
(2000) 02 DEL CK 0060
In the Delhi High Court
Case No : Criminal W. 884/99

Harcharan Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Citation : (2000) 3 AD 292 : (2000) CriLJ 1671 : (2000) 84 DLT 183 : (2000) 52 DRJ 810 : (2000) 3 RCR(Criminal) 542

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. B.K. Sharma, for the Appellant; Mr. K.C. Mittal, for the Respondent

Judgement

Anil Dev Singh, J.—By this writ petition the petitioner calls in question the order of the DCP (North-East) dated July 16, 1999, whereby the petitioner has been externed from the NCT of Delhi for a period of two years and the order of the Lt. Governor dated August 18, 1999, by which the order of the DCP (North-East) was upheld.

2.On May 3, 1999 DCP (North-East) issued a notice to the petitioner u/s 50 of the Delhi Police Act, 1978 (for short "the Act") calling upon him to show cause why he should not be externed from the NCT of Delhi on the ground of his involvement in 22 criminal cases. The petitioner filed reply to the show cause notice and also produced two defense witnesses in support of his case. However, the DCP (North-East) passed the order of externment against the petitioner on July 16, 1999 on the ground of his complicity in large number of criminal cases. On the basis of material before him, he came to the conclusion that the petitioner was "actively involved in criminal cases" and was not likely to reform himself. He also came to the conclusion that the activities of the petitioner were causing alarm, harm and danger to the citizens of the NCT of Delhi. The petitioner not being satisfied with the order passed by the DCP (North-East), filed an appeal u/s 51 of the Act before the Lt. Governor of Delhi. The Lt. Governor

after hearing the counsel for the petitioner and Senior Public Prosecutor for the Dy. Commissioner of Police, upheld the order of DCP (North-East) vide impugned order dated August 18, 1999.

3.Mr. Sharma, learned counsel appearing for the petitioner pointed out that the petitioner stood acquitted in 21 cases even prior to the notice issued to him u/s 50 of the Act. He also pointed out that in the remaining case even challan has not been filed. Learned counsel urged that the cases in which he was tried and acquitted cannot form the basis for an action for externment u/s 47 of the Act. He also canvassed that one of the cases being FIR No. 263 of 1992 under Sections 327/328/506/34 IPC, was registered against the petitioner on August 3, 1992 but even that case has been made a basis for his externment. Learned counsel submitted that the said instance furnished by the petitioner was too remote in point of time.

4.We have considered the submissions of the learned counsel for the petitioner. Section 47 of the Act, is inter-alia meant for safeguarding the rights of public at large from the onslaught of repetitive criminal acts of an individual. Its purpose is sought to be achieved by checking and curtailing the freedom of movement of such an individual and restricting his residence. The provisions authorise adoption of preventive measures for curbing the criminal propensities and activities of a person which are hazardous for the community. At the same time the authority acting u/s 47 of the Act, can not be allowed to exercise unfettered and arbitrary power for the purpose of passing orders of externment thereby trenching upon the fundamental right of an individual under Article 21 of the Constitution. The authority invoking the provisions of Sections 47 & 50 of the Act, must act in a just, fair and reasonable manner. It must ensure that there is no miscarriage of justice while exercising power under the said provisions.

5.The argument of the learned counsel for the petitioner that the cases in which he has been acquitted could not form the basis for action under Sections 47/50 of the Act, is without force. In Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, the Supreme Court while dealing with the Section 57 of the Bombay Police Act which is pari-materia with Section 47 of the Delhi Police Act, held as follows :-

"It now remains to consider the legality of the order itself. The bonafides of the urged against the legality of the order impugned is that it is based on previous orders of discharge or acquittal. It is said that those orders were passed because there was not sufficient evidence to bring the charge home to the accused. The insufficiency of the evidence itself may have been due to witnesses not being available to depose in open court or they may have been overawed and their testimony tampered with.

These are all matters which cannot be examined by this Court in an objective way, when the legislature has provided for the subjective satisfaction of the authorities or officers who have been entrusted with the duty of enforcing those

special provisions of the Act. It cannot be laid down as a general proposition of law that a previous order of discharge or acquittal cannot be taken into account by those authorities when dealing with persons under any one of the provisions we have been examining this case.

It is not for us to examine afresh the materials and to be satisfied that the order impugned is correct. But the materials placed on the record of this case in the affidavit sworn to by the officer who was responsible for the order impugned show at least one thing, namely, that the petitioner has not been a victim of an arbitrary order."

6. Therefore, there is no such general rule that criminal cases against a person which result in his acquittal cannot be taken into consideration by the authority proceeding against him under Sections 47/50 of the Act. It is not for this Court to sit in appeal over the decision of the concerned authority and reappraise the material on the basis of which an externment order has been passed. The legislature has provided for the subjective satisfaction of the authority concerned to arrive at an opinion for passing the order u/s 47 of the Act. It is not for us to substitute the subjective opinion of the concerned authority by our opinion. Basically the order of externment is passed to prevent a person with criminal tendencies from engaging himself in commission of offences. It is the officer concerned who must consider the material placed before him to satisfy himself on the basis thereof as to whether such a person is likely again to indulge in commission of offences in future. Therefore, in order to check the propensities of a person and making a prognosis of his probable future conduct, his past activities can be taken into consideration. Therefore, FIR No. 262 of 1992 under Sections 327/328/506/34 IPC registered against the petitioner on August 3, 1992 could be looked into by the Dy. Commissioner of Police for exercising power u/s 47 of the Act.

7. Learned counsel for the petitioner relied upon the decision of this Court in Ravi Kumar Vs. Deputy Commissioner of Police, West District, Delhi, and Giyarsi Ram Vs. State (Delhi Administration) and Others, in support of his submission that the cases in which the petitioner was tried and acquitted cannot form the basis for an action for externment u/s 47 of the Act. We do not see as to how the petitioner can get over the decision of the Supreme Court in the case of Hari Khemu Gawali (supra), according to which discharge or acquittal in a case can be taken into account for passing an order of externment. It is becoming a trend to strike terror in the minds of the prosecution witnesses or to exert pressure on them so that they do not depose at the trial or suppress the truth and turn hostile. It has been pointed out by the learned counsel for the respondent and has also been noticed in the impugned order passed by the Lt. Governor that in some of the cases the petitioner has been discharged only because the witnesses turned hostile. Therefore, in order to curb the activities of criminals whose cases cannot be proved in a court of law because of the terror created by them in the minds of witnesses, the invocation of the provisions of Section 47 of the Act may be

justified to safeguard the society from their excesses. In such cases no fault can be found with the anticipatory preventive action taken by the authority in consonance with Section 47 of the Act.

8. In the circumstances, Therefore, we do not find any merit in the writ petition. Accordingly, the writ petition fails and is hereby dismissed.