

(2006) 05 SC CK 0064

In the Supreme Court Of India

Case No : Criminal Appeal No. 530 of 2006 Arising out of SLP (Criminal) No. 5212 of 2005

Lt. Governor, NCT and Others

APPELLANT

Vs

Ved Prakash @ Vedu

RESPONDENT

Date of Decision : 05-05-2006

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27, 28, 29
Bombay Police Act, 1951 — Section 56
Bombay Prevention of Begging Act, 1959 — Section 107, 108, 11
Constitution of India, 1950 — Article 21
Criminal Pr

Citation : (2006) 2 ACR 1636 : (2006) 5 JT 425 : (2006) 5 SCALE 250 : (2006) 5 SCC 228 : (2006) 1 SCR 927 Supp : (2006) 1 UJ 739

Hon'ble Judges : S. B. Sinha, J;P. K. Balasubramanyan, J

Bench : Division Bench

Advocate : Mukta Gupta, T.A. Khan, for the Appellant; Harjinder Singh Vandana Sharma and S.V. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. An externment proceeding was initiated against the Respondent herein in terms of Section 47 of the Delhi Police Act, 1978. The said proceeding was initiated inter alia on the ground that his movements and acts had been causing alarm, danger and harm to person and property.

3. It is not in dispute that the following criminal proceedings were instituted against the Appellant:

S.No. FIR No. Date Section of Law Police Station 1. 124 29.04.82 308/34 IPC Kalyan Puri 2. 123 02.03.84 452/324/34 IPC Kalyan Puri 3. 469 08.11.85 308/506/427/323/34 IPC Kalyan Puri 4. 73 19.02.91 307/506/34 IPC Kalyan Puri 5. 15 09.01.93 147/148/149/323 IPC Trilok Puri 6. 480 10.08.93 304A IPC Trilok

Puri 7. 4 05.01.99 452/342/323/354/427/34 IPC Trilok Puri 8. 309 11.09.99 354/509/323/506/34 IPC Trilok Puri 9. 310 12.09.09 452/308/34 IPC Trilok Puri 10. 396 29.10.01 458/323/427/506 IPC Trilok Puri

Whereas the Respondent was convicted in relation to the instances and/ or the first information reports detailed at Sr. No. 4 and 9 hereof, in other cases, he was acquitted except in the cases detailed at Sr. Nos. 1 and 10 under Sections 308/34 and 458/323/427/506 of the Indian Penal Code respectively which are said to be still pending.

4. In the show cause notice issued to the Respondent, it was alleged:

That your movement and acts causing and calculated to cause alarm, danger harm to the person or property. There are reasonable grounds to believe that you engage or likely to engage in the commission of offence punishable under Chapter XVI, XVII, XXII or IPC. Is it a fact that you were not involved in a single isolated incident but indulged in criminal activities since 1982 and continued and dangerous so as to render you being at large in Delhi or in any part thereof is hazardous to the community.

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 the safety of their person or property. There are reasonable grounds to believe that you are likely to engage yourself in the commission of offence like those in para (i) above.

You are likely called upon to explain as to why an order for externment out of the limits of the National Capital Territory of Delhi for a period of two years in accordance with the provisions of Section 47 of Delhi Police Act, 1978 be not passed against you.

5. Respondent filed a show cause. He also examined witnesses on his own behalf. According to him, he had been implicated in many false cases. As the officials of the Delhi Police were inimically disposed towards his brother, they had implicated him in many false cases without any just or sufficient cause. On or about 31.12.2003, a supplementary notice was issued by Appellant No. 3 purported to be u/s 50 of the Delhi Police Act in continuation of the previous notice dated 7.8.2003. On or about 7.4.2004 an order of externment was passed against the Respondent directing his removal beyond the limits of the National Capital Territory of Delhi for a period of two years with effect from 13.4.2004.

6. Having regard to the contentions raised at the bar, at the outset, we may notice Sections 47, 48 and 50 of the Delhi Police Act read:

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 or u/s 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.

48. Removal of persons convicted of certain offences.-

If a person has been convicted

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

(b) of an offence u/s 3 or Section 4 of the Delhi Public Gambling Act, 1955, or u/s 12 of that Act in so far as it relates to satta gambling or on two or more occasions under any other provision of that Act (including Section 12 of that Act in so far as it does not relate to satta gambling); or

(c) of any offence under the Suppression of Immoral Traffic in Women and Girls

Act, 1956; or

(d) of any offence u/s 25, Section 26, Section 27, Section 28 or Section 29 of the Arms Act, 1959; or

(e) of any offence u/s 135 of the Customs Act, 1962; or

(f) of any offence u/s 61, Section 63 or Section 66 of the Punjab Excise Act, 1955, as in force in Delhi; or

(g) on two or more occasions of an offence under-

(i) the Opium Act, 1878; or

(ii) the Dangerous Drugs Act, 1930; or

(iii) the Drugs and Cosmetics Act, 1940; or

(iv) Section 11 of the Bombay Prevention of Begging Act, 1959, as in force in Delhi; or

(h) on three or more occasions of an offence u/s 105 or Section 107 of this Act,

the Commissioner of Police may, if he has reason to believe that such person is likely again to engage himself in the commission of any of the offences referred to in this section, by order in writing, direct such person to remove himself beyond the limits of 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 any part thereof, as the case may be, from which he was directed to remove himself.

50. Hearing to be given before order u/s 46, 47 or 48 is passed.-

(1) Before an order u/s 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 u/s

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 119 to 124 (both inclusive) of the Code of Criminal Procedure, 1973, 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 (2) may issue a warrant for his arrest and the provisions of Sections 70 to 89 (both inclusive) of the Code of Criminal Procedure, 1973, 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, shall, so far as may be, apply in relation to all bonds executed under this section.

7. The proposal to initiate an appropriate proceeding under the Act was considered in the noting / proceeding dated 7th August, 2003 of Respondent No. 3 herein, which reads as under:

Two public witnesses appeared before Shri V.V. Chaudhary the then Additional Deputy Commissioner of Police/ East to depose against Ved Prakash @ Vedu s/o Shri Prem Singh, r/o S-4, Pandav Nagar, Delhi. Camera statements recorded. On the basis of the material placed before me and after discussing the same with ACP Kalyan Puri and S.H.O./ Pandav Nagar and after having gone through the statement of camera witnesses, I am satisfied that sufficient grounds exist for proceeding against the respondent u/s 47, DP Act.

8. It is not in dispute that the provisions of Section 56 of the Bombay Police Act is in pari materia with Section 45 of the Delhi Police Act. Interpretation of the said provision of the Bombay Police Act came up for consideration before a Bench of this Court in Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, wherein inter alia the following contentions were raised:

(iii) The externing authority must pass a reasoned order or else the right of appeal would become illusory.

(iv) The State Government also ought to have given reasons in support of the order dismissing the appeal. Its failure to state reasons shows non- application of mind;

Chandrachud, J., as the learned Chief Justice then was, opined:

...An order of externment can be passed under Clause (a) or (b) of Section 56, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open

prosecution will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed externnee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externnee "of the general nature of the material allegations against him". That obligation fixes the limits of the co-relative right of the proposed externnee. He is entitled, before an order of externment is passed u/s 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.

9. The Court referring to its earlier decision in *Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, and State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc.*, rejected the contention that the notice issued against the externnee was vague. As regards points (iii) and (iv), as noticed hereinbefore, it was stated:

14. The third and fourth point have the same answer as the second point just dealt with by us. Precisely for the reasons for which the proposed externnee is only entitled to be informed of the general nature of the material allegations, neither the externning authority nor the State Government in appeal can be asked to write a reasoned order in the nature of a judgment. If those authorities were to discuss the evidence in the case, it would be easy to fix the identity of witnesses who are unwilling to depose in public against the proposed externnee. A reasoned order containing a discussion of the evidence led against the externnee would probably spark off another round of tyranny and harassment.

In *State of Maharashtra and Another Vs. Salem Hasan Khan*, , this Court followed the dicta in *Pandharinath Shridhar Rangnekar* (supra).

10. In *State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo*, , this Court yet again held:

25. As observed in *Gazi Saduddin* case satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority.

26. The material justifying externment can also throw light on options to be exercised. If referring to the materials, the authority directing externment also

indicates the option it thinks to be proper and appropriate, it cannot be said to be vitiated even though there is no specific reference to the other options. It is a matter of legitimate inference that when considering materials to adjudicate on the question of desirability for externment, options are also considered and one of the three options can be adopted. There cannot be any hair-splitting in such matters. A little play in the joints is certainly permissible while dealing with such matters.

11. The High Court by reason of the impugned judgment rejected the contention raised on behalf of the Respondent that the show cause notice was vague or unspecific stating:

...They do contain the general nature of the material allegations against the petitioner. Details of the cases in which he was involved are listed and a general allegation about his being a danger to person and property, has been leveled. The petitioner understood the drift of these allegations and replied to them suitably. In the light of these, I am of the opinion that the charges and grounds detailed in the show cause notices are not vague or vitiated.

12. However, having held so, the learned Judge proceeded to consider the matter as to whether there existed any evidence in support of the allegations made against the externnee or not. It relied upon a Division Bench decision of the High Court in *Bhim Singh v. Lt. Governor of Delhi and Anr.* 2002 (2) JCC 1132 and opined that in view of the fact that in the show cause notice in regard to the criminal cases the names of the witnesses who were said to be reluctant to or did not come forward to depose against the Respondent on account of fear, had not been disclosed, the principles of natural justice have been violated. It was further held that the authorities had not applied their mind stating:

...This minimal requirement of objective material, as well as application of mind to it is vitally necessary in opinion formation u/s 47 of the Act. As the decision in *Ishaque* suggests, the record should clearly suggest or support the satisfaction and should show in which cases the witnesses had declined to appear on account of apprehension to their safety. No doubt, a list of cases appears in both the show cause notices. However, no attempt has been made in the notices to connect as to in which of those cases witnesses were not forthcoming due to the petitioner's activities....

13. The law operating in the field is no longer *res integra* which may hereinafter be noticed:

(i) In a proceeding under the Act all statutory and constitutional requirements must be fulfilled.

(ii) An externment proceeding having regard to the purport and object thereof, cannot be equated with a preventive detention matter.

(iii) Before an order of externment is passed, the proceedee is entitled to an opportunity of hearing.

(iv) The test of procedural safeguards contained in the Act must be scrupulously complied with.

(v) The satisfaction of the authority must be based on objective criteria.

(vi) A proceeding u/s 47 of the Delhi Police Act stands on a different footing than the ordinary proceeding in the sense that whereas in the latter the details of the evidence are required to be disclosed and, thus, giving an opportunity to the proceeded to deal with them, in the former, general allegations would serve the purpose.

The High Court ordinarily should insist production of the entire records including the statement of the witnesses to express their intention to keep their identity in secret so as to arrive at a satisfaction that such statements are absolutely voluntary in nature and had not been procured by the police officers themselves.

14. We have noticed hereinbefore, that the High Court itself held that the allegations made in the notice satisfy the statutory requirement but, in our opinion, the High Court was not correct in coming to the finding that the third Appellant was bound to disclose the cases in which the witnesses had not deposed against the Respondent out of fear or because of threat, etc. If an attempt is made to communicate the cases in which witnesses were not forthcoming due to the activities of the proceedee, the same would violate the secrecy required to be maintained and would otherwise defeat the purpose for which Section 47 of the Act had been enacted.

15. An order of externment must always be restricted to the area of illegal activities of the externnee. The executive order must demonstrate due application of mind on the part of the statutory authority. When the validity of an order is questioned, what would be seen is the material on which the satisfaction of the authority is based. The satisfaction of the authority although primarily subjective, should be based on objectivity. But Sufficiency of material as such may not be gone into by the writ court unless it is found that in passing the impugned order the authority has failed to take into consideration the relevant facts or had based its decision on irrelevant factors not germane therefore. Mere possibility of another view may not be a ground for interference. It is not a case where malice was alleged against the third Appellant.

16. The High Court and this Court would undoubtedly jealously guard the fundamental rights of a citizen. While exercising the jurisdiction rested in them invariably, the courts would make all attempts to uphold the human right of the proceedee. The fundamental right under Article 21 of the Constitution of India undoubtedly must be safeguarded. But while interpreting the provisions of a statute like the present one and in view of the precedents operating in the field, the court may examine the records itself so as to satisfy its conscience not only for the purpose that the procedural safeguards available to the proceedee have been provided but also for the purpose that the witnesses have disclosed their apprehension about deposing in court truthfully and fearlessly because of the

activities of the proceedee. Once such a satisfaction is arrived at, the superior court will normally not interfere with an order of externment. The court, in any event, would not direct the authorities to either disclose the names of the witnesses or the number of cases where such witnesses were examined for the simple reason that they may lead to causing of further harm to them. In a given case, the number of prosecution witnesses may not be many and the proceedee as an accused in the said case is expected to know who were the witnesses who had been examined on behalf of the prosecution and, thus, the purpose of maintaining the secrecy as regards identity of such persons may be defeated. The court must remind itself that the law is not mere logic but is required to be applied on the basis of its experience.

17. The High Court in support of its findings has placed strong reliance upon a judgment of this Court in *Gazi Saduddin Vs. State of Maharashtra and Another*, wherein this Court stated:

In view of the findings recorded by the High Court there is no need for us to examine the case on facts but since the learned Counsel for the appellant persisted and took us through the entire evidence present on the record including the statement of three witnesses recorded by the police in-camera, we might record our findings on facts as well. A perusal of the statements of three witnesses spells out that he had threatened the witnesses with dire consequences for their failure to participate in the demonstration organised by him. It has been stated by the witnesses that the appellant used to give threats and beating to poor persons in the locality and had created a terror in the locality. The appellant was instigating the residents on communal lines and created disharmony amongst them. He was harassing the public in general and disturbed the public tranquillity and security of the locality. That the appellant had given beating to two of the witnesses and snatched Rs 700 and Rs 300 respectively from them at the point of a knife. The third witness has also stated that the appellant was in the habit of beating people and threatening them as a result of which a terror was created in the minds of the residents of Manjurpura, Harsh Nagar and Lota Karanja areas. That he was communal and spreading hatred amongst the communities. It was also stated by him that he had given beating to him and threatened him that if he did not help him in teaching a lesson to the Hindu community then he would not spare his life.

18. It was further held:

...Primarily, the satisfaction has to be of the authority passing the order. If the satisfaction recorded by the authority is objective and is based on the material on record then the courts would not interfere with the order passed by the authority only because another view possibly can be taken. Such satisfaction of the authority can be interfered with only if the satisfaction recorded is either demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person could not form or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act.

19. Even in *Sanjeev Alias Bittoo* (supra), it was observed:

Section 47 consists of two parts. First part relates to the satisfaction of the Commissioner of Police or any authorised officer reaching a conclusion that movements or acts of any person are causing alarm and danger to person or property or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in commission of enumerated offences or in the abetment of any such offence or is so desperate and dangerous as to render his being at large hazardous to the community. Opinion of the officer concerned has to be formed that witnesses are not willing to come forward in public to give evidence against such person by reason of apprehension on their part as regards safety of person or property. After these opinions are formed on the basis of materials forming foundation therefore the Commissioner can pass an order adopting any of the available options as provided in the provision itself. The three options are: (1) to direct such person to so conduct himself as deemed necessary in order to prevent violence and alarm or (2) to direct him to remove himself outside any part of Delhi or (3) to remove himself outside the whole of Delhi.

20. Although it is not possible for us to lay down the law in precise terms as the facts of each case are to be considered on their own merit, we have endeavoured to lay down the broad propositions of law. We would, therefore, record our disagreement with the view of the High Court.

21. The period of externment has since expired. In that view of the matter, we direct that the impugned order of the High Court need not be given effect to.

22. For the reasons aforementioned, this appeal is allowed and disposed of with the aforementioned observations. There shall be no order as to costs.