
(1988) 04 DEL CK 0006

In the Delhi High Court

Case No : Criminal Writ Petition Appeal No. 279 of 1987

Laxmi

APPELLANT

Vs

Commissioner of Police and Another

RESPONDENT

Date of Decision : 20-04-1988

Acts Referred:

Citation : (1988) 2 Crimes 702 : (1988) 35 DLT 108 : (1988) 2 RCR(Criminal) 269 : (1988) RLR 416

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : K.K. Sud and P.P. Lao, for the Appellant;

Judgement

Malik, J.

(1) The petitioner has challenged an order of externment passed on 14th of April 1987 by the Deputy Commissioner of Police, West District, New Delhi under sections 47/50 of the Delhi Police Act directing that she remove herself outside the limits of the Union Territory of Delhi for a period of two years. This order followed a notice under sections 47/50 of the Delhi Police Act dated 8th of January 1986. The petitioner filed an appeal before the Lt. Governor which failed.

(2) The validity of the order is being challenged on various grounds. The petitioner states that she had filed a complaint against some police officers and that it is in that background that she has been proceeded against under sections 47/50 of the Delhi Police Act. This, however, is denied by the respondent in the counter affidavit. It will be of some advantage to refer particularly to the contents of the notice u/s 47 served upon the petitioner. After reproducing the expression used in section 47(a)(b)(c)(i) 7 cases mostly under the Excise Act have been detailed and she is told that all this makes out a case against her u/s 47(a)(b)(c)(i) of Delhi Police Act. I may also take notice of the order passed wherein again after considering . her written statement and the evidence of the defense witnesses the Deputy Commissioner of Police goes on to state that he is

satisfied that the petitioner is engaged in the commission of offences as she was again arrested during the course of proceedings in three more cases. The crux of the order states that he is satisfied about the petitioner being engaged in the commission of offences and that he is further satisfied that the witnesses are not willing to come forward to give evidence in public against her for fear on their part as regards the safety of their person or property. After saying so the impugned externment order is passed. The order would show that the basis made for the externment is that she is involved in the commission of offences and the witnesses are not forthcoming against her to tender evidence in public for fear of their safety. It is true that in the beginning of the order the Deputy Commissioner has stated that on information that her activities are desperate and her movements are causing harm and danger to the persons and property, proceeding u/s 47 of the Delhi Police Act were initiated. But in the concluding part of his order he does not hold the view that she is possessed of the character as envisaged by section 47(a)(b)(c). This is perhaps due to the fact that the Deputy Commissioner concerned found no material to hold that the movements or acts of the petitioner are causing or calculated to cause alarm .danger or harm to any person or property or that she is so desperate and dangerous as to render her being at large in Delhi or in any part thereof hazardous to the community and he further found that the offences which are made basis for these proceedings do not fall within the category of The offences mentioned in section 47(b). So the very first basis for passing an order of externment is lacking in the order itself. Moreover, the notice as also the order states in general terms that the witnesses are not forth-coming to tender evidence against her for fear of their own safety. Mr. Lao states that the requirement of section 50 is that she has to be informed in general terms the nature of material allegations against her and afforded an opportunity to explain the same. He submits that if the witnesses are nominated the very purpose would become casualty in the process.

(3) It is true that section 50 requires of the Commissioner of Police to give notice informing her of the general nature of the material allegations but it also states that she has to be afforded an opportunity of tendering an Explanation .Since she is required to tender an Explanation the expression "general nature of material allegations" would not mean a vague allegation but would mean that she has to be informed of the allegations which she is required to meet and she must know regarding what she to tender an Explanation. The expression "general nature" used in the provision as such cannot be given such a limited meaning as to destroy the right of the person to tender Explanation which can only be done if he or she knows what he or she is required to explain.

(4) It is in that view of the matter that this court has earlier also expressed its concern at the manner in which the power vested under sections 47/50 of the Delhi Police Act is being exercised without indicating the nature of allegations. It is very easy to reproduce the expression used in the provision regarding the witnesses not coming to depose against the person in public for fear of their safety but it is difficult to believe in the existence of such a situation unless it is

clearly indicated as to which are the cases in which public witnesses are cited as such but they did not volunteer to depose for fear of their own safety. It may be that the names of the witnesses are not given but the authority could easily indicate as to what is the number of prosecution witnesses who have not deposed for fear of their own safety. This, however, is left as vague as it is and even though 7 cases have been indicated in the notice not a single instance has been indicated where such a situation arose.

(5) It has been indicated a number of time by this court that the power u/s 47 of the Delhi Police Act is an extraordinary power and is meant to tackle an extraordinary situation ; a situation in which it is absolutely difficult and even impossible to deal with the desperate character in a normal legal process. It is because of the extra-ordinary nature of this power that it is to be construed strictly. Before the proceedings under sections 47/50 of the Delhi Police Act are initiated, the court will always insist about the existence of the necessary conditions for its operation. In my view, the conditions laid down in sub-sections (a)(b) and (e) of section 47 are necessary and with each one of these conditions the existence of rider clause is also a must and the authority concerned is not entitled to proceed u/s 47 if the conditions of the rider clause are not fulfilled. Thus, the mere fact that a particular person satisfies what is indicated in clauses (a)(b) and (e) of section 47 by itself is not sufficient to attract the operation of sections 47/50 of the Delhi Police Act unless it is further shown that due to the aforesaid nature of the person the witnesses are not forthcoming to depose in public against him for their own safety and for the safety of their property. In the present case, the Deputy Commissioner in his order has clearly held that the petitioner is a habitual offender. There is no finding about the existence of what is stated in clause (a) or (e). The finding regarding the witnesses not coming to depose is vague and based on no material. At least the order does not indicate the material on which this finding is based. Law does not envisage a finding based on one's imagination. To sustain a finding it must be based on material or else it is no finding in the eyes of law.

(6) In this case, when a notice was given to the petitioner she was informed of the existence of 7 cases but when the order was passed, the Deputy Commissioner of Police has indicated 3 more cases, 2 of them under the N.D.P.S. Act which have been made full use of without affording an opportunity to the petitioner to tender an Explanation. On that account also the order stands vitiated. Furthermore, the counter affidavit clearly indicates that the testimony of some witnesses against the petitioner was recorded in camera behind her back by an officer subordinate to the officer who passed the impugned order. This practice has been deprecated by the Supreme Court in Prem Chand v. Union of India and others 1981 Cr. L. J. 5. This has been held to be gross violation of Articles 14, 19 and 21 of the Constitution. If the order is based on gross violation of the constitutional rights, it cannot be sustained. With these observations, I find no justification in the impugned order. The petition is allowed and the notice as also the impugned order together with the order of the appellate court is

quashed. .

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