

(1984) 10 DEL CK 0015
In the Delhi High Court
Case No : Criminal Writ. No. 64 of 1983

Jamil Ahmad

APPELLANT

Vs

A.K. Kanth

RESPONDENT

Date of Decision : 16-10-1984

Acts Referred:

Citation : (1985) CriLJ 849 : (1984) 2 Crimes 955 : (1985) 27 DLT 45 : (1985) ILR Delhi 63 : (1985) 1 RCR(Criminal) 249

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Judgement

1. The petitioner Jamil Ahmad has brought this criminal writ petition under Art. 226 of the Constitution for the issuance of a writ of certiorari for quashing the notice dt. 28/4/1983 of externment issued by the respondent Shri A. K. Kanth, Deputy Commissioner of Police (Central Distt.) under S. 47(a)(c-1) and (c-3) of the Delhi Police Act, 1978 (hereinafter to be referred to as the Act) as also for quashing the proceedings pending against the petitioner before the respondent.

2. The following are the allegations appearing in the impugned notice :-

"Allegations :-

This since 20/4/1983 you are engaged in commission of illegal acts and offences and that your activities or movements in the limits of the Union Territory of Delhi are causing or are calculated to cause alarm, danger or harm to the person or property.

That it has been made to appear to me that you have been continuing your criminal activities and have engaged yourself in the commission of offences for which the following cases were registered against you by the police for habitually committing breach of peace :-

(i) F.I.R. 182 dt. 20-4-1982 u/s. 61/1/14 Ex. Act P.S. Jama Masjid.

(ii) F.I.R. No. 17-A 12-9-1982 u/s. 107/151 Cr.P.C. P.S. Jama Masjid.

(iii) D.D. No. 5-A dt. 11-12-1982 u/s 107/151 Cr.P.C. P.S. Jama Masjid.

(iv) D.D. No. 10-A 13-1-1983 u/s. 107/151 Cr.P.C. P.S. Jama Masjid.

That the perusal of the above cases and material on record reveals that your activities/movements are great menace and that you are so desperate as to render your being at large in the Union Territory of Delhi or any part thereof hazardous to the community.

That the material on record, further reveals that the witnesses are not willing to come forward to give evidence in public against you by reasons of apprehension on their part as regards to the safety of their person or property."

3. The impugned notice is sought to be struck down on various grounds including mala fides on the part of police by alleging that once the petitioner repaired the cooler of Mr. Qadir Khan, Sub-Inspector of Police Station Jama Masjid, Delhi the demand of repair charges in respect of which annoyed the Sub-Inspector and when the matter was reported by the petitioner to the S.H.O. the latter accused the petitioner of being an inefficient mechanic and having spoiled the cooler of the Sub-Inspector and that the S.H.O. thus sided with the S.I. and the petitioner was then threatened and one day was taken from his shop and falsely arrested on 20-4-1982 under S. 61 of the Punjab Excise Act by the Police of P.S. Jama Masjid by planting 250 grams of Charas whereupon a large number of shopkeepers of the area protested against the high handedness of the police and deputation of the shopkeepers waited upon the then Deputy Commissioner of Police against the aforesaid false implication of the petitioner. It is also asserted that on the transfer of that Deputy Commissioner of Police, the petitioner has now been sought to be externed from Delhi by the issuance of the impugned notice, for a period of two years.

4. The petitioner has also asserted that after planting the false case of 250 grams of Charas on 20-4-1982 the petitioner was involved falsely on vague and imaginary allegations under Ss. 107/152 of the Cr.P.C. in two cases one after the other on 12-9-1982 and 11-12-1982 respectively but in both those cases the petitioner was discharged by the Assistant Commissioner of Police after hearing the reason for his false involvement therein.

5. It is further stated in the petition that soon after the discharge of the petitioner in the aforesaid two proceedings initiated against him on 12-9-1982 and 11-12-1982 under Ss. 107/151 Cr.P.C. the petitioner was again involved in yet another case on 13-11-1983 under Ss. 107/151 Cr.P.C. by the police of that every police station and without concluding the same and inquiring into the truthfulness of the allegations the respondent hurried though with the impugned notice which is alleged to be inspired and mala fide.

6. The impugned notice is also assailed being without substance and based on no material at all much less any credible material, and is vocative of the fundamental rights of the petitioner granted under Arts. 14, 19 and 21 of the

Constitution and is also bad for non-application of mind and vagueness of allegations. It is also alleged that the petitioner has no other alternative efficacious remedy but to file this writ and further that this notice would cause him economic hardship and would render his wife and children homeless and also vagrant. This is supported by an affidavit deposed to by Darshan Kumar Clerk of petitioner's counsel.

7. The counter-affidavit against this writ petition has been deposed to by the respondent Shri A. K. Kanth, Deputy Commissioner of Police (Central Distt.) Delhi wherein the various assertions of the petitioner against the impugned notice of externment have been refuted by asserting to the contrary that the petitioner is a registered bad character of the area and everybody in the area is afraid of him and nobody comes forward to depose against him and that he has made false imputations and insinuations against the police and its officers. It is also asserted that the petitioner is dealing in excise illicitly and trading in charas, opium etc. and is a man of desperate character. It is also urged in the counter-affidavit that the petitioner ought to have waited for the orders to be passed by the respondent on the show-cause notice after hearing the petitioner. The impugned notice is asserted to be perfectly valid and legal.

8. The relevant provisions of law applicable in this case are Ss. 47 and 50 of the Act and the same are reproduced below :-

"47. Removal of persons about to commit offence.

Whenever it appears to the Commissioner of Police. -

(a) that the movements or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chap XII, Chap. XVI, Chap. XVII or Chap. XXII of the Indian Penal Code, 1860 (45 of 1860) or under S. 290 or Ss. 489A to 489E (both inclusive) of that Code or in the abetment of any such offence or

(c) that such person -

(i) is so desperate and dangerous as to render his being at large in Delhi or any part thereof hazardous to the community;

(ii) has been found habitually intimidating other persons by acts of violence or by show of force; or

(iii) habitually commits affray or breach of peace or riot or habitually makes forcible collection of subscription or threatens people for illegal pecuniary gain for himself or for others or

(iv) has been habitually passing indecent remarks on women and girls, or teasing

them by overtures;

and that in the opinion of the Commissioner of Police witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, the Commissioner of Police, may by order in writing duly served on such person, or by beat of drum or otherwise as he thinks fit, direct such person to so conduct himself as shall seem necessary in order to prevent violence and alarm or to remove himself outside Delhi or any part thereof, by such route and within such time as the Commissioner of Police may specify and not to enter or return to Delhi or part thereof, as the case may be, from which he was directed to remove himself.

Explanation :- A person who during a period within one year immediately preceding the commencement of an action under this section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this section shall be deemed to have habitually committed that act.

Section 50 :-

Hearing to be given before order under S. 46, or 48 is passed.

1. Before an order under S. 46, S. 47 or S. 48 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 to tendering an Explanation regarding them.

2. If such person makes an application for the examination of any witness to be produced by him, the Commissioner of Police shall grant such application and examine such witness, unless for reasons to be recorded, in writing, the Commissioner of Police is of opinion that such application is made for the purpose of causing vexation or delay.

3. Any written Explanation put in by such person shall be filed with the record of case.

4. Such persons shall be entitled to be represented in the proceeding before the Commissioner of Police by a counsel.

5. (a) The Commissioner of Police may for the purpose of securing the attendance of any person against whom any order is proposed to be made under S. 46, S. 47 or the S. 48 require such person by order in writing to appear before him and to furnish a security bond with or without sureties for attendance during the inquiry.

(b) The provisions of Ss. 119 to 124 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974) shall so far as may be apply in relation to the order under Clause (a) to furnish security bond.

6. Without prejudice to the foregoing provisions the Commissioner of Police, while issuing notice to any person under sub-section (1) may issue a warrant for his arrest and the provisions of Ss. 70 to 89 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall so far as may be, apply in relation to such warrant.

7. The provisions of S. 145, S. 446, S. 447 or S. 448 of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be apply in relation to all bonds executed under this section.

9. Section 47 contemplates the externment of persons about to commit offences and it provides/contemplates the material necessary for the satisfaction of the Commissioner of Police before passing an order of externment whereas S. 50 inter alia, prescribes the mention in the externment notice of the general nature of material allegations against the person sought to be externed from Delhi and to give him thereby a reasonable opportunity of tendering an Explanation regarding the same.

10. It was contended by the learned counsel for the petitioner that the allegations made in the impugned notice in reference to the four criminal cases mentioned therein were vague and were not sufficient to enable the petitioner to tender a proper and effective Explanation against the same in the absence of specific particulars of those cases. This contention of the learned counsel for the petitioner is without substance inasmuch as the bare perusal of S. 50 of the Act goes to show that the impugned notice is to contain only the general nature of the material allegations against the petitioner and he is to tender an Explanation regarding the same, and the use of the words "general nature" in this provision of law is the antithesis of the specific details of the material allegations against the persons upon whom such notice is served. The mentions of the four criminal cases in the impugned notice with the FIR/DD numbers, the dates of the initiation of those cases, the provisions of law under which they were started and the police station wherein the same were registered, are sufficient so as to set out the general nature of the material allegations against the petitioner and beyond the same any particular information in respect of the same is not contemplated by S. 50 of the Act under which the impugned notice was given. The case reported as Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, dealt with a similar question in regard to S. 59 of the Bombay Police Act (22 of 1951) which provision of law corresponds to Section 50 of the Act. Section 56 of the Bombay Police Act corresponds to S. 47 of the Act. The aforesaid Supreme Court authority held as follows :-

"Although a proposed extreme is entitled before an order of externment is passed under S. 56 to know the material allegations against him and their general nature, he is not entitled to be informed of specific particulars regarding the material allegations"

11. In this authority the earlier Supreme Court authority reported as State of

Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc., was followed, which while dealing with Ss. 56 and 58 of the Bombay Police Act, had laid down that it was sufficient if the notice under S. 59 contained general nature of the material allegations.

12. Another authority reported as Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, also held that though S. 58 of the Bombay Police Act required the general nature of the material allegations against the person extern to be disclosed and it did not further provide for particulars to be supplied to such a person and Therefore it would be very difficult for him to avail himself of at least the second ground on which S. 61 permits him to get the matter judicially examined, still in the very nature of things it could not have been otherwise and the grounds available to an extern had necessarily to be very limited in their scope. Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, was also noted in Hari Ram v. Commr. of Delhi Police, Delhi 1979 Cdand Cri. C 38.

13. It was then contended by the learned counsel for the petitioner that the cases in which a person was discharged could not form the basis for an action for externment under S. 47 of the Act and relied upon Swaran Lal v. State (1981) 20 DLT 252 wherein single Judge of this court held that the cases in which a person was tried and acquitted could not form the basis for an action for externment under S. 47 of the Act. Therein also the question of validity of the notice under S. 50 of the Act was in question. While dealing with this question the Supreme Court in Hari Khemu Gawali's case (supra) at page 568 (of AIR) : (at P. 1113 of Cri LJ) observed as follows :-

"It now remains to consider the legality of the order itself. The bona fides of the order have not been questioned. What has been urged against the legality of the order impugned is that it is based on previous orders of discharge of 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 in this case."

14. This authority was also taken note of in Hari Ram's case (supra) at page 48. So, the aforesaid contention of the learned counsel for the petitioner cannot be accepted in view of the aforesaid Supreme Court authority which had also been taken note of by the Division Bench of our own High Court in Hari Ram's case

(supra).

15. The learned counsel for the petitioner vehemently urged mala fides against the respondent in the matter of the issuance of the impugned notice by pointing out that even though the petitioner has given the details of the mala fides in the petition, the respondent has not specifically denied the same in his counter-affidavit. The perusal of the counter-affidavit of the respondent shows that even though it contains a general denial of the allegations made in the petition there is no specific denial regarding the allegations against one S.I. Qadir Khan of P.S. Jama Masjid getting his cooler repaired from the petitioner and the non-payment of the repair charges by him on demand from the petitioner and the demand for payment resulting in anyone to the said Sub-Inspector and the matter having been reported by the petitioner to the S.H.O. of the said Police Station who also sided with S.I. Qadir Khan accusing the petitioner of being inefficient mechanic and having spoiled the cooler of the Sub-Inspector and the petitioner having been threatened and one day taken from his shop and falsely arrested by planting 250 gms. of charas and a large number of shopkeepers of the area having protested against the highhandedness of the police and a deputation of the shopkeepers having waited upon the then Deputy Commissioner of Police against the false implication of the petitioner in the said case and the then Deputy Commissioner assuring an enquiry into the matter. In the counter affidavit of the respondent no mention whatever was made of S.I. Qadir Khan and of the S.H.O. If no affidavit of S.I. Qadir Khan and of the S.H.O. controverting these allegations were filed, a deposition ought to have been made in the respondent's affidavit that both these officers of the police were questioned about the aforesaid allegations as also about the protest and a deputation on the part of the shopkeepers of the locality to the then Deputy Commissioner of Police. In the absence of the same in the counter- affidavit of the respondent the averments of mala fides on the part of the concerned Police officers of P.S. Jama Masjid as also of respondent can be said to exist against the petitioner and coupled with the same the discharge of the petitioner in the two subsequent cases dt. 12-9-1982 and 11-12-1982 under Ss. 107/154 Cr.P.C. which per se otherwise, as already pointed out above, could not suffice for the discharge of the impugned notice, assumes appreciable significance especially when the petitioner asserted in the petition that no substance was found in the allegations by the Asstt. Commissioner of Police and more so when in the counter-affidavit of the respondent the averment of there being no substance in the allegations was not specifically denied as such by deposing to the contrary that witnesses were not forthcoming due to fear from the petitioner. In *Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay* and *Another*, the Supreme Court had taken note of the fact that the bona fides of the order had not been questioned and what had been urged against the legality of the order impugned in the writ was based on previous orders of discharge or acquittal. So, that authority had considered the effect of the previous orders of discharge or acquittal per se for legality of the order impugned when the bona fides of the

order were not in question. In the case in hand the bona fides of the order impugned had also been questioned by seriously asserting that the petitioner had never been involved in any criminal case throughout his life prior to the aforesaid incident of the repair of the cooler of S.I. Qadir Khan of P.S. Jama Masjid.

16. When the bona fides of the impugned notice are questioned, the criminal writ challenging the impugned order is competent and the petitioner cannot be compelled to wait, as contended by the learned standing counsel representing the respondent and also asserted in the counter-affidavit of the respondent for the enquiry into the allegations of the impugned notice against the petitioner by the respondent as contemplated under S. 47 of the Act.

17. As a result the petition is allowed and impugned notice is quashed.

18. Petition allowed.