Jagdambaprasad Pathak Vs. Shri R.H. Mendonca and Others, .

9. As regards criminal activities of the petitioner that was the subjective satisfaction of the competent authority under the Act. IN fact perusal of record show those stood substantiated on the record. The Addl. Deputy Commissioner of Police before passing the impugned order recorded the statement of one person. He deposed that he could not make the statement against petitioner in public because of his fear. This shows the desperate character of the petitioner.

10. Since the activities of the petitioner were dangerous to the public at large and there was apprehension of breach of tranquillity and peace of the area, the competent authority arrived at a subjective satisfaction in passing the impugned

orders. We see no infirmity in the same nor any merits in the plea raised by the petitioner. Petitioner was afforded full opportunity to lead defense evidence but he failed to do so. So far as the appreciation of evidence is concerned that is the sole subjective satisfaction of the externing authority. this court is not sitting in appeal over the same. Perusal of the record shows that there was sufficient material available on record before the competent authority to arrive at the subjective satisfaction.

11. For the reasons stated above, we find no infirmity in the impugned order. It does not suffer from any infirmity. The writ petition is accordingly dismissed.