
(1987) 03 DEL CK 0026

In the Delhi High Court

Case No : Criminal Writ Appeal No. 93 of 1982

Narendra Singh alias Neeru

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 20-03-1987

Acts Referred:

Citation : (1987) 2 Crimes 78 : (1987) 32 DLT 11 : (1987) 2 RCR(Criminal) 306

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : S.P. Mahajan and S.T. Singh, for the Appellant;

Judgement

Malik Sharief-ud-din, J.

(1) The petitioner has challenged his externment in pursuance of an order passed by D.C.P. on 6th July 1982 directing the externment of the petitioner for a period of" six months beyond the Union Territory of Delhi. He has also challenged the order of the Lt. Governor dated 6th August, 1982 by which his appeal was dismissed and the order for externment was confirmed.

(2) Admittedly, a notice u/s 50 of the Delhi Police Act was served, upon the petitioner and admittedly the order of externment was passed u/s 47 of the Delhi Police Act after affording him an opportunity to defend himself. It will be seen that D.C.P. as well as the appellate authority have based their conclusions on the statement of S.H.O. Delhi Cantt. and on the inferences available from the fact that the petitioner was involved in four criminal cases. It was on this basis that both D.C.P. and the appellate authority arrived at a conclusion that the petitioner I ;a desperate dangerous person and it must be assumed that the witnesses under these circumstances are not forthcoming to depose against him in public for fear of their own safety. After going through the record and after taking into consideration the contentions and counter contentions advanced I am of a definite opinion that the impugned orders are unsustainable and say so for the following reasons : u/s 47 of the Delhi Police Act, the condition precedent for

arriving at a satisfaction is firstly that the Commissioner of Police must be satisfied that the Tt, of" a person are causing or are calculated to cause alarm, danger of harm to a person or property; 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; that the person is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to community or has been habitually intimidating the persons by acts of violence; after being satisfied that a person is of the above stated character the Commissioner has to further satisfy himself that it is because of the dangerous and desperate disposition of the person that the witnesses are not prepared to come forward to depose in public against him for fear of safety of their person and property.

(3) From a plain reading of the provision it will be seen that this is an extraordinary provision and has been enacted to meet an extraordinary situation. It does not exclude the normal proceedings under law. In my view the resort to this provision is only permissible if it is reasonably found that because of the desperate and dangerous nature of a person, it is not possible to deal with hKn under the normal procedure as the witnesses are afraid of coming forward to depose in public against him. If it is found that the witnesses are forthcoming to depose in public against him, then despite his desperate and dangerous nature resort to Section 47 of the Delhi Police. Act is unwarranted.

(4) Adverting to the facts of the present case it will be seen that a notice u/s 47 of Delhi Police Act was served upon the petitioner in respect of three cases. It was only during the course of proceedings before the D.C.P. that a mention about the fourth case was made and the appellant authority in his order observed that no prejudice has been caused to the petitioner as he was afforded an opportunity to defend himself. The fourth case was registered against the Petitioner during the tendency of proceedings u/s 47 of the Delhi Police Act.

(5) Admittedly the position is that in two of the cases the parties arrived at a compromise after the petitioner was charged of an offence which could be lawfully compounded. In one of the cases the petitioner was convicted and was given benefit of probation but in appeal he was acquitted in that case as well. About the fourth case it is said that it was pending.

(6) The satisfaction of the Commissioner of Police that the witnesses are not forthcoming must be always based on some cogent material. It must be the satisfaction of a reasonable prudent man. The satisfaction has to flow from certain facts and material. All administrative actions must also be informed with reasons particularly those effecting the liberty of a citizen. In one of the cases the petitioner has been convicted though acquitted in appeal. I wonder as to how he could be convicted if the witnesses had not come forward to depose against him in the court. Strangely this case is also made the basis for belief that the witnesses are not prepared to come forward to depose against the petitioner. On the face of it, it is absurd. In other two cases admittedly the parties have arrived

at a compromise and these were dismissed in pursuance of a compromise. In these two cases it appears that the police had put a label of non-compoundable offence but the court while charging the petitioner charged him of offences which were compoundable. The parties thereafter compounded the offences and both these cases were dismissed. If the law makes an offence compoundable and if the parties compound the criminal case of their file will it is not understandable, as to how it could be made the basis for proceedings u/s 47 of the Delhi Police Act. The least that can be said is that after those two cases came to be compounded the question of examining the witnesses did not arise at all, and if there was no attempt to examine the witnesses in the court of law, his conclusion that the witnesses are not forthcoming against the petitioner is far fetched. Nothing has been said about the fourth case, though Mr. Mahena. Counsel for the petitioner maintains that too had been dismissed after having been compromised. All the three cases have Therefore been compromised while in the fourth case the trial court convicted the petitioner though he was acquitted by the appellate court. Under these circumstances the satisfaction arrived at by the D.C.P. is without application of mind and is absolutely mechanical. The petitioner had also examined some witnesses in defense but neither D.C.P. nor the appellate authority has given any reasons for discarding their revision about the character of the petitioner, and the background in which the petitioner was involved in these four cases. In any case the most important condition for proceeding u/s 47 is that due to desperate disposition of the petitioner the witnesses for fear of their safety are not willing to come forward and depots against him in public and this most important condition is and was always lacking in the present case.

(7) The petition, Therefore, is allowed and the impugned orders dated 6-7-1982 and 6-8-1982 are quashed. The Exemption order is set aside.