

(2017) 03 DEL CK 0079

In the Delhi High Court

Case No : W.P.(CRL) 2714 of 2016 and Crl.M.A. No. 14427 of 2016

Manoj Kumar @ Monu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

Delhi Police Act, 1978 — Section 47, Section 50, Section 51

Citation : (2017) 4 ADDelhi 50

Hon'ble Judges : Mr. Vipin Sanghi, J.

Bench : Single Bench

Advocate : Mr. R.P. Luthra, Advocate, for the Petitioner; Mr. R.S. Kundu, ASC with ASI Ajit Singh, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner has preferred the present writ petition to assail the order dated 02.06.2016 passed under Section 50 of Delhi Police Act, 1978, by the Additional Deputy Commissioner of Police, North East District, Delhi, as also the order dated 24.08.2016 under Section 51 of the Delhi Police Act, 1978, passed by Hon'ble Lieutenant Governor, Delhi. By the first order, the petitioner was externed from NCT of Delhi for a period of one year with effect from 09.06.2016. By the second order, his statutory appeal has been dismissed by the Hon'ble Lieutenant Governor.

2. The impugned order dated 02.06.2016 itself narrates the circumstances and background in which the petitioner was noticed under Section 47 of the Delhi Police Act. The relevant extract from the impugned order dated 02.06.2016 is reproduced as under:

" The proposal for the externment of Manoj Kumar @ Monu S/o. Kukku R/o. 11. No. C-11/11, Gali No. 08, Kabir Nagar, Delhi was received from the then SHO/Welcome, through the then ACP/Shahdara, Delhi. After going through the proposal and satisfying on the basis of material received from the then SHO/

Welcome, Delhi necessary proceedings for externment were initiated against the respondent on 30.07.2015. The independent witnesses of the area were also examined in camera since they were not willing to come forward to make a statement against him in public due to apprehension with regard to their safety and personal property but they have deposed so in the camera statement. Accordingly, a notice under section 50 of Delhi Police Act, 1978 containing following summary of allegations was issued to the respondent.

"That you are engaged in the commission of crime involving force of offence punishable under IPC and Excise Act cases as is apparent from the following cases in which you were involved :

Sl. No.

FIR No.

Dated

Section of Law

Police Station

1.

513

11.11.2001

61/1/14 Excise Act

Nand Nagri

2.

375

07.07.2003

61/1/14 Excise Act

Nand Nagri

3.

362

14.11.2003

61/1/14 Excise Act

M.S.Park

4.

656

13.10.2004

61/1/14 Excise Act

Nand Nagri

5.

38

17.01.2005

61/1/14 Excise Act

Nand Nagri

6.

671

14.09.2005

61/1/14 Excise Act

Nand Nagri

7.

812

02.11.2005

354/506/34 IPC

Nand Nagri

8.

260

08.07.2008

61/1/14 Excise Act

Welcome

9.

43

02.11.2009

61/1/14 Excise Act

Jyoti Nagar

10.

360

03.11.2012

33 Delhi Excise Act

Welcome

11.

335

13.06.2014

33 Delhi Excise Act

Welcome

12.

02

01.01.2015

33 Delhi Excise Act

Welcome

13.

107

26.02.2015

33 Delhi Excise Act

Welcome

That your activities and acts are causing and calculated to cause alarm and danger to persons or property. You are so desperate and dangerous as to render your being at large in Delhi or in any part thereof hazardous to the community as you are directly indulging in sale of illicit liquor in the area. Selling of illicit liquor to the members of the public is detrimental to their health and safety. Number of persons dies every year after consuming illicit liquor.

The witnesses are not willing to come forward to give evidence in public against you by reason of apprehension on their part as regards the safety of their person and property. These are reasonable grounds that you are likely to engage yourself in commission of offence like these mentioned in Para above."

3. The petitioner filed his reply to the said show cause notice under Section 47 of the Delhi Police Act, on his own. The same is available on the record produced by the respondent/State. In this reply, in relation to the first nine cases tabulated herein above, the petitioner stated, to the effect, that he had been acquitted/discharged therein. Here itself, I may observe that the petitioner's claim of acquittal/discharge-at least in respect of three cases, was not correct inasmuch,

as, he stands convicted in cases at serial Nos. 2, 4, and 6 as is evident from the record. In relation to case at serial Nos. 9 to 13, the petitioner stated that he was on bail. He denied that he is a danger to the society. He stated that he is a peaceful and law abiding citizen and that he is married having three children. He denied the other allegations levelled in the notice. The impugned order shows that the petitioner appeared on his own and did not engage a counsel despite repeated opportunities. The Additional Deputy Commissioner of Police gave the following reasons for passing of the said order:

" I have carefully gone through the record and other relevant material available during the course of proceedings. The record suggests that the respondent is a criminal of such a desperate nature and habitual bootlegger, who was involved in 13 criminal cases under IPC and Excise Act, which shows that he has no respect for Law and is not likely to improve his conduct till stringent measures are taken against him. Hence, option of "Bound Down" for good behaviour cannot be exercised. Unless and until he is removed from the present environment and separated from his associates, he will not desist from his activities.

A close scrutiny of the record clearly indicates that the respondent is a habitual bootlegger and has adopted it as a means of his livelihood and these are sufficient grounds to conclude that he is actively involved in selling illicit liquor. Selling of illicit liquor to the members of the public is detrimental to their health and safety. It may also lead to the commission of crimes. Several times, crimes are committed under the influence of liquor. Number of persons dies every year after consuming illicit liquor. I have also been examined SHO/Welcome, Delhi who has deposed about the criminal activities of the respondent. I am of the view that he is not likely to improve his conduct in future and his presence in the community creates harm and danger to the general well being of the local residents, hence disturbing the public order. The witnesses are unwilling to depose in public against him because of the apprehension on their part as regards to the safety of their person at the hands of the respondent and his conduct definitely requires stringent view. His successive involvement goes to indicate that he is likely to involve herself in crime in future also.

Keeping in view the evidence brought on file i.e. notice, prosecution witness and other evidence adduced during the course of proceedings against him. I have no hesitation in concluding that he is not likely to improve till stringent measures are taken as his acts in the area of NCT of Delhi are calculated to cause harm, danger and alarm to the respectable citizens. He has no means of livelihood in NCT of Delhi. His activities are adversely affecting the general well being and health of the law-abiding citizens in the area of NCT of Delhi and they feel insecure. Moreover, unless he is weaned of his present company, he is not likely to reform himself and start a normal life. His continuous presence in the area leads to alarm and apprehension in the minds of law-abiding citizens of the area who have a right to live a peaceful life. I am of the view that his case is wells within the scope of section 47 of Delhi Police Act and he is fit person to be

externed from the limits of NCT of Delhi.

Now, therefore, in exercise of the powers vested on me under section 47/50 D.P. Act, 1978 and conferred on me by the order of Commissioner of Police, Delhi under section 8 (ii) of the said Act, I, Rajendra Singh Sagar, Addl. Deputy Commissioner of Police, North East District, Delhi hereby direct Manoj Kumar @ Monu S/o Kukku R/o H. No. C-11/11, Gali No.08, Kabir Nagar, Delhi to remove himself beyond the limits of NCT of Delhi for a period of one year with effect from 09.06.2016. The respondent is further directed not to enter or return to area of NCT of Delhi within the said period without a written permission of the competent authority."

(emphasis supplied).

4. As noticed herein above, his statutory appeal was dismissed by Hon''ble Lieutenant Governor on 24.08.2016.

5. The submission of Mr. Luthra, learned counsel for the petitioner, firstly, is that the cases which have been enlisted, and on the basis of which the impugned order has been passed, are extremely old. Notice was issued to the petitioner on 30.07.2015, whereas the cases are of the year 2001, 2003, 2004, 2005, 2008 etc. He submits that such old and stale cases could not have formed the basis of externment proceedings against the petitioner. Mr. Luthra further submits that it is not alleged that the alleged supply of illicit liquor by him has resulted in any death of any person, or any person has been harmed by the same-even if it were to be assumed for the sake of argument that the petitioner was involved in bootlegging, as alleged. Mr. Luthra further submits that the statements of the witnesses have been recorded in camera. He submits that since the petitioner was not allowed to participate in the said proceedings, it also needs examination whether the competent authority satisfied himself with regard to the credibility of the witnesses and relevance of their statements. Mr. Luthra submits that the alleged involvements of the petitioner are not in respect of any heinous crimes.

6. Mr. Luthra has also submitted that it could not be said that the petitioner is so desperate a criminal, that he should be externed. He submits that the requirements of Section 47(a) are clearly not satisfied in the facts of this case. He submits that clause (a) of Section 47 concerns a specific person/individual or property. It does not relate to a generalized body of people or properties in general. Mr. Luthra submits that before passing the impugned order, the competent authority has proceeded in a highly casual manner and the relevant documents were not even on record when the impugned orders were passed.

7. Upon issuance of notice in this petition, the State was called upon to file a status report and produce the original record. The record was produced before the Court and inspected by Mr. Luthra. The counter affidavit was also filed by the State. It was pointed out by Mr. Luthra on 03.02.2017 that he could not find in the case file the orders pertaining to the conviction of the petitioner in cases at serial Nos. 2, 4 and 6 of the aforesaid list arising out of case FIR Nos. 375/2003,

656/2004 and 671/2005. Consequently, the State was required to file a better counter affidavit disclosing as to on what basis it was claimed that the petitioner was convicted in these cases.

8. The State has filed the further affidavit dated 22.02.2017 in this regard.

9. Mr. Kundu submits that in the present case, the petitioner, in his reply has admitted his involvement in all the thirteen cases. His claim that he had been acquitted/discharged in the first 13 cases is contrary to the record, inasmuch, as, he has been convicted in cases FIR Nos. 671/2005, 375/2003 and 656/2004 under Section 61(1)(14) of the Excise Act. He has referred to the additional affidavit filed by the Deputy Commissioner of Police, North East District, which shows that the original case records in these cases were consigned to the record room and destroyed. However, the record revealed that the petitioner was convicted and sentenced to fine in each of these cases. The certified copies obtained from the court have been placed on record along with the additional affidavit.

10. Mr. Kundu further submits that to invoke the power under Section 47 of the Delhi Police Act, conviction is not the yardstick and the involvement in criminal cases is sufficient. He further submits that the petitioner has continued to involve himself in cases of bootlegging from 2001 onwards, and there were two cases of 2015 and one case of 2014 - all of which were pending, when the proposal to extern the petitioner was mooted. The notice issued to the petitioner was proximate in point of time to the later involvements of the petitioner.

11. The original record produced by the State has been perused. The sealed envelope containing the statements of the witnesses recorded in camera has also been perused. A perusal of the said statements shows that they are identical, and all that they stated is that on account of the fear spread by the petitioner, and on account of threats issued by him, their identities may not be disclosed. However, these statements do not relate to the activities attributed to the petitioner which are primarily of bootlegging in the area. Keeping in view of the aforesaid, the said statements could not be the basis of the impugned order.

12. However, a perusal of the record and the impugned order shows that the same is not premised on the said statements alone. The relevant extract from the impugned order-which has been reproduced herein above, shows that the same has been passed primarily on the basis of the record itself. The record shows that the petitioner is indeed involved in 13 cases ranging from 2001 to 2015. The FIRs in these cases are a part of the record, and they are the foundation of the notice issued to the petitioner under Section 47 of the Act. The record also shows that the petitioner has continued to involve himself in cases of bootlegging and, despite registration of earlier cases, his activities have gone on unabated. In fact, prior to issuance of notice dated 30.07.2015, in the year 2015 itself, the petitioner was alleged to be involved in two cases; in 2014 in one case, and in 2012 in one case of bootlegging. The continuous involvement of the

petitioner over the years is reflective of his desperation, stubbornness and hardening since his earlier involvements do not appear to have deterred him from getting involved in subsequent similar criminal cases. The submission of Mr. Luthra that the activity of bootlegging is not covered by clause (a) of Section 47 also has no merit. Section 47(a) reads as follows:

"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)

(c)

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."

13. Section 47 to 54 of the Delhi Police Act fall in Chapter V of the said Act provides for, "Special Measures for Maintenance of Public Order and Security of State". The purpose and object of the aforesaid provisions clearly is to dislocate the entrenched offenders who have a history of involvement in criminal cases, so that their activities which are causing, or are calculated to cause alarm, danger or harm to, "person or property", get disrupted. The kind of criminal offences covered by Section 47 of the Delhi Police Act, inter alia, include those which could be committed as a part of network. It is not uncommon for offenders to create their own safe havens and develop contacts and infrastructure with a view to carry on their offending activities. An activity like bootlegging can be carried out by establishing other contacts who are a part of a network. In *Kaushalya v. State* 33(1987) DLT 119, the Division Bench was dealing with an order of externment passed under the Delhi Police Act. In that case as well, the petitioner was involved in 13 cases of bootlegging registered at PS Delhi Cantt. The petitioner had been acquitted in 10 of those cases; convicted in one while two were pending. In paragraphs 10 and 12, the Court observed as follows:

"10. Bawa Gurcharan Singh next contended that to order an externment on the ground that tile movements or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property it must be shown that the alleged alarm, danger or harm is to the public generally and not to one or two

individuals in the public. The contention of Bawa Gurcharan Singh is that there is no evidence or finding that the acts of the petitioner were causing or are calculated to cause alarm, danger or harm to the person or property of the public generally and, therefore, the order of externment is not legal and valid. We are unable to agree with this contention of the learned counsel. The allegations against the petitioner are that since 1976 she had been indulging repeatedly in the commission of offences punishable under the Excise Act. There could be no doubt that if a person indulges in the commission of offences under the Excise Act this would be dangerous and harmful to person and property of the public generally. The court can take judicial notice of the fact that from time to time there have been number of deaths because of the sale of illicit liquor. The kind of activities in which the petitioner is alleged to be indulging from their very nature could never be confined to a few individuals and such activities always affect a very large section of the public. The second contention of Bawa Gurcharan Singh has no force.

(emphasis supplied).

"12. We have carefully read the authorities cited above, but we are of the view that they are distinguishable on facts. It was for the authority to decide on the material placed before it whether the alleged objectionable activities are confined to a particular area and the purpose and object of externment would be achieved by ordering externment from that particular area or that the circumstances required an externment from the whole of the Territory of Delhi. The illegal activities attributed to the petitioner are of such a nature that normally they are not confined to any particular area or zone and these activities are spread out and their victims can be from anywhere in Delhi. The bootleggers work in groups and they maintain great secrecy and it is very difficult to detect their areas of operation. We are of the view that the impugned order cannot be said to be violative of the fundamental rights of a citizen guaranteed in Article 19 of the Constitution of India."

(emphasis supplied).

14. Mr. Luthra has submitted that under clause (a) of Section 47, the act of the noticee has to relate to a single person or individual and the movements or acts do not pertain to the society at large. For this purpose, he emphasises the use of the expression, "person or property". His submission is that the expression, "person" is not used in the plural. I do not find merit in the submission for the reason that the words, "person or property" are not preceded by the article, "a" or, "one". Looking to the purpose and object of Section 47, it does not stand to reason that the expression, "person or property" should be interpreted to mean a singular person or singular property. If action can be initiated for externment in respect of movements or acts of a person, "causing or are calculated to cause alarm, danger or harm" to a single person or property, certainly externment would be justified if the movements or acts of the noticee affect more than one person or property.

15. The submission of Mr. Luthra that there is no material on record to justify the passing of the externment order by the competent authority also has no merit. The Supreme Court in the State of NCT of Delhi and another v. Sanjeev Alias Bittoo 2005 SCC (Cri) 1025 has held that;

".....some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with the question mere repletion of the provision would not be sufficient. Reference is to be made to some material on record and if that is done, the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non."

16. Having perused the file, it certainly cannot be said that there is no material available with the competent authority at the time of issuance of the notice or passing of the impugned order. On the case file, the copies of the FIRs are available. These FIRs have been mentioned in the show cause notices itself and even in his reply, the petitioner has not disputed the factum of his being involved in 13 cases. It was on account of the stand taken by the petitioner that he had been acquitted in the cases at serial nos. 2, 4 and 6 that the State was required to file a further response and it has transpired that the petitioner has, in fact, been convicted in the said cases.

17. I do not find merit in the submission of Mr. Luthra that stale cases have been cited so as to justify the externment of the petitioner. The citation of all the cases in which the petitioner is involved shows that the competent authority had sufficient material for it to appear to him that the petitioner is an old and habituated offender; he is incorrigible, and; stubborn. In fact, the said material is sufficient for the competent authority to reasonably believe (i.e. for it to appear to him) that the petitioner is desperate, since he does not appear to have discontinued his offending activities despite being involved in so many cases, year after year. It is not that only the old cases have been taken note of in the show cause notice and the impugned order. As noticed herein above, there were proximate cases of 2012, 2014 and two cases of 2015 when the show cause notice was issued to the petitioner.

18. Merely because there may be no allegation of any death or serious injury being suffered by any person on account of the bootlegging activity of the petitioner is no ground to say that the order of externment is not justified. The activity of bootlegging involves procurement and supply of alcohol illegally. There is no check on the source from where the alcohol is procured and, thus, there is no check on the quantity and safety of the alcohol. There is no check on the quantum of alcohol received and traded and the persons to whom the same may be sold. There is no control over the quantities of alcohol being sold. It is quite possible that such illegal alcohol may fall into the hands of even minors. It is also well known that consumption of liquor in unregulated manner leads to commission of crime. It is well known that trade in alcohol is considered as a

pernicious trade. It is for this reason that the said trade is very strictly controlled and monitored by the State. There is no fundamental right to carry out trade in alcohol on account of the ill-effects that it causes in the society. Thus, to say that trade in alcohol is not a ground to invoke the power of externment cannot be accepted, and is rejected. As noticed herein above, a Division Bench of this Court has also taken the same view in Kaushalya (supra).

19. A perusal of the impugned order dated 02.06.2016 also shows that competent authority did not claim in the show cause notice, or in the order, that the petitioner had been convicted in any of the said 13 cases. Only his involvements were taken into consideration, and that was sufficient. In fact, it has come out from the status report that the petitioner had been convicted in three of the aforesaid cases, as taken note of herein above. Therefore, the absence of judgments of conviction on the record when the show cause notice was issued and the impugned orders were passed, is neither here nor there.

20. For all the aforesaid reasons, I find absolutely no merit in the present petition and the same is, accordingly, dismissed.