

(1985) 10 DEL CK 0026

In the Delhi High Court

Case No : Criminal Writ Petition No. 59 of 1981

Mohd. Aslam

APPELLANT

Vs

Delhi Administration and others

RESPONDENT

Date of Decision : 03-10-1985

Acts Referred:

Citation : (1986) 3 Crimes 342 : (1986) 29 DLT 437 : (1986) 10 DRJ 11 :
(1986) 1 RCR(Criminal) 53 : (1985) RLR 592

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : K.K. Sud, Rajiv Chauhan and S.T. Singh, for the Appellant;

Judgement

1. This writ petition under Art. 226 of the Constitution has been filed by the petitioner for quashing the impugned notice dt. 8th May 1981 issued by Additional Deputy Commissioner of Police (Central), respondent 2 herein, to show-cause why the petitioner be not extended from the limits of the Union Territory of Delhi. The said notice purports to have been issued under S. 50 read with S. 47 of the Delhi Police Act (hereinafter referred to as "the Act").

2. The allegations leveled against the petitioner in the said notice are as under :

"That since 24-1-65 you are engaged in the commission of illegal acts and offences against body or property involving force or violence and that your activities or movements in the limits of the Union Territory of Delhi are causing alarm, danger or harm to the person or property.

That it has been made to appear to me that you have been continuing your criminal activities and have engaged yourself in the commission of offences against body or property involving force or violence falling under Chapters XVI, XVII or XXII of the IPC and the following cases were registered against you.

----- S. No. FIR Dated
u/s P.S. No. ----- 1.

28 24-1-65 12/9/55 G. Act J. Masjid 2. 468 8-11-65 506/34 IPC J. Masjid 3.
 298 3-8-66 12/9/55 G. Act J. Masjid 4. 321 11-8-66 12/9/55 G. Act J. Masjid
 5. 71 24-1-67 -do- -do- 6. 205 25-9-67 -do- -do- 7. 312 17-7-67 -do- -do-
 8. 511 18-11-67 -do- -do- 9. 40 4-2-68 506/34 IPC -do- 10. 46 29-1-69
 12/9/55 G. Act -do- 11. 539 28-12-71 12/9/55 G. Act J. Masjid 12. 314
 26-5-76 -do- -do- 13. 744 11-12-75 -do- -do- 14. 361 17-6-78
 147/148/149/323/332/353/ -do- 186/188/307/506/427/436 IPC

----- That the perusal of the above cases and material on record reveal that your activities/movements are great menace and that you are so desperate and dangerous as to render your being at large in the Union Territory of Delhi or any part thereof hazardous to the community.

From the material on record, further it reveals that the witnesses are not willing to come forward to give evidence in public against you by reason of apprehension on their part as regards to the safety of their persons or property."

3. The contention of the petitioner is that he is engaged in the lawful business of old clothes in wholesale at Jama Masjid and he is a permanent resident of that locality. However, he incurred the wrath of local police due to which he was constrained to make a complaint against Shri H. L. Kapoor, at one time Station House Officer and now Assistant Commissioner of Police, in the court of the Illaqa Magistrate. He had also made allegations in the said complaint against several other subordinate police officials of the police station but he could not pursue the complaint due to certain limitations. Thus, according to him, the proceeding for his externment from the Union Territory of Delhi has been initiated by respondent 2 mala fide and is motivated. On merits, he has contended that he has never been convicted of any offence whatsoever and whatever criminal cases were falsely instituted against him culminated either in his discharge or acquittal. Further, according to him, the allegations made against him in the impugned notice are either stale or totally irrelevant and are not based on any substantive evidence/material.

4. A perusal of the allegations reproduced above would show that the grounds available to the police under clauses (a), (b) and (c)(i) of S. 47 of the Act which is designed to remove persons who are about to commit offences, are sought to be pressed into service. The said Section reads as under :

"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, 1860 (45 of 1860) or u/s 290 or

Sections 489A to 489E (both inclusive) of that Code or in the abatement 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) to (iv)

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,

Explanation -"

5. It is, Therefore, to be seen whether the material embodied in the allegations leveled against the petitioner in the impugned notice can be called relevant or sufficient on which the subjective satisfaction of the Commissioner of Police to initiate proceeding under S. 47 could be based. On a bare reading of the allegations it is manifest that the petitioner apparently started life of crime as far back as 1965. He was involved in as many as 11 cases under S. 12 of the Public Gambling Act, 1867, during the period January 1965 to December 1975. Admittedly, he was acquitted in all those cases. Moreover, the last gambling case in which he was involved was of the year 1975 i.e. about six years prior to the impugned notice. Thus, the instances furnished by these cases are too remote in point of time.

6. In Prem Chand (Paniwala) Vs. Union of India (UOI) and Others, the Supreme Court observed that :

"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 fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded 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."

7. Adverting to these observations a Division Bench of this Court has recently held in Ravi Kumar Vs. Deputy Commissioner of Police, West District, Delhi, , that the cases in which the petitioner was tried and acquitted cannot form the basis for an action for externment u/s 47. The Bench also noticed that most of the cases taken into consideration by the Deputy Commissioner of Police in the said case pertained to the period prior to 1975 while the notice under S. 50 read with S. 47 of the Act was given in 1982. So, it was observed that the order was

largely based on material too remote in time to the making of the impugned order. These observations, to my mind, are quite apposite to the facts of the case in hand. I may, however, further add that the involvement of the petitioner in several cases of Gambling Act spread over a long period of about ten years can hardly have any nexus with the grounds falling under Clauses (a), (b) and (c)(i) of S. 47 because the mere indulgence in gambling cannot warrant an inference that the movements or acts of the person concerned are causing or are calculated to cause alarm, danger or harm to person or property. Likewise this circumstance has no bearing on the question whether such a person is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community. Obviously they do not fall in any of the offences described in Clauses (b) of Section 47. Even in the counter-affidavit filed by the respondent it is not shown how the involvement of the petitioner in cases under Gambling Act can have any nexus with the grounds of his externment mentioned above. All that has been stated in the counter-affidavit in this behalf is that all types of notorious and bad characters are supposed to visit the place where Satta gambling is conducted in order to participate therein or to make preparation for committing other organized crime. This is too far-fetched an idea which may be simply termed as preposterous in the context of the legal requirements of Section 47.

8. Out of the remaining three cases, two viz. FIR No. 468 dt. 8th November 1965 and FIR No. 40 dt. 4th February 1968 were u/s 506/34, Indian Penal Code. The contention of the petitioner is that he was acquitted in both the said cases. This is not disputed by the respondent. Hence, both these cases too cannot be taken into account in view of the judgment in Ravi Kumar v. Deputy Commr. of Police (supra). Moreover, they are too remote in point of time. Thus, the only case in which the petitioner is presently involved is FIR No. 361 dt. 17th June 1978 under sections 147, 148, 149, 323, 332, 353, 186, 188, 307, 506, 427 & 436, Indian Penal Code. The submission of counsel for the petitioner is that this case arose out of communal riots which took place in Jama Masjid area in June 1978 and several hundred Muslims were involved in the same. He asserts that no overt act has been attributed to the petitioner even in this case. The case has since been committed to the Court of Session but it is not making any headway because of the large number of accused, all of whom are seldom present in the Court. Thus, according to counsel for the petitioner. there is no rational basis or tangible material on which the subjective satisfaction of the Deputy Commissioner of Police could be based with regard to the conclusions arrived at by him in the impugned notice. The answer of the respondent to the submission is that the petitioner is still indulging in criminal activities through his agents and he is giving protection to them and, Therefore, proceedings for externment have been considered necessary. However, this is not the allegation made against the petitioner in the impugned notice and such a consideration is even otherwise extraneous to the objects of Section 47. Surely pendency of only one criminal case of the nature falling under Clause (b) of S. 47 could not constitute a valid

ground for the Deputy Commissioner of Police to arrive at the opinion that the petitioner is a desperado and his being at large would be hazardous to the community.

9. That apart, the respondent has not furnished any material on the basis of which the Deputy Commissioner of Police could have formed the opinion that the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property. He has not even alleged that the previous acquittals of the petitioner in so many cases could be ascribed to fear on the part of the witnesses in coming forward and deposing against the petitioner. The petitioner is not expected to meet a case upon a mere reproduction of the words of the section or upon enumerating the cases registered against him. See *Chander Bhan Soni Vs. The Administration of Delhi*, . It is, Therefore, not at all comprehensible how the Deputy Commissioner of Police felt satisfied about this ground. As observed by another Division Bench of this Court in *Hari Ram v. Commr. of Delhi Police, Delhi*, 1979 Cha Cri. C 38 (Delhi) :

"This situation would only arise when a person becomes a danger to the society at large and has terrorized the society to such an extent that witnesses being afraid of their safety refuse to depose against him in public."

10. The instant unfortunately is a case of total want of material which would justify formation of such an opinion.

11. To sum up, Therefore, there is no escape from the conclusion that the impugned notice stands vitiated on account of sheer vagueness ss and general nature of the allegations and involvement of the petitioner in criminal activities which are either non-germane to the grounds under 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. Hence, this petition is allowed and the impugned notice is quashed.

12. Petition allowed.