
(2016) 09 DEL CK 0069

In the Delhi High Court

Case No : Writ Petition (CRL) No. 2881 of 2016

Dheeraj Singh

APPELLANT

Vs

Commissioner of Police

RESPONDENT

Date of Decision : 30-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Delhi Police Act, 1978 — Section 47, Section 50

Citation : (2016) 234 DLT 471

Hon'ble Judges : Mr. Vipin Sanghi, J.

Bench : Single Bench

Advocate : Mr. Rajesh Mahajan, ASC and Ms. Parul Jamwal and Mr. Peeyush Bhatia, Advocates, for the State; Mr. Swastik Singh, Mr. Atul Singh and Mr. Himanshu Dagar, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. Vipin Sanghi, J. (Open Court) - CrI. M.A. No. 15464/2016

Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(CRL) 2881/2016 and CrI.M.A. No.15463/2016

3. Issue notice. Mr. Mahajan accepts notice.

4. I have heard learned counsel for the parties and proceed to judgment.

5. The petitioner has preferred the present writ petition to seek a writ of certiorari quashing the notice dated 20.07.2016 issued by respondent No.2 under Section 47 read with Section 50 of the Delhi Police Act proposing to extern the petitioner. The said notice in its material part reads as follows:

"In order to give you an opportunity of tendering your explanation regarding the said allegations, I have appointed 09.08.2016 at 10 AM to receive your

explanation and to hear you and your witnesses, if any, with regards to said allegations.

Now, therefore, in exercise of the powers vested on me under Section 47 of the Delhi Police Act, 1978 conferred upon me by the order of Commissioner of Police Delhi u/s 8 of the Delhi Police Act, 1978, I Manoj C, Addl. Dy. Commissioner of Police, South West District, New Delhi require you to appear before me in my office at Sector 19, Dwarka New Delhi, on the above date and time for the said purpose and also require you to furnish a bond in the sum of Rs.15,000/- (Fifteen Thousand) with one surety in the like amount for your attendance during the proceedings. Should you fail to appear and furnish a bond as directed above, I shall proceed with the enquiry in accordance with provisions of Section 50 of the Delhi Police Act, 1978.

ALLEGATIONS: Since, September 2006 you are engaged in commission of illegal acts and your activities and movements are causing alarm, harm and danger to the residents. You have been found involved in the following cases as per record of P.S. practise.

S. No.

FIR No./ Date

Under Section

PS

1.

891/ 21.09.2006

324/341/34 IPC

Dabri

2.

931/ 07.10.2006

307/323/341/34 IPC & 25/27 Arms Act

Dabri

3.

818/ 05.12.2008

420/468/471/511/120-B, IPC

Dwarka

4.

329/ 13.04.2016

325/34 IPC

Dabri

5.

539/ 06.07.2016

385/386

IPC Dabri

That the witnesses including the camera witnesses are not willing to come forward to give evidence in the public against you because of the fear of harm and danger for persons and property at the hands of the respondent, if they do so."

6. The submission of learned counsel for the petitioner is that the said notice itself is illegal and is liable to be quashed. The first submission is that the notice per se is mala fide. He submits that a mala fide notice can be assailed even before it culminates in an order after hearing, and in this regard, he placed reliance on Mahinder Kumar (Jagdeep) v. Kiran Bedi & Another, 1988 (15) DRJ 41.

7. Learned counsel further submits that the notice is also bad as it does not furnish any material on the basis of which the respondents could have formed the opinion that the witnesses are not willing to come forward and depose against the petitioner by reason of apprehension on their part as regards threat to their person and property. It is not stated that the acquittal of the petitioner in earlier cases could be ascribed to fear on the part of the witnesses in coming forward and deposing against the petitioner. In this regard, reliance is placed on Mohd. Aslam v. Delhi Administration & Others, 1986 (3) Crimes 342.

8. The petitioner also placed reliance on Syed Mushir Ahmed v. Deputy Commissioner of Police (South District), New Delhi & Others, 32 (1982) DLT 29, to submit that the notice is vague insofar as the allegation that the witnesses are not coming forward to give evidence in public against him is concerned, it is not indicated as to which of the witnesses have due to some apprehensions at the hands of the petitioner declined to tender evidence. The notice also does not suggest that in which cases registered against him, the witnesses have refused to tender evidence. Moreover, the notice does not set out the action which is proposed to be taken against him. Though the externment is up to the period of two years, it is not set out in the notice itself the period for which the action is proposed to be taken.

9. Learned counsel for the petitioner has submitted that out of the five cases enlisted in the show-cause notice, one case at Sl. No.4, as aforesaid, does not exist. The first two cases are of the year 2006 and the third case is of the year 2008. In the first case aforesaid, the petitioner already stands discharged. The two cases, which are now pending are those listed at Sl. Nos. 3 & 5, i.e. of the years 2008 and 2016. Of these, the case enlisted at Sl. No.3 is in mediation,

being a civil dispute.

10. On the other hand, the submission of Mr. Mahajan, learned ASC is that the present petition is premature. A writ would not normally lie against a show-cause notice since the petitioner has opportunity to defend himself by replying to the show-cause notice. The petitioner is also entitled to a personal hearing and the authorities are obliged to pass a reasoned order. Moreover, the petitioner has right to appeal under Section 51 of the Delhi Police Act before the Lieutenant Governor. Since the petitioner has alternate efficacious remedies, the petitioner cannot directly come to this Court to assail the notice. It is submitted that the notice has not been issued without jurisdiction and that is not even the case of the petitioner. It is further submitted that no allegations of any personal mala fide have been made against any of the authorities. In support of his submission that the present petition is premature, Mr. Mahajan has placed reliance on Mohd. Usman @ Haji v. State & Others, W.P. (Crl.) No.75/2003 decided by this Court on 20.08.2007, and in particular, to the following passage of this decision:

"4. The basis issue which arises in this case is whether a writ petition lies when a show cause notice is issued by a competent authority in exercise of its powers and the person is given an opportunity to present his case and explain his position. In *The Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors.* JT 1995(8) SC 331 Supreme Court observed that when a competent statutory authority issues a show cause notice, it is to be borne in mind that there is no question of infringement of any fundamental right guaranteed by the Constitution. Unless there is attack on the vires of the statutory provisions or the notice is ex facie a "nullity" or without jurisdiction, a writ petition cannot be entertained.

5. In AIR 2004 SC 1467 *Special Director & Anr. v. Mohd. Ghulam Ghouse and Anr.*, Supreme Court observed as under:

This Court in a large number of cases has deprecated the practise of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that

ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

6. In a recent decision AIR 2007 SC 906, *Union of India & Anr. v. Kunisetty Satyanarayan*, Supreme Court again observed as under:

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

7. In the present case, the petitioner was given a show cause notice and asked to explain his position. The issuance of show-cause notice did not affect any of the fundamental rights of the petitioner."

11. Mr. Mahajan submits that the authorities concerned would, after considering the response of the petitioner to the show-cause notice, for good and sufficient reasons, arrive at their decision as to whether, or not, the petitioner should be externed, and if so, for what period and to what extent. He submits that to set out in the show-cause notice itself - the period for which the exterment is proposed, and the area from which the petitioner should be externed, would tantamount to pre-judging the issues.

12. Mr. Mahajan has relied upon *State of NCT of Delhi & Another v. Sanjeev @ Bittoo*, 2005 SCC (Crl.) 1025, wherein the Supreme Court has analysed Section 47 of the Delhi Police Act and observed that the opinion of the officer concerned has to be formed that witnesses are not willing to come forward in public to give evidence against such person by reason of apprehension on their part as regards safety of person or property. After this opinion is formed on the basis of

materials forming foundation thereof, the Commissioner can pass an order adopting any of the available options as provided in the provision itself. The three options are: (1) to direct such person to so conduct himself as deemed necessary in order to prevent violence and alarm; or (2) to direct him to remove himself outside any part of Delhi; or (3) to remove himself outside the whole of Delhi.

13. Having heard learned counsel for the parties, and perused the petition and the decisions relied upon by the parties, I find this petition is premature and does not deserve to be entertained at this stage.

14. In Mohd. Usman (*supra*), this Court has, on the basis of several earlier decisions of the Supreme Court concluded that a writ petition to assail a show cause notice would not be maintainable, except in very rare and exceptional cases, such as, where the show cause notice issued is wholly without jurisdiction, or for some other reason if it is wholly illegal.

15. The Parliament has engrafted a procedure for externment of any person under Section 47 of the Delhi Police Act. The said procedure is in conformity with the principles of natural justice. Section 50 of the Delhi Police Act expressly provides that before an order, *inter alia*, under Section 47 is made against any person, the Commissioner of Police shall, by notice in writing, inform him of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. Section 50(2) entitles the concerned person to even examine witnesses in his defence before the Commissioner of Police, unless such an application to examine witnesses appears to have been made for the purpose of causing vexation or delay. Section 50(3) obliges the Commissioner of Police to take the written explanation of the person on record. The person is entitled to be represented in the proceedings before the Commissioner of Police by a counsel (see section 50(4)).

16. Thus, the Commissioner of Police is obliged to act, keeping in view all safeguards in compliance with the principles of natural justice, since an order under Section 47 may impinge on the fundamental and civil rights of the person concerned. It is well settled that an order passed by an authority should contain reasons see *A. K. Kraipak and Ors. v. Union of India*, 1969 (2) SCC 262 and *Mohinder Singh Gill and Ors. v. The Chief Election Commissioner, New Delhi And Ors.*, (1978) 1 SCC 405. Section 47 itself lays down the guidelines - on the fulfilment of which the Commissioner of Police may pass an order under the said provision. The whole purpose of requiring the person concerned to be put to notice of the proposal to pass an order against him under Section 47 of the Delhi Police Act, is to give him an opportunity to put forward his defence and his version, and also to provide such information and evidence as may be relevant to his defence in case he chooses to oppose the proposal made by the Commissioner of Police. Mere issuance of the show cause notice cannot lead to the inference that an externment order is bound to follow in every such case. The Commissioner of Police would have to examine the defence of the person concerned with an open mind and objectively, keeping in view the guidelines

contained in section 47 of the Act. His application of mind would be reflected in his order. Keeping in view the defence of the person concerned, the Commissioner of Police may, or may not, pass an order adverse to the concerned person externing him or directing him to conduct himself in a manner which is necessary in order to prevent violence or alarm. It is possible that the person concerned, on the basis of his defence, may not be subjected to an order under Section 47. It is also possible that he may not be aggrieved by an order passed under Section 47, even if he is externed for a limited period, or from a particular limited area for a limited period, or; he is directed to conduct himself in a particular manner to prevent violence or alarm.

17. After seeing the order, the concerned person may accept the order. Even if he is aggrieved by such an order as may be passed under Section 47 of the Act, the concerned person has a statutory right to assail the same under Section 51 of the Delhi Police Act before the Administrator, namely, the Lt. Governor. Thus, the Delhi Police Act itself provides a statutory framework to deal with an order of externment, or an order directing the person concerned to conduct himself in a manner so as to prevent violence or alarm in the concerned area.

18. If the person concerned is still not satisfied with the order passed in appeal by the Administrator, the orders passed under Section 47 and/or Section 51 of the Delhi Police Act would be subject to judicial scrutiny by this Court under Article 226 of the Constitution of India.

19. No doubt, there is no statutory bar to the maintainability of a writ petition under Articles 226 and/or 227 of the Constitution of India even at the stage of the show cause notice. In exceptional cases, where the show cause notice itself is issued malafide or without jurisdiction, the court may short-circuit the statutory procedure and entertain a writ petition in respect of a show cause notice. However, as noticed in *Mohd. Usman (supra)*, such cases are rare and exceptional.

20. In the present case, the petitioner has not alleged any personal malafides against any particular officer who, according to the petitioner, was instrumental in the issuance of show cause notice. It has not been disclosed in the petition as to what is the real purpose of the issuance of the show cause notice under Section 47 of the Act. Pertinently, the petitioner has not even impleaded any particular police officer by name, which would have been the case had the petitioner alleged any personal malafides against any particular police officer.

21. Pertinently, in *Mahinder Kumar (Jagdeep) (supra)*, the petitioners had made personal allegations against the respondent Mrs. Kiran Bedi by adverting to the actions taken by her against the petitioners from time to time. The court returned a finding in this case that malafides in law by issuance of notice to the petitioners is writ large after examining the facts of the case. There is no such history to be found in the present case - by examining which, it could be said that the respondents were victims of either personal or legal malafides of the

respondents, who are the Commissioner of Police and the Additional Deputy Commissioner of Police, South-West District. Therefore, the reliance placed by the petitioner on Mahinder Kumar (Jagdeep) (supra) appears to be misplaced.

22. In Mohd. Aslam (supra), this court examined the status of the several cases in which the petitioner in that case was allegedly involved, and on the basis of which the proceedings under Section 47 were initiated against him. A perusal of the decision in Mohd. Aslam (supra) shows that the issue/ objection with regard to maintainability of the writ petition at the show cause notice stage was neither raised before the court, nor considered by the court. The court proceeded to examine the case on its merits and in the facts of the case, came to the conclusion that the notice was vitiated on account of vagueness and general nature of allegations, and involvement of the petitioner in criminal activities found to be either non germane to the grounds under Section 47, or too remote in point of time to have any bearing upon or nexus with the opinion formed by the Deputy Commissioner of Police for drawing up externment proceedings. This decision, therefore, does not address the issue whether a writ petition should be entertained by the court at the show cause notice stage. This decision may be relevant, and may be relied upon by the petitioner before the Commissioner of Police at the stage of hearing and if so relied upon, the Commissioner of Police would have to deal with the same.

23. Similar is the position in Syed Mushir Ahmed (supra). Here too, this Court proceeded to examine the notice under Section 50 on its merits without going into the issue whether the writ petition was maintainable.

24. In the face of the considered decision of this court in Mohd. Usman (supra), in my view, the present petition is not maintainable and is highly premature. The petitioner has at least two rounds available to him. Firstly, he has a right to defend himself before the Commissioner of Police, and even if an order under Section 47 is passed against him with which he is aggrieved, he has a right to prefer an appeal before the Administrator/ Lt. Governor. If he is still aggrieved by the order that the Administrator/ Lt. Governor may pass, he can always prefer a writ petition at that stage. This court would also have the benefit of the view of the Commissioner of Police and the Lt. Governor and it is those orders which would be open to judicial review. It is not for this court to substitute its opinion with the subjective satisfaction that the Commissioner of Police may arrive at on the basis of objective assessment of the materials placed before him and in the light of the statutory guidelines contained in section 47 of the Act.

25. I also find merit in the submission of Mr. Mahajan that to state in the notice itself as to what specific action is proposed to be taken against the petitioner would tantamount to pre-judging the issue. It is only on the basis of the materials/ evidence produced before the Commissioner of Police that he would eventually pass an order either externing the person, or to conduct himself as deemed necessary in order to prevent violence and alarm.

26. Consequently, the present petition is dismissed as premature. It shall be open to the petitioner to raise all his submissions, including those raised in the present writ petition in his defence before the Commissioner of Police. The Commissioner of Police shall deal with them in case he chooses to pass an order against the petitioner in terms of section 47 of the Act. The Commissioner of Police shall indicate his reasons in his order.

27. Petition stands disposed with the aforesaid directions.

28. Dasti.