
(1995) 07 DEL CK 0009

In the Delhi High Court

Case No : Criminal Writ Appeal No. 89 of 1992

Mohd. Usman @ Haji

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 21-07-1995

Acts Referred:

Delhi Police Act, 1978 — Section 50

Citation : (1996) CriLJ 2647 : (1995) 59 DLT 306 : (1996) 36 DRJ 131 : (1995) 3 RCR(Criminal) 786

Hon'ble Judges : A.K. Srivastava, J

Bench : Single Bench

Advocate : M.S. Siddique and P.S. Sharma, for the Appellant;

Judgement

A.K. Srivastava, J.

(1) By this Criminal Writ Petition under Article 226 of the Constitution of India the petitioner has sought the relief of issuing a writ, order or direction in the nature of certiorari quashing notice bearing No.584/R- Court DCP/C dated 18.2.92 issued by the respondent No.3, Additional Deputy Commissioner of Police, Central Distt., Darya Ganj, New Delhi. The impugned notice, Annexure P-3, is u/s 50 of the Delhi Police Act, 1978 (for short the "Act") requiring the petitioner to show cause as to why he should not be extended from the limits of the Union Territory of Delhi for a period of two years. The date of receiving Explanation against the notice was fixed as 20.2.1992. The petitioner was in judicial custody when the notice was served on him and on the date fixed i.e. 20.2.1992 he was produced before the Additional Deputy Commissioner of Police, Central District in jail custody. This writ petition was filed on 21.2.1992, rule was issued on 8.5.92 and an interim order was passed on 27.5.92 to the effect that till the decision of this writ petition final order may not be passed by the respondents. The petition was finally heard on 12.7.95. It is not the case of the petitioner that he is still in judicial custody.

(2) The petitioner has challenged the impugned notice on several grounds hut

the learned counsel for the petitioner during the course of arguments challenged the impugned notice only on the following three grounds:

- 1.The notice is invalid as it was served on the petitioner while the petitioner was in judicial custody;
- 2.The Additional Deputy Commissioner of Police, Central District Jail, was not empowered to issue notice u/s 50 of the Delhi Police Act, 1978 and, Therefore, the notice is without jurisdiction;
- 3.In the impugned notice no reliance could be placed on cases in which the petitioner had already been acquitted.

(3) The learned Standing Counsel for the State has controverted the arguments of the learned counsel for the petitioner on the grounds that soon after service of notice the petitioner was released from judicial custody and no prejudice could have been caused to him in furnishing his reply/explanation to the show cause notice; that the Additional Deputy Commissioner who issued the impugned notice was duly empowered to issue the notice under delegation orders dated 6.10.1978 and 28.2.1979 passed by Shri J.N. Chaturvedi, Commissioner of Police, Delhi and that it is still the stage of notice and whatever factual pleas the petitioner seeks to take in respect of the contents of the impugned notice he still has the opportunity to say so before the competent authority under the Act. He further argued that due to stay operating in the matter in view of this court's order dated 27.5.1992 no final orders have yet been passed and the petitioner is at liberty to make all the submissions he may like to make before the competent authority. Further, he made a preliminary objection that this writ is not available because it is still at the stage of notice and no final orders have been passed and that even after passing of the final orders the statute provides for appeal under its section 51 and, Therefore, unless the petitioner exhausts all his remedies under the Statute his writ petition challenging the notice u/s 50 of the Act should not be entertained.

(4) Before dealing with the matter it would be appropriate to reproduce sections 47 and 50 of the Act and delegation orders dated 6.10.78 and 28.2.79 issued by Shri J.N. Chaturvedi, Commissioner of Police, Delhi u/s 8 (2) of the said Act. Sections 47 and 50 of the Act 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) 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 abetment 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)has been found habitually intimidating other persons by acts of violence or by show of force; or

(III)habitually commits affray or breach of peace or riot. or habitually makes forcible collection of subscription or threatens people for illegal pecuniary gain for himself or for others; or

(IV)has been habitually passing indecent remarks on women and girls, or leasing them by overrules;

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 lime 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.

Explanation- A person who during a period within one year immediately preceding the commencement of an action under this "section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this section shall he deemed to have habitually committed that act.

50.Hearing to be given before order under Sections 46, 47 or 48 is passed

(1)Before an order u/s 46, Section 47 or Section 48 is made against any person, the Commissioner of Police shall by notice in writing inform him of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an Explanation regarding them.

(2)If such person makes an application for the examination of any witness to be produced by him, the Commissioner of Police shall grant such application and examine such witness, unless for reasons to be recorded in writing, the Commissioner of Police is of opinion that such application is made for the purpose of causing vexation or delay.

(3)Any written Explanation put in by such person shall be filed with the record of

the case.

(4) Such person shall be entitled to be represented in the proceeding before the Commissioner of Police by a counsel.

(5)(a) The Commissioner of Police may for the purpose of securing the attendance of any person against whom any order is proposed to be made u/s 46, Section 47 or Section 48 require such person, by order in writing, to appear before him and to furnish a security bond with or without sureties for attendance during the inquiry.

(B) The provisions of Sections 119 to 124 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to the order under clause (a) to furnish security bond.

(6) Without prejudice to the foregoing "provisions, the Commissioner" of Police, while issuing notice to any person under sub-section (1) may issue a warrant for his arrest and the provisions of Sections 70 to 89 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to such warrant.

(7) The provisions of Section 445, Section 446, Section 447 or Section 448 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to all bonds executed under this section."

(5) Delegation orders dated 6.10.78 and 28.2.79 respectively issued by Shri J.N. Chaturvedi, Commissioner of Police, Delhi are as follows:

"In partial modification of the orders noted in the margin and in exercise of the powers conferred by section 8(2) of the Delhi Police Act, 1978, I, Commissioner of Police, Delhi, hereby direct that the Deputy Commissioners of Police and Additional Deputy Commrs. of Police posted in the Districts, mentioned therein, shall exercise the powers (except the power to make regulations) and perform the duties of the Commissioner of Police in the whole of Union Territory of Delhi and the Assistant Commissioner of Police posted to Sub-Division in their respective Districts, Provided that the exercise of the powers and the performance of the duties by these officers by virtue of this order shall be subject to any further order or directions which may hereafter from time to time, be issued orally or in writing by the undersigned.

1.No. 1433-1560/Spl. Cell dt. 7.7.78

2.No. 2786-2816/Spl. Cell dt. 7.8.78.

3.No. 4476-4525/Spl. Cell dt. 29.9.78)

SD/-

(J.N. CHATURVEDI)"

6.10.78.

"In continuation of my order No.4643- 4708/Spl. Cell dated 6.10.1978 and in exercise of the powers conferred by Section 8(2) of the Delhi, Police Act, 1978, I, J.N. Chaturvedi, Commissioner of Police, Delhi hereby direct that the Deputy Commissioners of Police, and Additional Deputy Commissioners of Police posted in the Districts, Deputy Commissioner of Police, Crime Prevention and Deputy Commissioner of Police, Crime and Railways, shall exercise the powers and perform the duties of the Commissioner of Police, to be exercised or performed by him, in the Union Territory of Delhi, u/s.50 of the Delhi Police, Act, 1978, provided that the exercise of the powers and the performance of the duties by those officers, by virtue of this order, shall be subject to any further order or directions which may hereafter, from time to time, be issued orally or in writing by the undersigned.

SD/-

(J.N. CHATURVEDI)

Commissioner of Police : Delhi

28:2.79"

(6) Copies of the aforesaid delegation orders had not been filed by the respondents in this writ petition. When the learned State counsel was asked to file-copies thereof he brought a photostate copy to the Court and also gave copy thereof to" the learned counsel for the petitioner. No affidavit was filed and the learned counsel for the State invited the attention of this Court to a reported judgment of this Court in Kaushalya Vs. State, wherein the aforesaid two orders have been reproduced.

(7) Now the three contentions of the learned counsel for the petitioner are taken up one by one.

(8) Relating to the first contention the admitted factual position is that on the date of the receipt of the notice the petitioner was in judicial custody but thereafter he was released. It is not the case of the petitioner that the competent authority proceeded against the petitioner ex parte while the petitioner was in judicial custody. The records of the case show that the petitioner was brought before the competent authority on 20.2.1992 in judicial custody and the hearing was adjourned to 2.3.1992. There is nothing on record to show that the petitioner remained in judicial custody on 2.3.1992 or thereafter. The learned counsel for the petitioner has relied on Chander Bhan Soni Vs. The Administration of Delhi, , in which an order of externment passed u/s 47 of the Police Act on 14.10.1982 against Chander Bhan while in custody was found to be mindless and thus quashed. I fear this decision does not help the petitioner because in his case no order of externment u/s 47 of the said Act has yet been passed. The matter is still at the notice stage and the petitioner is not in judicial custody. The ratio of the aforesaid cited judgment appears to be that when petitioner of that case was in judicial custody how could he frighten witnesses or

could have complied with the order of externment. In view of above discussion the first contention of the learned counsel for the petitioner does not appear to have any force.

(9) Coming to the second contention of the petitioner the learned State counsel urged before me that the impugned notice was issued by the Additional Deputy Commissioner, Delhi Police with duly empowered delegated powers under sub-section (2) of Section 8 of the Act. On perusal of the Act it is found that its sub-section (2) of Section 8 gives power to the Commissioner of Police to authorise the Deputy Commissioners of Police or the Additional Deputy Commissioner of Police or Assistant Commissioners of Police to exercise such all the powers (except the power to make regulations) and perform such all the duties of the Commissioner of Police and within such local limits as may be specified in such orders. Shri J.N. Chaturvedi, Commissioner of Police, Delhi in exercise of the powers under sub-section (2) of Section 8 of the Act issued two orders of delegation on 6th October 1978 and 28th February 1979 (which have been reproduced above). The Commissioner of Police was competent to delegate to the police officers mentioned in the said sub-section the powers or duties which the Commissioner of Police has to perform under the Act and it is for the Commissioner of Police to specify in the order the local limits within which the said police officer shall exercise the powers delegated to him. Under the aforesaid orders it is to be found that the Additional Deputy Commissioner of Police posted in the districts was empowered by the Commissioner of Police to exercise the powers and perform the duties of Commissioner of Police in the Union Territory of Delhi u/s 50 of the Delhi Police Act, 1978. This delegation was, however, subject to a rider that the exercise of the powers and performance of the duties of the delegated authority by virtue of the aforesaid orders shall be subject to any further order or directions which may thereafter, from time to time, be issued orally or in writing by the undersigned. There is no challenge to the delegation of powers on the basis of the aforesaid rider. The challenge is basic that the Additional Deputy Commissioner was not empowered to issue the impugned notice. In view of the delegation orders, as reproduced above, I see no force in the arguments of the learned counsel for the petitioner and I am of the view that the Additional Deputy Commissioner who issued the impugned notice was duly empowered to issue that notice and there is no possibility of any challenge to the same on that ground.

(10) Coming to the third contention of the learned counsel for the petitioner I find that this contention also has no force in the circumstances of the case. Only a notice u/s 50 has been issued to him and whatever factual picas he has he may lake before the competent authority under the Act before an order u/s 47 may be passed against him. There is no denying from the side of the State that the petitioner will have ample opportunity to advance these pleas before the competent authority.

(11) Of course, I am conscious that a notice issued u/s 50 of the said Act may be

quashed by this Court and the petitioner may not be asked to go through the entire process laid down in the Act and make a challenge in the writ jurisdiction only after exhausting his statutory remedies under the Act. But such challenge may only be on fundamental grounds such as mala fides or want of statutory authority to issue the notice. Learned counsel for the petitioner has no doubt relied on Jamil Ahmad Vs. A.K. Kanth, but that case related to mala fides. In the present case, the petitioner has not made an allegation of mala fides and the assertion of want of jurisdiction to issue the impugned notice has already not been accepted by me as per discussion made above.

(12) The petition, Therefore, fails and is dismissed.

(13) Stay granted in this petition on 27.5.1992 is vacated.