

(2017) 11 DEL CK 0208

In the Delhi High Court

Case No : Criminal Writ Petition No. 941 Of 2017, Criminal Miscellaneous
Application No. 5235 Of 2017

Mohd. Shariqui Khaan

APPELLANT

Vs

State And Anr

RESPONDENT

Date of Decision : 24-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 21

Delhi Police Act, 1978 — Section 47, 47(c)(i) , 47(c)(ii) , 47(c)(iii), 47(c)(iv), 50, 51,
55, 56, 56(a), 56(b), 56(1), 56(1)(bb), 57, 59

Code of Criminal Procedure, 1973 — Section 107, 110

Citation : (2017) 11 DEL CK 0208

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Ramesh Gupta, Rajeev Saxena, Rachit Shaney, Sanjay Lao

Final Decision : Dismissed

Judgement

S.No.,FIR NO.,Under Section,Police Station,P. Position

1.,670/06,452/342/365/323/34 IPC,Jamia Nagar,Quashed

2.,72/12,392/394/34 IPC,Jamia Nagar,PT

3.,169/13,451/323/34/ IPC,NFC,PT

4.,599/14,341/323/506/427/34 IPC,Jamia Nagar,PT

5.,634/15,186/353/34 IPC,NFC,PI

6.,877/16,341/143/145/147/431 IPC,Jamia Nagar,PI

7.,878/16,323/341/307/506/34 IPC,Jamia Nagar,PI

7. As noted above and from perusal of the documents on the file it is revealed that in FIR No. 670/2006 the complainant alleged that the petitioner,,,,,

along with other people forcibly entered his room at 11:45 PM, abducted him and beat up the complainant with rod, sticks, punches and kicks.",,,,

8. In FIR No. 72/2012 the complainant alleged that the petitioner with four other people stopped him and robbed his Rs. 50,000/- on gun point.",,,,

9. In FIR No.169/2013 was lodged on the complaint of Director of Holy Family Hospital who alleged that the petitioner along with associate beaten,,,,

the security guard and forcefully entered into the ICU where the petitioner's mother was admitted. After entering the ICU petitioner beat the ICU,,,,

staff and Dr. Deepak Pathania besides damaging the hospital property.,,,,

10. In FIR No. 599/2014 the complainant alleged that on 30th July, 2014 petitioner along with co-accused restrained him and beat him with kicks,",,,,

punch and sharp weapon.,,,,

11. In FIR No. 634/2015 was registered on the complaint of Ct. Kapil who was attached with traffic duty in Sukhdev Vihar Traffic Circle and alleged,,,,

that on 31st December, 2015 two persons jumped the Red Light. When he caught them the petitioner refused to show any documents of motorcycle",,,,

and Driving License and called his other friends who slapped the constable and tore his uniform and ran away from that place.,,,,

12. In FIR No. 878/2016 the allegation of the complainant is that the petitioner along with associate restrained him and opened fired at him with pistol,,,,

with the intention to kill him however, the complainant succeeded in saving himself. In the process petitioner fired 4-5 rounds in the air.",,,,

13. FIR No. 877/2016 was registered on the complainant SI Pankaj Gulliya after the petitioner was found indulging blocking the road, damaging public",,,,

property and committing riot.,,,,

14. The allegations as noted above clearly show that the movements and acts of the petitioner are causing danger, harm to the persons and the",,,,

number of cases shows propensity of the petitioner to commit the offences.,,,,

15. The petitioner has been externed in terms of Section 47 (c) (i) and not under Section 47(c) (ii) to (iv) which would require three involvements in,,,,

the preceding year before the externment.,,,,

16. The second requirement for passing an order of externment under Section 47 of the Delhi Police Act is that the witnesses are not willing and,,,,

coming forward to give evidence against the petitioner. Finding of the Additional DCP on this count is based on the statement of witnesses recorded in,,,,

camera wherein the witnesses have stated about their fear to depose against the petitioner. The said statements which are in sealed cover have been,,,,

perused by this Court and resealed with the seal of the Court.,,,,

17. Dealing with the provision of externment Supreme Court in the decision reported as (1973) 1 SCC 372 Pandharinath Shridhar Rangnekar v.,,,,

Commr. of Police observed:,,,,

â??9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary,,,,

circumstances. 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 externee,,,,

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 externee â??of the,,,,

general nature of the material allegations against himâ??. That obligation fixes the limits of the co-relative right of the proposed externee. He,,,,

is entitled, before an order of externment is passed under Section 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.,,,,

*** ,,,,

11. In Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay [1956 SCR 506 : AIR 1956 SC 559 : 1956 SCJ 59 9in] which an" ,,,,

order of externment was passed under Section 57 of the Act, it was held by this court on an examination of the general scheme of the Act" ,,,,

that the provisions of Sections 55, 56, 57 and 59 cannot be held to be invalid on the grounds that only the general nature of the material" ,,,,

allegations is required to be disclosed to the externnee, and that it would be difficult for him to get the matter judicially examined. Sinha J.,",,,,,

speaking for the majority, observed:" ,,,,,

â??The grounds available to an externnee had necessarily to be very limited in their scope because if evidence were available which could,,,,

be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example," ,,,,,

under Section 107 or Section 110. But the special provisions now under examination proceed on the basis that the person dealt with under,,,,

any of the Section 55, 56 or 57 is of such a character as not to permit the ordinary laws of the land being put in motion in the ordinary way," ,,,,,

namely, of examining witnesses in open court who should be cross-examined by the party against whom they were deposing. The provisions" ,,,,,

we are now examining are plainly intended to be used in special cases requiring special treatment, that is, cases which cannot be dealt with" ,,,,,

under the preventive sections of the Code of Criminal Procedure.â?? ,,,,,

12. In State of Gujarat v. Mehboob Khan Usman Khan, this court, reversing the judgment of the High Court of Gujarat, rejected the" ,,,,,

argument that a notice substantially similar to the one in the instant case was bad for vagueness. It was held that the person proposed to be,,,,

externed was entitled to be informed of the general nature of the material allegations and not to the particulars of those allegations. As to,,,,

the meaning of the phrase â??general nature of the material allegationsâ?, it was observed: â??Without attempting to be exhaustive we" ,,,,,

may state that when a person is stated to be a â??thiefâ?? that allegation is vague. Again, when it is said that â??Aâ?? stole a watch from" ,,,,,

X on a particular day and at a particular place', the allegation can be said to be particular. Again, when it is stated that X is seen at" ,,,,,

crowded bus stands and he picks pockets' it is of a general nature of a material allegation. Under the last illustration, given above, will" ,,,,,

come the allegations, which, according to the Gujarat High Court, suffer from

being too general, or vague. Considering it from the point of",,,,,
view of the party against whom an order of externment is proposed to be
passed, it must be emphasised that when he has to tender an",,,,,
explanation to a notice, under Section 59, he can only give an explanation, which
can be of a general nature. It may be open to him to take",,,,,
a defence, of the action being taken, due to mala fides, malice or mistaken
identity, or he may be able to tender proof of his general good",,,,,
conduct, or alibi, during the period covered by the notice and the like.â??",,,,,

18. Supreme Court, while summarizing the law on externment, in the decision
reported as (2006) 5 SCC 228 Lt. Governor, NCT v. Ved Prakash noted",,,,,
as under:",,,,,

â??18. 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 under Section 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 proceedee to deal with",,,,,

them, in the former, general allegations would serve the purpose.",,,,,

,,,,,

21. An order of externment must always be restricted to the area of illegal
activities of the externee. 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,,,,

therefor. 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.,,,,

22*. 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 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.â??,,,,

19. Supreme Court in the decision reported as (2003) 7 SCC 330 Gazi Saduddin v. State of Maharashtra further held:,,,,

â??13. It has not been pointed out that there was any lapse in following the procedure laid down under the Act and the Rules in passing the,,,,

order of externment. The procedure laid down under the Act culminating in passing of the order of externment was duly followed. 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.

14. 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.

15. A perusal of the aforesaid statements made by the three witnesses spells out that the appellant had threatened the witnesses with dire,,,,

consequences for not participating in the demonstration organised by him. He threatened them with dire consequences if they did not,,,,

support him and attend every programme organised by him. He was spreading communal feelings amongst the residents of the locality. He,,,,

was harassing the public in general and causing disturbance to the public tranquillity and security of the locality. We are satisfied that a,,,,

case was made out for the externment of the appellant under sub-clause (1) of Section 56(1)(bb) of the Act.â?,,,

20. Considering the material on record it cannot be said that the order of externment dated 7th March, 2017 or the appellate order dated 15th March,",,,,

2017 suffers from non-application of mind or is based on no material, wherein the statement of witness in camera have been recorded who have",,,,

sought protection and non-revealing of their identity.,,,,

21. Petition and application are dismissed.,,,,