

(1987) 04 DEL CK 0009

In the Delhi High Court

Case No : Criminal Writ Appeal No. 116 of 1983

Mukhtiaruddin

APPELLANT

Vs

Lt. Governor of Delhi and Another

RESPONDENT

Date of Decision : 30-04-1987

Acts Referred:

Citation : (1987) 32 DLT 238

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : K.L. Budhiraja, Asha Takkar and S.T. Singh, for the Appellant;

Judgement

M.K. Chawla, J.

(1) The Deputy Commissioner of Police, Central District served a notice u/s 50 of the Delhi Police Act, 1978, on the petitioner to show cause why he be not externed from the limits of the Union Territory of Delhi for a period of 2 years, on the allegations that since 1975, he is engaged in the commission of illegal acts and offences against body, riot and breach of peace which are causing or calculating to cause alarm, danger or harm to the persons or their property ; that he is involved in 5 cases under the various provisions of the Indian Penal Code; that his activities are great menace to the society at large ; and that he is so desperate and dangerous which renders his being at large in the Union Territory of Delhi or any part there of hazardous to the community.

(2) The petitioner sent the reply to the show cause notice denying the allegations .He also led evidence in support of his innocence and false implication in the cases mentioned in the said notice. Shri. A.K. Kanth, the then Deputy Commissioner of Police, vide order dated 3.8.83, directed the petitioner to remove himself beyond the limits of the Union Territory of Delhi for a period of three months via Shahdara border. He was, however, permitted to attend courts at New Delhi/Delhi on all days of hearing of the cases pending against him in the courts on the condition that on all days on conclusion of hearing ,he shall

immediately remove himself outside the limits of Union Territory of Delhi and shall not visit any other place in Delhi except the court premises. The petitioner filed an appeal u/s 51 of the Delhi Police Act which was heard and rejected by the Lt. Governor of Delhi on 17.9.1983. These very two orders are under challenge in the present writ petition seeking an appropriate direction or order for the quashing of the notice, the order of the Deputy Commissioner of Police and confirmed by the Lt Governor of Delhi.

(3) The contention of the learned counsel for the petitioner in brief is that the authorities below went wrong in forming an opinion about the desperate and dangerous character of the petitioner, without there being any evidence in support of the same inasmuch as he was cases cited in the show cause notice. The last one is still subjudice. The submission of the learned counsel for the State is that the Deputy Commissioner of Police took into consideration the over all activities of the petitioner and rightly came to the conclusion that his continued presence in the Union Territory of Delhi would prove hazardous to the community. The impugned order which has become ineffective does not call for any interference.

(4) After giving my carefully consideration to the facts and circumstances placed and proved on the record, I am of the opinion that the impugned order of the Deputy Commissioner of Police and that of the Lt. Governor of Delhi confirming the same, are liable to be quashed. In the show cause notice, the petitioner is shown involved in the following cases :

1.FIR No. 439 dt. 16.5.75 u/s 147/148/149/IPC, Police Station Pahar Ganj.2. F.I.R. No. 250 dt. 12.5.78 u/s 363 Ipc, P.S. Sarai Rohilla.3. Dd No. 15 dt. 23.3.82 u/s 107/150 Cr. P.O., P.S. P. Ganj.4. Dd No. 22-A dt. 5.12.82 u/s 107/150 Cr. P.C, P.S. P. Ganj.5. Fir No. 1270 dt. 8.12.82 u/s 324/34/307/34 Ipc, P.S. P. Ganj.

It is not denied that in the first four cases, the petitioner has been discharged. The last case is pending trial. In this case, the petitioner was released on anticipatory bail. Even though his stand is that he was falsely implicated at the instance of one Dr. Rayees Khan, but till the outcome of the trial, no opinion can be expressed. The fact, however, remains that till today the petitioner has never been convicted of any offence under the Indian Penal Code or any other Act.

(5) During the show cause proceedings, the petitioner also produced many respectable of the area who deposed about his good conduct and certified him to be a peace-loving citizen of the area. Beyond that, the respondents have not led any material on record to suggest that the witnesses are not willing to come forward to give evidence in the public against the petitioner by reason of apprehension of danger to their person and property. In fact, there could not be such an evidence as he was not being tried for the commission of any offence. At the time of the passing of impugned order, the last case was at the investigation stage. Prima facie, the essential ingredients to bring the case within the purview of Section 47 of the Delhi Police Act have not been proved or complied with.

(6) No other point has been urged nor requires going into. In The result, the petition is accepted and the impugned orders of the Deputy Commissioner of Police dated 3.8.83 and that of the Lt. Governor of Delhi dated 17.9.83 confirming the same, are hereby quashed.