

(1971) 07 DEL CK 0020
In the Delhi High Court

Kuldip Kumar

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 26-07-1971

Acts Referred:

Citation : (1972) CriLJ 75

Hon'ble Judges : P.S. Safeer, J

Bench : Single Bench

Judgement

Pritam Singh Safeer, J.—The order dated the 30th of November. 1970. a copy whereof has been filed as Annexure "C" to the petition, has been impugned. The order has been passed u/s 57 of the Bombay Police Act. as made applicable in terms of Section 2 of the Union. Territories (Laws) Act. Section 2 of the latter Act finds its authority in Sub-Article (1) of Article 239 of the Constitution of India. It is a Parliamentary legislation as envisaged in the sub-Article, mentioned above. It has been submitted on behalf of the petitioner that Section 57 (a) does not hold good in its applicability to Union Territory of Delhi. The submission is that the terms of Section 2 of the Union Territories (Laws) Act are such that they go beyond the authority which could be legitimately enacted by Parliament in terms of Article 239 of the Constitution of India. The learned Counsel concedes that the legislation by the Bombay Legislature was intra vires. That being so, there has been no amendment or modification which may be injuring the virus of that part of the provision, applied to the Union Territory of Delhi, with which I am presently concerned.

2. A reference has been made to the view taken in Rai Pal v. Union of India Civil Writ No. 1307 of 1967. which was disposed of by a Full Bench on 1-12-1969. The Court was primarily concerned with Clause (c) of Section 57 of the Bombay Police Act. It was held that the power of modification given to the Central Government u/s 2 of the Union Territories (Laws) Act. while extending an. Act to the Union Territory, cannot be construed as authorising any change of policy but is confined to making alterations of such a character as keep the policy of the Act intact and

introduce such variations as are appropriate to local conditions of which the Central Government is made the Judge. The Central Government while modifying the Act, has to adhere to its essential features and it is not permissible under the garb of modification to brine about any radical transformation. In case the Central Government alters the essential character of an Act or changes it in material particulars, it would be tantamount to legislation and that is not permissible.

3. In this case I am concerned with Clause (a) of Section 57 of the aforementioned Act. It is not at all urged before me that any alteration whatsoever has been made in the said clause by the Central Government while applying the said Act to Delhi. Section 2 of the Union Territories (Laws) Act has. Therefore, been properly utilised. The learned Counsel appearing for the petitioner is unable to draw any sustenance from the aforementioned judgment.

4. If a reference is made to Annexure "C". in Paragraph 3 thereof ten convictions, which the petitioner suffered. are mentioned. It has been urged that even on the date of its applicability Section 57 (a) could not be so interpreted as to cover the convictions which the petitioner had suffered earlier to the 2nd of September, 1965, when the notification was issued applying Section 57 of the Bombay Police Act to the Union Territory of Delhi. Two of the convictions are admittedly such which the petitioner suffered after the issuance of the notification, mentioned above. The conviction in 15th of February. 1966. u/s 307 of the Indian Penal Code and that u/s 332 of the said Code on the 28th of February. 1968. were the convictions under the provisions of the Indian Penal Code, falling within Chapter XVI thereof. I am not accepting the argument that on the date the provision became operative it could not cover the convictions already recorded. There was no question of any retrospective operation.

5. If the Legislature by a validly enacted law provides that it shall apply to an existing situation, its operation will take within its ambit the circumstances obtaining on that date. Section 57 (a) is:

57. Removal of persons convicted of certain offences. If a person has been convicted

(a) of an offence under Chapter XII. XVI or XVII of the Indian Penal Code on

The Legislature in its own wisdom expressly used the words "has been convicted". The legislative intent clearly was that on the date of its coming into operation the provision will contain within its authority the person who may have been convicted in respect of any of the offences enumerated in Clause (a).

6. The second contention is that Section 57 does not conform to the requirements of Article 14 of the Constitution of India. It is contended that the enactment must have envisaged the possibility of both the minors and the majors suffering convictions. There should have been some reasonable differentia dealing with the type of criminals concerned. It is also submitted that

Section 77 does not take into account the nature of the offence. I am unable to accept any of these contentions. I hold that Section 57 (a), which is the provision applicable to the case of the petitioner, is based upon a concept which eliminates discrimination from the legislative field. The basis is the conviction of a person. If any person has suffered a conviction under the provisions contained in the particular Chapters of the Indian Penal Code mentioned in Clause (a) of Section 57 he will receive equal treatment. Equality is accorded. It is not denied, There is no basis for the submission that this provision should have taken into account as to whether the convicts were majors or minors. In order to elaborate his contention the learned Counsel submitted that in case of persons below 21 years of age they would be entitled to secure the benefit of the provisions of the Probation of Offenders Act. Bare reading of the provisions contained in Sections 3, 4 and 6 of the Probation of Offenders Act makes it clear that even where a person is below 21 years of age the Court is not bound to give him the benefit of the Probation of Offenders Act, but has to function under a significant limitation. That limitation is that while denying him the benefit of the protection of the provisions of the Probation of Offenders Act the Court must record its reasons for not giving him the protection. The counsel submits that for purposes of the Indian Penal Code a person will become major when he attains the age of 18 years. There is no license for any person in his age of 16 or 17 years to go about committing crimes, and urging that differentia should be there in Section 57 of the Bombay Police Act regarding him because there are provisions in the Probation of Offenders Act of which he can seek the benefit. Even in case of a person in such an age group, the Court convicting him may record reasons looking into the various factors, which have been mentioned in the said provisions of the Probation of Offenders Act. The Court will look firstly into the circumstances of that case, then into the nature of the offence and last of all into the character of the offender. If the Court finds that a person below 21 years of age is such a habitual offender that day in and day out he is piling up crime after crime, the Court may reject the prayer for giving him the benefit of the Probation of Offenders Act. In any case. Section 57 (a) of the Bombay Police Act places everyone convicted of any of the offences covered by Clause (a) thereof on an equal footing. It is non-discriminatory.

7. It is then alleged by the learned Counsel that a reading of Section 59 would show that the very person who may act under it for the purpose of calling for an Explanation may also act as the final Judge in the cause. That argument does not hold water. If a reference is made to the provisions of Section 57 under which alone an ultimate order can be passed, then the authority to pass the order is not conferred upon any Police Officer whatsoever. It is confined to the judicial authorities mentioned in that provision. Section 59 of the Act is merely procedural. It is meant to provide that an opportunity will be given to the person called upon to answer the notice issued to him. to file a written-statement and that the written-statement so filed will be kept on the record. It also provides that an application being made by such person he will be given an

opportunity to adduce evidence. It is not contended that the said procedural provision has not been complied with. A perusal of the impugned order shows that the present petitioner was duly served with a notice, a copy whereof has been filed as Annexure "A" and he filed a written-statement, a copy whereof has been filed as Annexure "B", with the petition. He was given various opportunities to plead his case. He made a statement and that also was recorded during the proceedings. When the stage of arguments was arrived at, he made himself scarce.

8. The grievance raised is that the order dated the 30th of November. 1970, was not served within 30 days and. Therefore, the petitioner was put in such a situation that he could not avail of the provisions of Section 60 of the Bombay Police Act and file an appeal. That, however, will not work any injustice as I find that this is a case calling for a remand. The reason is that Section 57 makes it imperative for the authority passing the ultimate order under that provision to record its conclusion based on reasoning as to why it is concluded that if allowed to remain within the territory concerned the person who is to be externed would be likely to indulge in acts calling for his externment.

9. Paragraph 4 of the impugned order is:

4. I have very carefully considered the material placed before me by the Police, the Explanation of the respondent and his written statement before me. From his own statement I find that he has admitted a number of convictions in different cases relating to Chapters XII and XVII of the Indian Penal Code, I Therefore, find it a fit case to pass final order of externment

Section 57 nowhere confers the authority that merely on admission of certain convictions by the person who may have been notified earlier to show cause why he should not be externed, an order of externment may be passed. On considering the material before it the authority acting u/s 57 must give its reasons as to why it considers it likely that if not externed the person concerned will go on indulging in such activities which may call for an order of externment. Such a finding is absent from the impugned order.

10. It is directed that the petitioner will appear before Mr, Srinivasan. District Magistrate, Delhi, on the 19th of August. 1971. who will hear the arguments, attend to the record and pass an order which may be merited in this case. The petition is accepted to the extent indicated above.