

(2001) 11 DEL CK 0101
In the Delhi High Court
Case No : Criminal W. No. 1200 of 2000

Mohd. Afzal

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 29-11-2001

Acts Referred:

Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 14, 19, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 107, 151
Delhi Police Act, 1978 — Section 47, 50, 51, 8
Penal Code, 1860 (IPC) — Section 120, 34

Citation : (2002) CriLJ 1426 : (2002) 95 DLT 684 : (2002) 61 DRJ 422 : (2002) 2 RCR(Criminal) 666

Hon'ble Judges : Ramesh Chand Jain, J;A.D. Singh, J

Bench : Division Bench

Advocate : B.K. Sharma, for the Appellant; Mukta Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Jain, J.—By means of this petition under Article 226 of the Constitution of India the petitioner prays for quashing of externment order dated 28th July, 2000 passed by the Additional Deputy Commissioner of Police, North East District under Sections 47/50 of the Delhi Police Act, 1978 (hereinafter referred to as "the Act") thereby directing the petitioner to remove himself beyond the limits of National Capital Territory of Delhi for a period of two years with effect from 5th August, 2000.

2. Externment proceedings u/s 47 the Act were initially commenced against the petitioner with a notice dated 15-2-1994 issued u/s 50 of the Act. However, before the notice could be acted upon and the proceedings could be taken to logical conclusion the petitioner was arrested and remanded to judicial custody in several cases and remained confined in jail. Consequently upon his acquittal in the criminal cases and on his release the proceedings were revived and three supplementary notices dated 26-10-1999, 2-6-2000 and 24-6-2000 in

continuation of the previous notice were issued to the petitioner stating therein that beside the five cases mentioned in the notice dated 15-2-1994, he involved himself in the following cases:-

Section	of	Law	Police	Sr. No. FIR No. & Station Year
1. 139/94	324/34	IPC	Seelampur	2. 456/94 307 IPC -DO- 3. 831/97
302/307/452/34	IPC	-DO-	& 27 Arms Act.	4. DD No. 4-A 107/151 Cr.P.C. -DO-
Dt.26.1.95	5. DD	No.45-B	-DO-	-DO- Dt.16.5.1997 6. 212/2000
452/506/323/365/	-DO-	34 IPC	7. 256/2000 452/342/365/506/	-DO- 34 IPC 8.
169/2000 302/216/225-B/	-DO-	9. 34 IPC	DD No.20-A Regarding Threat to	-
DO- Dt.4.6.2000	Public			

3. The petitioner was called upon to furnish his reply which he did and on a consideration of the same and after hearing the petitioner, the Competent Authority i.e. Additional Deputy Commissioner of Police passed the order dated 28-7-2000 which inter alias contained the following observations, findings and directions:-

"Today, the respondent is present without his defense counsel to argue his case. Prior to decide his case, I have carefully gone through the record and other relevant material available during the course of proceedings. The record suggests that the respondent is involved in 13 criminal cases IPC, Cr.P.C. & Arms Act like robbery, murder, attempt to murder, hurt, abduction, illegal possession of arms, etc. He is also notorious and active bad character of P.S. Seelampur. A close scrutiny of the record clearly indicates that there are sufficient grounds to conclude that he is actively involved in the criminal cases. 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 local residents. No witnesses are willing 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.

Keeping in view of the evidence brought on file i.e. notice, supplementary notice and unconvincing replies of the notices & supplementary notices and record of his criminal activities and other evidence adduced during the course of proceedings. I have no hesitation in concluding that he is incorrigible type of criminal who indulges himself in criminal activities and not likely to perform his way of life. His activities and acts in the area of N.C.T. of Delhi are causing and are calculated to cause harm danger and alarm to the respectable citizens. I am of the view that his case is well within the scope of section 47(a), (b), (c) (i) of Delhi Police Act and he is fit person to be externed from the limits of N.C.T. of Delhi.

Now, Therefore, in exercise of the powers vested on me under action 47/50 D.P. Act 1978 and conferred on me by the order of Commissioner of Police, Delhi u/s

8(ii) of the said act, I, Sunil Garg, Addl. Dy. Commissioner of Police, North East District, Delhi hereby direct Mohd. Aphajal S/o Mohd. Iqbal Gazi r/o H.No.K-221, New Seelampur, Delhi to remove himself beyond the limits of N.C.T. of Delhi for a period of two years with effect from 5/8/2000. He is however, permitted to attend the court at Delhi/New Delhi on all dates of hearing and shall immediately thereafter remove himself outside the limits of N.C.T. of Delhi and shall not visit any place except the court premises. This relaxation is only for the day of hearing for the court coming and going out of the limits of N.C.T. of Delhi. The surety taken for appearance during the proceedings is discharged. File is consigned to record. Announced in the open court in the presence of the respondent.

4. Aggrieved by the aforesaid order, the petitioner filed an appeal before the prescribed authority (in this case Administrator/Lt. Governor) u/s 51 of the Act. The appellate authority upheld the impugned order and dismissed the appeal vide order dated 22-9-2000.

5. The petitioner has challenged the impugned orders passed by the Competent Authority and the appellate Authority on a variety of grounds. Notice of the petition was issued to the respondent/State and a counter affidavit has been filed on behalf of the respondent State thereby justifying the impugned orders.

6. We have heard Shri B.K. Sharma, learned counsel for the petitioner and Ms. Mukta Gupta Standing Counsel (Criminal) representing the State and have given our thoughtful consideration to their respective submissions. The first and foremost submission of the learned counsel for the petitioner is that the action of respondent in initiating the externment proceedings is mala fide inasmuch as his father Shri Mohd. Iqbal Gazi had filed a case against the then SHO Virender Singh and the staff of the Municipal Corporation for burning his shop and the said SHO and Municipal Corporation staff were summoned by the court u/s 436 IPC. It is pointed out that the cases mentioned in the notice dated 15-2-1994 and most of the cases out of the nine cases mentioned in the supplementary notices have already ended upon in acquittal of the petitioner which would show that the police had falsely implicated him in a series of cases and had an axe to grind. As regards the three cases i.e. cases arising out of FIR No. 212/2000 u/s 452/506/323/365/34 IPC, FIR No. 256/2000 under Sections 452/324/365/506/34 IPC and FIR No. 169/2000 under Sections 302/216/225B/120B/34 IPC, the contention on behalf of the petitioner is that the petitioner has been falsely roped in these cases with a view to make up a case/grounds for his externment. In this connection learned counsel for the petitioner has taken us to the First Information Reports of the aforesaid cases as also the orders passed by the Sessions Courts on the bail applications of the petitioner. It is true that in one case i.e. FIR No. 169/2000 the petitioner was granted bail primarily on the ground that his involvement in the case was based on the disclosure made by the co-accused and there was no independent evidence against him to connect him with the crime relating to the murder of one Gulshan.

In the other case FIR No. 212/2000 the petitioner was granted anticipatory bail mainly on the ground that there was delay in lodging the FIR and there was enmity between the complainant and the petitioner. On the strength of these orders, the learned counsel for the petitioner has urged that the police has lodged false cases against him out of enmity. We, however, see no merit in this contention because at the time of consideration of the bail application the Court considers the facts of the case only on a prima facie view and the evidence collected by the investigation upto that stage. The investigation in those cases has since been completed and charge-sheets filed against the petitioner which would show that there was enough material justifying his prosecution for the serious offences like murder etc.

7. Learned counsel for the petitioner also submitted that a large number of residents of the locality in which the petitioner is ordinarily residing have filed their affidavits before the Competent Authority which would clearly show that the petitioner has been falsely involved in this case. We do not wish to comment on this part of the material because firstly it was for the Competent Authority to take a view on the probative value of such piece of evidence and in any case it is not difficult to obtain such affidavits and file them in such like proceedings.

8. It was next urged by the learned counsel for the petitioner that the revival of the externment proceedings which were initiated in February 1994 after a period of more than five years in the year 1999 was illegal and highly improper particularly when the petitioner had already been acquitted in all the five cases referred to in the first notice dated 15-2-1994. In support of his contention learned counsel for the petitioner has placed reliance upon a Division Bench judgment of this Court in Ravi Kumar Vs. Deputy Commissioner of Police, West District, Delhi, wherein on the facts and circumstances of that case this Court quashed the externment order mainly on the ground that the cases in which the petitioner was tried and acquitted could not form basis of an action for externment u/s 47 of the act. In the facts of the cases the Court also observed that the externment order was made on the basis of materials which was too remote in time. The Division Bench had relied upon the observations of the Supreme Court in (1981) XIX DLT 18 which reads as under :-

""Sections 47 and 50 have to be read strictly. Any police apprehension is not enough for passing order of externment. Some ground or other is not adequate. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fought with violence. Likewise, there must be sufficient reason to believe that the person proceed against is so desperate and dangerous that his mere presence in the locality or any part thereof is hazardous to the community and its safety. A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedoms. Natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Articles 14, 19 and 21 of the Constitution. The Act permits

externment, provided the action is bonafide. All power, including police power, must be informed by fairness if it is to survive judicial scrutiny".

Similarly reliance is also placed on the decision of a Single Bench decision of this Court in Mohd. Aslam v. Delhi Administration and Ors., 1986 (1) Crimes 342 wherein the Court examined the validity of the notice u/s 50 of the Act issued to the petitioner and quashed the same primarily on the ground that the notice stood vitiated on account of sheer vagueness and general nature of the allegations and involvement of the petitioner in criminal activities which were either non-germane to the grounds u/s 47 or too remote in point of time to have any bearing upon or nexus with the opinion formed by the Deputy Commissioner of Police for drawing up externment proceedings.

9. In our view, none of these authorities render any assistance to the petitioner at least on the facts of the present case which are quite distinguishable. It is not disputed that the five cases which formed the basis of the evidence for the first notice had resulted into acquittal of the petitioner but it is manifest that the petitioner did not stop his criminal activities even thereafter and continue to involve himself in a number of cases including very grave offences likely robbery, murder, attempt to murder, abduction and illegal possession of Arms et., which certainly gave a fresh cause to the Competent Authority to initiate the proceedings u/s 47 of the Act even if not to continue the earlier proceedings commenced in 1994. It appears to us that no prejudice whatsoever has been caused to the petitioner by pursuing the proceedings of 1994 particularly when the same were duly supplemented by issuing three supplementary notices dated 26-10-1999, 2-6-2000 and 24-6-2000 giving complete detail of the subsequent activities of the petitioner and the grounds on which it was proposed to pass an order for his externment u/s 47 of the Act. All the three notices were duly replied to by the petitioner and were considered by the Competent Authority. Thus the contention that the material relied upon by the Competent Authority was too remote and non-existent at the time of passing of the impugned order seems to be a far fetched one.

10. No other point was pressed before us. Having regard to the facts and circumstances of the present case, we are of the considered opinion that on the face of the material obtaining on record, it is not possible to hold that the impugned order is the result of any enmity or malice of the authorities or has been passed without sufficient material or ground. On the other hand we find that the impugned order is a well reasoned and fully justified on the face of the material obtaining on record and does not suffer from any illegality or other infirmity on the basis of which it is liable to be set aside or quashed.

11. The writ petition being devoid of any merit is hereby dismissed. No order as to costs.