

(1984) 09 GUJ CK 0001
In the Gujarat High Court

Mohammedumar Mohammedhusen

APPELLANT

Vs

Dy. Police Commissioner and Others

RESPONDENT

Date of Decision : 11-09-1984

Acts Referred:

Bombay Police Act, 1951 — Section 57, 57(c)
Bombay Prevention of Gambling Act, 1887 — Section 12A, 12A
Constitution of India, 1950 — Article 21

Citation : (1985) 1 GLR 199

Hon'ble Judges : P.S. Poti, C.J; R.C. Mankad, J

Bench : Division Bench

Judgement

P.S. Poti, C.J.—The one and only justification for invoking Section 57(c) of the Bombay Police Act against the petitioner is that he has been during the past convicted u/s 12A of the Bombay Prevention of Gambling Act, 1887 and is likely therefore to indulge in committing the same crime over again. Assuming without deciding that the petitioner having been convicted earlier u/s 12A is likely to commit the same offence over again, the question is whether this by itself would justify invoking Section 57(c) of the Bombay Police Act. Section 12A of the Bombay Prevention of Gambling Act, 1887 enables a Police Officer to apprehend, without warrant, any person who prints, publishes, sells, distributes or in any manner circulates any newspaper, news-sheet or other document or any news or information with the intention of aiding or facilitating gaming. Any such person shall, on conviction, be punishable in the manner and to the extent referred to in Section 4. The petitioner had been charged under this section and had been subjected to small fines besides imprisonment till raising of the Court. As we said before, we will assume that he will commit the same offence again, but that would not in any way justify invoking Section 57(c). Though literally any conviction u/s 4 or Section 12A of the Bombay Prevention of Gambling Act, 1887 may invite Section 57 of the Bombay Police Act it would certainly be wrong to read it in that manner, as indicated in our decision in Special Criminal Application No. 74 of 1984 Vaghari Dhanabhai v. State XXVI GLR. In that case the previous

conviction was under the Bombay Prohibition Act, 1949. The position would be identical here too. The purpose of passing an externment order is to keep away a person who is a menace to society, but that does not mean that every criminal, however petty his criminality is, is to be externed merely for that reason. The crimes that he commits must be of such a nature that it should justify the extreme step of keeping him away from his home district. The consequence of his act to social order, the ineffectiveness of any other proceedings against him excepting the externment order and the grave consequence that may follow if he is not externed would alone justify the extreme step of infringing, and very seriously, the freedom of a citizen. If not read in that manner the provision itself will become unconstitutional as violating the fundamental freedom under Article 21 of the Constitution of India. To give a legal content and meaning to Section 57, to bring it within constitutional limits, and to view it as a provision absolutely necessary in the public interest despite its serious inroad into individual rights of a citizen it must be read as limited to cases where the exercise of the power of externment is absolutely called for. But we notice that the police have been quite often using this provision in a casual or cavalier fashion without regard being had to the consequence of an order under that provision on the person against whom it is passed. To extern a person from his residence and keep him out of the district for a long period of two or three years, making his own home inaccessible to him, would affect him more than it would affect him had he been held under preventive detention or had he been convicted for an offence and sent to jail, for in the latter case he would not have to seek a living for himself, he would be looked after by the State in the event of illness, and he would be fed and given work. Moreover he would then be entitled to parole and furlough and consequently he would be entitled to be with the members of his family during the periods when he is released on such parole or furlough. There is no such provision in regard to an externee who for all practical purposes becomes estranged from his hearth and home, from his kith and kin and will have to live at a place which he may not be used to and may not take kindly to him. This would be a serious restriction on his liberty or freedom. Whether it would be justifiable restraint would necessarily depend upon the extreme need for such a step against him. Bearing this in mind it will be difficult, to say that merely because a person has been convicted previously for an offence of distributing news-sheet, newspaper or any other document with the intention of aiding or facilitating gaming he would be a social menace of such an order as to justify externment. That and that alone is averred in the notice issued to the petitioner. No doubt he has been convicted as required by Section 57(c) and the ritualistic mention of such conviction alone is round in the notice. The order attempts to improve on this by stating a fact which is not mentioned in the notice, viz. that:

...and this has created amongst peaceloving citizens terrorism and atmosphere of danger and terror; and therefore, you are a menace to the said society.

2. Of course apart from this statement, there is no indication from any material that there is any question of practice of terrorism on the part of the petitioner.

Distribution of a pamphlet relating to gaming is not a terrorist activity much less will it create an atmosphere of danger and terror though it may be part of an activity which is anti-social. Whatever that be, it goes without saying that the abovesaid statement in the order is without any foundation on the materials in the case. In these circumstances invoking Section 57(c) is not warranted. The petitioner is entitled to challenge Annexure "B" as confirmed by the appellate order Annexure "C" successfully and hence they are quashed. The rule is made absolute. No costs.