

(2015) 07 DEL CK 0239

In the Delhi High Court

Case No : Writ Petition (Criminal) 326 of 2015

Kamal Kishor

APPELLANT

Vs

Addl. DCP-I North West Distt. Delhi and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 290, 445, 446, 447, 448

Delhi Police Act, 1978 — Section 46, 47, 48, 48

Penal Code, 1860 (IPC) — Section 279, 338, 379, 411

Citation : (2015) 9 AD 308 : (2015) 3 JCC 1950

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : N.S. Dalal, for the Appellant; R.S. Kundu, Addl. SC and Virender Kumar, SI, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashutosh Kumar, J—The petitioner is aggrieved by the order dated 27.11.2014 passed by the Additional Deputy Commissioner of Police-I, Central West District, Delhi whereby he has been externed from the limits of National Capital Territory of Delhi for a period of one year as well as the order dated 17.12.2014 passed by the Appellate Authority (Lieutenant Governor) which upheld the externment of the petitioner.

2. Based on the externment proposal by the SHO of Rani Bagh police station through the ACP, Saraswati Vihar, a notice was issued to the petitioner under Section 50 of the Delhi Police Act, 1978 (hereinafter referred to as the "Act") on 8.10.2012 with a direction to appear before the Additional DCP on 25.10.2012. A list of six cases was given to him to explain as to why he should not be externed because of his having become a habitual offender.

3. During the pendency of the proceedings under Section 47 of the Act, the petitioner was again found to have involved himself in 11 cases relating to theft, dishonestly receiving stolen property, knowing it to be stolen, robbery etc. A

supplementary notice under Section 50 of the Act was given to him and he was asked to reply to the supplementary notice as well.

4. Pursuant to the notice/direction, the petitioner submitted his reply stating that out of the six cases registered against him, two cases namely FIR No. 93/2013 registered under Section 279/338 of the IPC (P.S. Roop Nagar) and FIR No. 172/2010 under Section 379/411 of the IPC (P.S. Rani Bagh) had ended in discharge and remaining four cases are pending trial. He also stated that after the aforementioned cases, he has made efforts to reform himself and has undertaken the business in sale and purchase of blankets which he operates from his home with the help of his mother.

5. The petitioner, produced a witness in his defence namely Surinder Khattar, a neighbour of his who knows him from childhood. Aforesaid Surinder Khattar has testified to the good moral character of the petitioner.

6. With respect to the supplementary notice, the petitioner replied that out of the list of 11 cases, he has been discharged in 7 cases. The four remaining cases are pending trial. He repeated the earlier assertion that he has reformed himself and is concentrating on the blanket business.

7. The petitioner, after the supplementary notice led another person as a witness in his defence namely Rakesh Gupta who also is a neighbour. He has stated that the petitioner, has obtained a vehicle which is being plied for earning his livelihood.

8. The Additional DCP vide his order dated 27.11.2014 held that the petitioner is a habitual offender with criminal propensity and requires to be externed from National Capital Territory of Delhi for a specified period. The Additional DCP came to a definite finding, on going through the records of the materials before him that the presence of the petitioner in the area would be hazardous to the life and property of law abiding citizens. Consequently, by the aforesaid order (27.11.2014), the petitioner was directed to remove himself from the limits of the National Capital Territory of Delhi within a period of seven days and was prohibited from entering or returning to the limits of NCT of Delhi without written permission of the competent authority. A permission, however, was granted to him to attend to the cases in Delhi Courts but with a specific direction that he should remove himself away from the territorial limits of NCT after attending to the dates in the Courts.

9. The appellate order dated 17.12.2014, upholds the externment.

10. Learned counsel for the petitioner assailed both the orders on the grounds that undue haste has been shown by the authorities in externing him; relevant factors like his discharge in most of the cases cited by the appellants has not been taken into account and that even if the allegations are accepted to be correct, there is nothing to show that the petitioner is a habitual offender or by virtue of his being involved in so many cases, he has become a hazard to the

society and his being let at large would be prejudicial for the society. It has further been submitted by the petitioner that there was nothing on record before both the authorities to come to the conclusion that the witnesses of the area are apprehensive of any reprisal at the hands of the petitioner in case they come in open as witnesses.

11. In order to appreciate the contention of the petitioner, it would only be apposite to refer to the relevant provisions of the Delhi Police Act, 1978. Sections 47, 50, 51 and 52 of the Act reads as under:--

"Section 47 - Removal of persons about to commit offences

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 Chapter XII, Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code (45 of 1860) or under section 290 or sections 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 in any part thereof hazardous to the community; or

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 section 46, 47 or 48 is passed

(1) Before an order under section 46, section 47 or section 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 of 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 the case.

(4) Such person 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 section 46, section 47 or section 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 sections 1.19 to 1.24 (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 sections 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 section 445, section 446, section 447 or section 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.

Section 51 - Appeal against orders under sections 46, 47 or 48

(1) Any person aggrieved by an order made under section 46, section 47 or section 48 may appeal to the Administrator within thirty days from the date of the service of such order on him.

(2) An appeal under this section shall be preferred in duplicate in the form of a

memorandum, setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by that order or a certified copy thereof.

(3) On receipt of such appeal, the Administrator may, after giving a reasonable opportunity to the appellant to be heard either personally or by a counsel and after such further inquiry, if any, as he may deem necessary, confirm, vary or set aside the order appealed against:

Provided that the order appealed against shall remain in force pending the disposal of the appeal, unless the Administrator otherwise directs.

(4) The Administrator shall make every endeavour to dispose of an appeal under this section within a period of three months from the date of receipt of such appeal.

(5) In calculating the period of thirty days provided for an appeal under this section, the time taken for obtaining a certified copy of the order appealed against, shall be excluded.

Section 52 - Finality of order in certain cases - An order passed by the Commissioner of Police under section 46, section 47 or section 48 or the Administrator under section 51 shall not be called in question in any court except on the ground--

(a) that the Commissioner of Police or the Administrator, as the case may be, had not followed the procedure laid down in sub-section (1), sub-section (2) or sub-section (4) of section 50 or in section 51, as the case may be; or

(b) that there was no material before the Commissioner of Police or the Administrator, as the case may be, upon which he could have based his order; or

(c) in the case of an order made under section 47 or an order in appeal therefrom to the Administrator under section 51, the Commissioner of Police or the Administrator, as the case may be, was not of the opinion that witnesses were unwilling to come forward to give evidence in public against the person against whom such order has been made."

12. Section 47 of the Act refers to the situation under which a person could be removed from the territory of Delhi. The situation enumerated are that if the movement of such person causes alarm, danger or harm or the proceedee is or about the commit offences under various sections of the Indian Penal Code or that such person is so desperate and dangerous so as to render his roaming at large in Delhi would be hazardous to the community or has been habitually intimidating persons or causing affray or passing indecent remarks on women and girls. If in conjunction with any one of the grounds or all the grounds the competent authority namely the Commissioner of Police frames his opinion that out of fear nobody is coming forward to depose against such person, he could either be directed to behave or to remove himself outside Delhi or to remove

himself from any specified part of Delhi for a fixed duration/tenure.

13. The explanation appended to the section defines habitual offender. If a person has involved himself in cases on three occasions or more within one year immediately preceding the commencement of the action, he is a habitual offender.

14. Section 47 of the Act, therefore, refers to two aspects. The Commissioner of Police has first to be satisfied about the proceedee to be a dangerous person and that allowing him to roam at large would be hazardous to the society or cause harm and danger to any person or property or reasonable grounds for believing that he would involve himself in offence affecting human body, property, counterfeiting coins and currency notes. Thereafter, the Commissioner of Police is required to formulate his opinion that witnesses are unwilling to come in open to depose against such person for the fear of their lives. Then only a person/offender/proceedee could either be directed to behave himself or remove himself outside any part of Delhi or remove himself completely outside Delhi.

15. The Additional DCP, from the materials available before him was fully satisfied on the basis of the statement of witnesses recorded in camera by Mr. Rajeev Ranjan, the then Additional DCP-I/North West District, Delhi that witnesses are not willing to come forward to depose against the petitioner.

16. The Additional DCP, took note of the 17 criminal cases to the credit of the petitioner, 11 of which came during the pendency of the externment proceedings. This fact satisfied the Additional DCP about the sufficiency of the grounds for externing the petitioner which had become essential in the interest of society.

17. The Additional DCP has taken into consideration the relevant facts and has come to the satisfaction about the petitioner being a hazard to the society.

18. The appellate order also takes note of the grounds relied upon by the competent authority and upheld the same as being a sound order.

19. The submission of the counsel for the petitioner that the petitioner stand discharged in most of the cases is of no consequence. The provisions under Section 47 to 52 of the Delhi Police Act are meant to prevent lawlessness in the society by adopting the method of externment which could be either from one part of the territory of Delhi or of whole of the Delhi or issuance of direction to any delinquent/proceedee to mend his ways. Acquittal or discharge in cases lodged against the petitioner does not make any difference so far as the assumption of the criminal propensity of the petitioner is concerned. Since the externment order is only a preventive order, it is not necessary that in all cases which have been cited as offence against the petitioner, the petitioner should be convicted to warrant his externment.

20. In most of the cases in which the petitioner was found to be involved are under Sections 379 and 411 of IPC. The offence of theft and of accepting stolen property, knowing it to be stolen, if seen in isolation, or as a solitary incident,

may not appear to be serious. The frequency with which such cases were lodged against the petitioner, not only brings the petitioner in the category of a habitual offender as defined and explained under the Act, but have also made his presence in society inexpedient for an even tempo of life.

21. This Court is satisfied about the existence of materials against the petitioner justifying the order of externment, and the procedure adopted to come to such a finding. No elaborate decision is required for the competent authority to extern a proceedee. The order passed by the competent authority as also the appellate order reflects existence of material warranting the externment of the petitioner.

22. The period of externment is also not faulted with.

23. No judicial interference is required against the order of externment of the petitioner, and the appellate order.

24. This petition, therefore, fails and is dismissed.

Crl.M.A No. 2519/2015

25. In view of the main petition having failed, the application has become infructuous.

26. This application is disposed of accordingly.