
(2001) 08 DEL CK 0180

In the Delhi High Court

Case No : Criminal W. No. 305 of 2001 and Criminal M. No. 275 of 2001

Ishaq Shah

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Delhi Police Act, 1978 — Section 47, 50

Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2002) 96 DLT 18

Hon'ble Judges : Usha Mehra, J; C.K. Mahajan, J

Bench : Division Bench

Advocate : Bhupesh Narula, for the Appellant; Mukta Gupta, for the Respondent

Final Decision : Allowed

Judgement

C.K. Mahajan, J.

m 1. By way of this petition the petitioner, Ishaq Shah, seeks mquashing the order dated 13th November, 2000 passed by the Additional DCP, mSouth District, thereby directing externment of the petitioner for a period of one year mfrom Delhi within seven days. The petitioner has also challenged the order of the Lt. mGovernor dated 17th January, 2001 by which the order of the Additional DCP was mconfirmed.

m m 2. A proposal was sent for externment of the petitioner to the Additional DCP, mSouth Distt. Delhi on the basis of involvement of the petitioner in the criminal cases. mThe petitioner was found guilty in motor vehicle theft cases and receiver of stolen mproperty. The proposal was considered by the Additional DCP (South) and on the mmaterial produced before him proceedings were initiated u/s 50 of the mDelhi Police Act. On 1st June, 1999 a notice has been served on the petitioner. The mcontents of the notice were explained and read over to him. In the aforesaid notice mwhich was issued u/s 50 of the Delhi Police Act, it is alleged that there mwere reasonable grounds for believing that the petitioner

was engaged in the commission of offence punishable under Chapter XII of IPC. The movements and acts of the petitioner were causing alarm, danger and harm to the persons and property in the N.C.T. of Delhi and his presence in Delhi or any part thereof was hazardous to the community. It is further alleged that witnesses were not coming forward to depose against the petitioner in public due to fear of their person and property.

m m 3. The petitioner filed a reply to the show cause notice and contended that he had been discharged in one case of theft and the other two cases were pending investigation in the Police Station, Kalkaji. Instead of completing the investigation and filing challan the proceedings for externment were initiated. There was no material before the police to warrant an order of externment. He further stated that he was not involved in any criminal activities and was implicated by the police.

m m 4. The petitioner was involved in three cases for the years 1999, which are as under :

m m mFIR NO. SECTION POLICE STATION REMARKS m130/99 379, IPC Kalkaji Discharged m m141/99 379/411 Kalkaji No summons has m been received so far m199/99 379/411 Kalkaji No summons has m been received so far m

m 5. Respondent No. 1 adjudicated the proceedings. The Additional DCP heard the petitioner and he considered the evidence on record and by a detailed order dated 13th November, 2000 externed the petitioner for a period of one year. Against the said order of externment the petitioner filed an appeal before the Lt. Governor. After hearing the petitioner the Lt. Governor vide order dated 17th January, 2001 upheld the order of the Additional DCP dated 30th November, 2001.

m m 6. It is contended that the externment order stood vitiated as it was not passed on any evidence. The statement of persons or alleged witnesses recorded in camera could not have been used against him without supplying a copy thereof. Moreover, the petitioner has been discharged in one out of three cases and in the other two cases he has not received any summons so far. Hence these cases could not form the basis of declaring him a desperate or a dangerous person. It was further contended that the petitioner had been discriminated against as the co-accused had been discharged by the Additional DCP without any reasons. It is further contended that the petitioner has never been involved in any other case involving violence, murder or any other heinous crime. The petitioner has falsely been implicated by the SHO of the Kalkaji Police Station.

m m 7. Ms. Mukuta Gupta, Counsel for the State contends that the activities of the petitioner were such as to instil fear in the common public. The witnesses were not willing to come forward in open against the petitioner. In the circumstances witnesses were examined in Camera. Moreover co-accused was not discharged but was bound down for keeping good behavior for a period of

two years. The activities of the petitioner have a potential to create alarm and are capable of sending shock waves affecting public tranquillity. The petitioner is a member of gang of motor thieves. Scooter and Maruti car were recovered from him. He has been involved in three motor vehicle thefts and recoveries have also been made from him. The Externment Authority had taken a lenient view and only externed him for a period of one year.

¶ 8. We have heard Counsel for the parties. We find no substance in the contention of the petitioner insofar as it relates to recording of evidence of witnesses in camera. There is no violation of the principle of natural justice. 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 extraordinary 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 under 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 : Surjeet Singh Vs. State and another, ; Shri Ajay Pal Singh Vs. State (NCT of Delhi) and Others, decided on 2nd February, 2001 and Smt. Phulwari Jagdambaprasad Pathak Vs. Shri R.H. Mendonca and Others,

¶ 9. In Prem Chand v. Union of India and Ors., 19 (1981) DLT18, while considering Section 47 and 50 of the Act the Supreme Court observed as under :

"Sections 47 and 50 have to be read strictly. Any police apprehension is not enough for passing order of externment. Some ground or other is not madequate. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fought with violence. Likewise, there must be sufficient reason to believe that the person proceed against is so desperate and dangerous that his mere presence in the locality or any part thereof is hazardous to the community and its safety. A stringent test must be applied in order to avoid easy possibility of abuse of this power to detriment of the fundamental freedoms. Natural justice must be fairly complied with and vague allegations and secret hearing are gross violations of Articles 14, 19 and 21 of the Constitution. The Act permits externment, provided the action is bona-fide. All power, including police power, must be informed by fairness if it is to survive judicial scrutiny."

¶ 10. Section 47 of the Act empowers the Commissioner of Police to extern persons, about to commit offence. The Commissioner has to be satisfied before passing an externment that the person concerned must fall under one of the clauses of the said provision and that the witnesses are afraid to give evidence in public against such a person.

m m 11. Notice u/s 50 was served on the petitioner and admittedly the morder of externment was passed u/s 47 of the Delhi Police Act after maffording him an opportunity to defend himself. It is apparent from the perusal of mthe record that the Additional DCP and the Appellate Authority have based their mconclusions on the statement/report of the SHO, Kalkaji and on inferences available mfrom the fact that the petitioner was involved in three cases, that the petitioner is a mdesperate and dangerous person and it must be assumed that witnesses under these mcircumstances are not forthcoming to depose against him in public for fear of their mown safety.

m m 12. The petitioner was given a hearing and he adduced evidence before the mAdditional DCP. The Additional DCP who on a consideration of the "evidence mbrought on file i.e. notice and record of his criminal activities and other evidence mincluding arguments adduced during the course of proceedings" concluded that mthe acts of the petitioner were "calculated to cause harm, danger and alarm to the mrespectable citizens".

m m 13. The main question arises as to whether the material on the basis of which mthe conclusions are drawn could be said to be sufficient for arriving at a subjective msatisfaction that the acts of petitioner were causing alarm, danger and harm to the mperson and property in the NCT of Delhi and that his presence was hazardous to mthe community.

m m 14. The order of the Additional DCP does not cull out reasonable grounds of mbelieving that the petitioner is engaged or is about to engage in the commission of moffence involving force or violence or that the petitioner is so desperate and mdangerous to render his being at large in Delhi. Considering the fact that the two mcases were still under investigation by the police and in one case the petitioner had mbeen discharged, there was no material before the Additional DCP to have come to mthe satisfaction that the petitioner was a desperate and dangerous person and his mpresence in Delhi would be hazardous to the community. The satisfaction of the mAdditional DCP that the witnesses are not coming forward to depose must be based mon some cogent material. Satisfaction has to flow from certain facts and material. It mmust be satisfaction of an normal and an ordinary prudent man. The material before mthe Additional DCP was the notice and the record of the three cases besides the mstatement of the SHO, Kalkaji and the statement of one witness recorded in camera. mThere is nothing on record to suggest that the aforesaid two cases which are pending minvestigation the witnesses had refused to tender evidence. There is no evidence to msuggest the there was a threat to life of any person at the time when the theft took mplace. There has to be something more than merely registration of the cases to mwarrant an order of externment. The present proceedings were commenced while mthe two cases were under investigation and, Therefore, to our mind the satisfaction mrecorded by the concerned officer was without application of mind and mechanical. mThere is also no demonstrable material on record to lead to the reasonable belief that mthe petitioner is so

desperate and dangerous criminal to render his being large in mDelhi.

m m 15. The show cause notice is a reproduction of the words of the section setting out in general material allegations without giving details. One of the essential conditions for passing the order of externment is that in the opinion of the mAdditional DCP witnesses do not come forward to give evidence against him. The mAdditional DCP appears to have considered the evidence and the material on mrecord what he has before him is the report of the SHO Kalkaji, list of cases showing minvolvement of the petitioner. One independent witness was examined, satisfaction mwas recorded that witnesses are not forthcoming to make statements in public magainst the petitioner on account of apprehension of their safety. The record of the mcase and the three cases relied upon do not in any way support the satisfaction marrived at by the Additional DCP. Notice of externment does not show in which mcases the witnesses had declined to appear because of apprehension of their safety mand for lack of evidence the case ended in favor of the petitioner. Section 47 curbs mthe freedom of movement and leaves much to the subjective satisfaction of the mAdditional DCP. He must, Therefore, follow the law strictly and if he fails the order mmust go. Supreme Court has held in Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, that the matter is further the msubjective satisfaction of the officer. Therefore, satisfaction must be based on mmaterial. In the present case, this is not so.

m m 16. Moreover the order of the Additional DCP and the order of the Appellate mAuthority show total non application of mind. There is no material on record or mplaced before the Court to suggest that the petitioner is a member of gang of motor mvehicle thieves. Recovery of scooter or a car, does not necessarily imply that a person mis a member of a gang involved in stealing vehicles.

m m 17. In the circumstances the order of externment and the order in appeal are mset aside.

m m 18. No order as to costs.

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