
(2000) 03 DEL CK 0015
In the Delhi High Court
Case No : Criminal W. No. 420 of 1999

Pratap Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Citation : (2000) 3 AD 1029 : (2001) CriLJ 1849 : (2000) 86 DLT 15 : (2000) 54 DRJ 30 : (2000) 2 JCC 568 : (2000) 3 RCR(Criminal) 501

Hon'ble Judges : Usha Mehra, J;S.N. Kapoor, J

Bench : Division Bench

Advocate : Mr. Harjinder Singh Adv, for the Appellant; Mr. K.C. Mittal, for the Respondent

Judgement

Usha Mehra, J.—Delhi Police Act,1978 (hereinafter called the Act) was enacted with the purpose to bridge the conflicting relationship between the police and the Magistracy. It was difficult for the police to handle certain law and order problems. To overcome these problems it was felt expedient to provide Police Commissioner system in Delhi. Therefore, the Act was enacted which came in force on 1st day of July,1978. The Bombay Police Act,1951 was the tested testament for the Police Commissioner system. Therefore, number of provisions of the Bombay Police Act,1951 have been incorporated in the Act, thus most of the provisions of the Act and in particular Section 50 and 47 of the Act are analogous to the provisions of the Bombay Police Act,1951. One of the time tested measure to prevent commission of crime is to snap criminal links of certain class of persons with other persons having criminal bent of mind. Section 47 of the Act deals with the removal of persons about to commit offences. Under this Section Commissioner of Police has been empowered with vide powers but before doing so the Commissioner of Police has to satisfy that the criteria laid down under the Act has been complied with. He has to ensure that notice in writing is issued to the person concerned informing him in general nature the material allegations leveled against him. He has also to be given him reasonable opportunity of tendering his Explanation in response to the notice. So the twin

criteria provided under the Act have to be complied with before the Commissioner of Police can justify his action u/s 47 of the Act.

2. Keeping the above principle in mind, we have to see whether in the facts of this case the twin criteria has been complied with. For that we may have quick glance to the facts of this case as well as relevant provisions of the Act.

3.1 Facts as alleged in notice are that the Additional. Deputy Commissioner of Police found that Pratap Singh, the petitioner herein was involved in as many as 16 cases under various provisions of the Indian Penal Code (in short IPC).

S. FIR Date Section of Law P. Station No. No. 1. 613 22.10.92 302 IPC SEELAMPUR 2. 344 23.09.87 462/506/323/34 IPC -DO- 3. 330 26.09.88 324/34 IPC -DO- 4. 39 14.02.89 452/308/34 IPC -DO- 5. 214 18.05.89 147/148/149/448/452 -DO 323/353/332 IPC 186,506 IPC. 6. 209 24.09.90 308/34 IPC -DO- 7. 373 06.08.90 309/324/34 IPC -DO- 8. 347 13.08.93 364 IPC GOGAL PURA 9. 428 31.07.93 302/307 IPC SEELAMPUR 10. 525 19.09.93 302 IPC & 27 -do- A. ACT & TADA ACT 11. 329/92 NO CASE 392 IPC NO CASE DADRI UP 12. 431/92 379 IPC VINAY NAGAR 13. 45/93 392 IPC SIKANDARABAD 14. 304/93 NO CASE 392 IPC -DO- 15. 391/92 302/34,120-BJIND HARYANA IPC 25 A.ACT & TADA 16. 786/97 356/379/384/34 SEELAMPUR IPC

3.2 On the basis of his involvement in those cases, the concerned Externing Authority formed tentative opinion that the movement and acts of the petitioner were causing alarm. His movements were dangerous and harmful to the person and property of the public at large. The concerned Externing Authority also formed tentative opinion that petitioner was desperate and dangerous as to render being at large in Delhi or in any part thereof hazardous to the community. Thus proceedings u/s 47 of the Act were initiated against him. Accordingly order was passed on 26th October,1998. Pursuant thereto, notice u/s 50 of the Act was issued directing the petitioner to put in appearance and file his reply to the said notice. Petitioner availed the opportunity. However, the Externing Authority on the basis of the material available on record passed order on 21st January,1999 u/s 47 of the Act, whereby the petitioner was ordered to be externed for a period of two years from the National Capital Territory of Delhi with immediate effect. Petitioner filed appeal against the said order to the Lt.Governor. By the impugned order dated 24th March,1999 Lt. Governor dismissed his appeal.

4. This petitioner has felt aggrieved against the impugned order and has assailed the same primarily on the following amongst other grounds; (i) there was no application of mind on the part of the concerned Externing Authority; (ii) Externing Authority took into consideration extraneous circumstances for externing Authority considered such of the cases which were not registered against the petitioner and/or had been registered outside Delhi within the jurisdiction of the State of U.P. and Haryana where Commissioner of Police, Delhi had no jurisdiction; (iii) that the provisions of Section 47 of the Act are vocative

of Articles, 14, 19 and 21 of the Constitution of India. There has been violation of the provisions of Article 22(3) and 5 of the Constitution. Even otherwise the provisions of Sections 47 and 50 of the Act are draconian in nature and curtail the personal liberty of an individual which is guaranteed under Article 19 of the Constitution. (iv) that material had not been supplied on the basis of which the Externing Authority came to the conclusion that the petitioner had been engaged or was about to be engaged in commission of any offence; (v) that the procedure followed was neither fair nor just nor reasonable; (vii) that the right of hearing as prescribed u/s 50 of the Act is farce. Moreover, such of the material against a person cannot be used if in those cases the person had already been acquitted by a Court of competent jurisdiction. This tantamounts to sitting over the judgment of a Court which is not permissible under law.

5. On the other hand Mr.K.C.Mittal, Standing Counsel for the State urged that there was sufficient material before the authority to pass the order of externment. It was not a case of no evidence. Externing Authority in fact relied on the activities of the petitioner which culminated into registration of cases against him not only in Delhi but also in the neighbouring States like UP and Haryana. While considering the question of public interest and public peace and safety, the concerned Externing Authority as of necessity has to consider the activities of the petitioner viz-a-viz neighbouring States as well. Therefore, while considering the activities of the petitioner if the Externing Authority took into consideration the cases pending against him in the States of UP and Haryana which States are bordering States of Delhi, it has not in any manner violated the provisions of the Act or the principle of natural justice. As per law general nature of the material allegations were communicated to the petitioner vide the said notice.

6. Undisputed facts are that the petitioner had been booked in number of cases registered at Delhi as well as in the neighbouring States. Because of those cases the Externing Authority felt that petitioner's movements were harmful. Accordingly gave him notice u/s 50 of the Act. He replied to the same and after considering his reply order u/s 47 of the Act was passed. His appeal has also been dismissed. Thus the challenge to the impugned order is based primarily on the ground of violation of the provisions of the Act.

7. In order to appreciate the challenge, we may as well have glance at Section 47 of the Act, which is reproduced as under :-

47. Removal of persons about to commit offences - Whenever it appears to the Commissioner of Police -

(a) that the movements of 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 engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, Chapter XIV, Chapter XVII or Chapter XXII of the Indian Penal Code or u/s 290 or Sections 498A 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 teasing them by overtures.

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 time 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.

8.1 Having taken note of the facts and relevant provisions of the Act, let us deal with the last argument first. The petitioner having been exonerated in most of the cases relied upon in the notice claims order of externment could not be passed on the basis of these cases. We find no substance in this argument for the obvious reasons that a person with dangerous and harmful activities may strike terror in the mind of the witnesses and/ or pressure them under threat not to depose against him with the result witnesses go hostile and such person go scot free. For arriving at this conclusion aid can be had to the observations of this Court in *Harcharan Singh Vs. The State*, CrI.W.No.884/99 decided on 3rd February, 2000 wherein a similar point arose and the Division Bench while negating such an argument and after relying the observation of Supreme Court in the case of *Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another*, has rejected his contention. The Supreme Court in the case of *Hari Khemu Gawali (Supra)* while dealing with a matter u/s 57 of the Bombay Police Act, which is *pari materia* in broader sense with Section 47 of the Delhi Police Act made following observations in para 11 of the Judgment:-

"(11)What has been urged against the legality of the order impugned is that

it was based on previous orders of discharge or acquittal. It is said that those orders were passed because there was not sufficient evidence to bring the charge home to the accused. The insufficiency of the evidence itself may have been due to witnesses not being available to depose in open court or they may have been overawed and their testimony tampered with.

"....It cannot be laid down as a general proposition of law that a previous order of discharge or acquittal cannot be taken into account by those authorities when dealing with persons under any one of the provisions we have been examining in this case."

8.2 The Division Bench of this Court on the basis of aforesaid observations in the case of Harcharan Singh Vs. State (Supra) made following observations:-

"We do not see as to how the petitioner can get over the decision of Supreme Court in the case of Hari Khemu Gawali (supra) according to which discharge or acquittal in a case can be taken into account for passing an order of externment. It is becoming a trend to strike terror in the minds of the prosecution witnesses or to exert pressure on them so that they do not depose at the trial or suppress the truth and turn hostile.....

Therefore, in order to curb the activities of criminals whose cases cannot be proved in a Court of law because of the terror created by them in the minds of the witnesses, the invocation of the provisions of Section 47 of the Act may be justified to safeguard the society from their excesses. In such cases no fault can be found with the anticipatory preventive action taken by the authority in consonance with Section 47 of the Act."

8.3 The decision of the Division Bench of this Court in Harcharan Singh (Supra) based on the observations of Supreme Court in the case of Hari Khemu Gawali (Supra) on all fours apply to the facts of this case. Therefore, to our mind, petitioner cannot take any help or assistance on account of this argument.

9. Mr.Harjinder Singh then urged that complete disclosure of particulars were not made available to the petitioner. In Hari Khemu Gawali (Supra) while dealing with Section 59 of the Bombay Police Act, the Supreme Court rejected similar contention by observing that though Section 59 only required the general nature of the material allegations against the person externed to be disclosed and it did not further provide for particulars to be supplied to such a person. Though the Supreme Court noticed that it would be difficult for him to avail of atleast the second ground on which the matter judicially examined, yet it observed that in the very nature of things it could not have been otherwise. The grounds available to an externee had necessarily to be very limited in their scope. In Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, this very view was followed. Since the language of Section 50 is similar, to our mind, the particulars which have been provided are sufficient for the purpose of compliance of Section 50 read with Section 47 of the Act. It may be mentioned that giving further details by disclosing the name of particular witness who was

not willing to come forward to state truthfully against the petitioner by exposing such witnesses to the dangers involved. It would frustrate the very purpose of these proceedings. Accordingly we feel that petitioner was only entitled to the material allegations and not details thereof. Therefore, there was sufficient compliance of the provisions of the Act.

10. Turning to the main ground of non-application of mind, Mr.Harjinder Singh urged that the concerned externalizing Authority by placing reliance on extraneous consideration, namely, on the cases mentioned at Serial Nos.2, 11, 13, 14, 15 and 16 of notice violated the provisions of the Act. This according to Mr.Harjinder Singh amounted to non-application of mind. Cases at Serial No.2 and 11 bearing FIR No.344/87 of Police Station Seelampur registered u/s 452/506/323/34 IPC and FIR No.329/92 of Police Station Dadri (U.P.) registered u/s 392 IPC, according to petitioner no such case had ever been tried against him. Likewise the case shown at Serial No.14 bearing FIR No.304/93 Police Station Sikandrabad (U.P.) has not been tried against him. Petitioner is not aware whether any case as mentioned at Serial No.16 bearing FIR No.786/97 of Police Station Seelampur u/s 356/379/384/34 IPC has been registered against him. He has not received any summons. Therefore, while issuing the notice reliance on the non-existing cases by the Externalizing Authority amounted to non- application of mind. By relying on these cases, Externalizing Authority violated the provisions of the Act because it took into consideration extraneous circumstances. Once the Externalizing Authority took into consideration extraneous circumstances in that eventuality the notice as a whole stood vitiated. To support his arguments, Mr.Harjinder Singh placed reliance on the decision of Supreme Court in the case of Mehboob Khan Nawab Khan Pathan Vs. Police Commissioner, Ahmedabad and Another, . Supreme Court in that case was dealing with the subjective satisfaction of the Externalizing Authority. There the detaining authority had taken into consideration extraneous matter, namely; the incidents other than those shown in the ground of detention with which the detenu had no direct or indirect connection or participation. It was in that background the Apex Court observed that such a notice suffer from vice of non-application of mind. He also placed reliance on the decision of Supreme Court in the case of Prem Chand (Paniwala) Vs. Union of India (UOI) and Others, wherein it has been observed that

"A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedom. Natural justice must be fairly complied with and vague allegations and secret hearing are gross violation of Articles 14, 19 and 21 of the Constitution of India. The Act permits externment provided the action is bonafide. All powers including police power must be informed by fairness if it is to survive judicial scrutiny."

11. Relying on the above observations Mr.Harjinder Singh contended that by non-application of mind and relying on extraneous matter, the Externalizing Authority not only violated the provisions of the Act but deprived him reasonable opportunity of being heard. The action of the Externalizing Authority was thus not bonafide.

Even otherwise it could not have taken into consideration the cases registered outside Delhi in the States like UP and Haryana nor the Externing Authority could place reliance on cases which were not registered against him. Provisions of Sections 50 and 47 of the Act being stringent, there is flagrant disregard of these provisions by the Externing Authority in this case and, Therefore, the action of the respondent authority needs rejection.

12. We will consider these submissions in two parts: one relating to cases filed in neighbouring States and the other relating to three cases at Item No.11, 13 and 14.

13. While considering the cases admittedly the externing Authority took note of the cases pending in the State of UP and Haryana. But that by itself, to our mind, is no ground to assume non-application of mind. A similar plea was raised before this Court in the case of Kaushalya Vs. State, . This Court while negating the plea observed that judicial notice of the fact that from time to time there have been number of deaths because of activities of the person can be taken. Similarly in the case in hand petitioner has been involved in cases of dacoity, murder, Arms Act as well as of TADA. In this backdrop if the Authority took note of those cases even though registered and pending against the petitioner in the neighbouring States of Delhi; it cannot be said that the Authority acted illegally or on extraneous matters. Rather this factor helped the Authority to arrive at the decision that his presence would be harmful to the person and property of the public generally. To our mind, it did not violate any provisions of Section 50 or Section 47 of the Act or any right of the petitioner nor the Authority committed breach of the principle of natural justice.

14. In the first blush the argument based on cases at item No.11, 13 and 14 advanced by the learned counsel for the petitioner appears to be attractive. It was admitted by respondent in paras 3,4 and 5 of the counter as under:-

"3. That now the petitioner has alleged that he was not involved in three cases i.e. FIR No.344/87, FIR No.329/92 and FIR No.304/93. It is submitted that the name of the petitioner figures in case FIR No.344/87 u/s 452/506/386/323/34 IPC Police Station Seelampur.

4. That the case FIR No.329/92 was registered at Police Station Dadri U.P. and the final report in this case has been filed, which has been accepted by the concerned court.

5. That in regard to case FIR No.304/93, it is submitted that this case was registered at Police Station Sahibabad, not at Police Station Sikanderabad U.P. The case is pending trial against the petitioner.

15. In view of this admission we cannot take into consideration the three cases mentioned in the counter. But could we ignore 13 other cases in which involvement as per the case of the State have not been challenged, to say that the order is bad in law? If we just have a glance at the particulars given of the

rest of the cases there cannot be any doubt that movements and acts of a person who has allegedly committed four murders u/s 302 in addition to three cases for offence u/s 307 apart from offences u/s 308/392/384/379 in as many as 12 other cases Along with cases under Sections 25 & 27 of the Arms Act as well as TADA are likely to cause alarm and his simple staring at any person knowing his background may cause alarm, danger or harm to his person or property let apart his threats after having armed himself. He could very safely be said to be desperate and dangerous. In such a circumstance his activities fall in the category of disturbing public order. In the case of Ashok Kumar Vs. Delhi Administration and Others, Supreme Court held as under:-

"The prejudicial activities of the detenu, as revealed in the grounds of detention, consist of a consistent course of criminal record. The detenu appeared to have taken to a life of crime and become a notorious character. The fact that the petitioner and his associates are facing trial or the matters are still under investigation only shows that they are such dangerous characters that people are afraid of giving evidence against them. The armed holdup gangsters in an exclusive residential areas of the city where persons are deprived of their belongings at the point of knife or revolver reveal organized crime. The particular acts enumerated in the grounds of detention clearly show that the activities of the detenu, cover a wide field and fall within the contours of the concept of public order."

16. In this connection one may also refer to the case of Ahamed Nassar Vs. State of Tamil Nadu & Ors. 1999 SCC (Cri) 1469 which read as under:

36. "Thus courts must first find, the extent of the individual right deciphering with the degree of trespass it makes on the public right, on which there is embargo. Where an individual acts clandestinely for his personal gain against the national interest deleteriously affecting the national economy or security the drastic curtailment of his right should be kept in mind to see that no such person escapes from the clutches of law. On the one hand, as it takes away one's liberty it should be strictly construed, on the other hand to subserve the objective of this Act, in the national interest it should be seen that no such person escapes."

17. Accordingly, we find it difficult to accept that Externing Authority in the absence of the above three FIRs neither could nor should have formed the impugned opinion. In such a situation while we observe that more care was expected of the externing authority while considering the material for passing an externment order yet this circumstance in itself is not sufficient to set aside the impugned order. In this background applying the constitutional scheme of Article 19(1)(d), Article 19(5), the Preamble as also the Statement of Objects and Reasons of Delhi Police Act, heading of Chapter 5, provisions of Sections 47 and 50, it appears to us that wherever there are two possible interpretations of the statute, one that subserves the objectives of an enactment is to be accepted. If one just after having a glance over the relevant material on record finds that no other view was possible for a reasonable, prudent and circumspect person, then

the consideration of the irrelevant grounds, may be ignored in considering the validity of the order. In such circumstances the order need not be set aside merely on the ground that there was a typographical mistake in the name of the police station in one case and in one or two charge sheet could not be filed for the source of information was gagged due to fear, for there is sufficient relevant information to reach same subjective satisfaction after ignoring irrelevant material.

18. Fact of the matter is that Authority on the basis of cases registered against him invoked the provisions of Section 47(a)(b) and (c)(i) of the Act. It considered that his movements and acts were causing alarm, danger and harm to person and property. He was considered desperate and dangerous as to render his being at large in Delhi hazardous to the community. Authority for arriving that conclusion took note of the fact that the petitioner was involved in 13 cases relating to heinous crimes covered under the provisions of Sections 302/307/392/364/452/ 506/323/324/452/308/353/364/379 IPC and if he was not externed from Delhi there was danger to public order and safety.

19.1 Mr.Harjinder Singh also raised the challenge to the virus of Section 47 and 50 of the Act. This argument deserves to be rejected in view of the decision of Supreme Court in the case of State of Gujarat Anr. Vs. Mehboobkhan Usman Khan AIR 1968 SC 1468 and Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, . This argument also deserves to be rejected in view of the decisions of this Court in the case of Hari Ram Vs. Commissioner of Police and Ors. reported in (1980) 1 Del 102 wherein Division Bench of this Court after considering various decisions of High Court and Supreme Court upheld the validity of Delhi Police Act and the provisions made therein. In fact provisions of Delhi Police Act are para materia with that of the Bombay Police Act. Challenge to the virus of provisions of Bombay Police Act came up for consideration before Supreme Court in the cases of Gurbachan Singh Vs. The State of Bombay and Another, and in the case of Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, . After analysing the provisions of the Bombay Police Act, the Apex Court held that the restriction that this law imposed upon the rights of free movement of a citizen, were reasonable and come within the purview of Clause 5 of Article 19 of the Constitution. The Supreme Court in the case of Gurbachan Singh (supra) further held that :

"It is true that a procedure different from what is laid down under the ordinary class of persons against whom proceedings could be taken up u/s 27(1) of the City of Bombay Police At. But the discrimination, if any, is based upon a reasonable classification which is within the competency of the Legislature to make".

19.2 Departure from ordinary procedure was justified as the best means of giving effect to the object of the Legislature. Further the existence of an Advisory Board is not a sine qua non of the constitutionality of such a legislation. Relying on the above observation of the Apex Court, it can be said that the Act has not

imposed unreasonable restrictions on the fundamental rights of the individual. Hence attack on the validity of the Act merits rejection.

20. As regards another submission of Mr. Harjinder Singh that appropriate opportunity was not given to the petitioner of being heard, even his counsel was not present at the time of hearing, we find no substance in the same for the reason the petitioner not only filed his representation he even examined two witnesses. It is not the case of the petitioner that the counsel was present and he was not allowed to address arguments. Petitioner was entitled to defend the matter with the assistance of Advocate. It does not entitle him to prolong these proceedings on the pretext of absence of the counsel. In view of the very nature of the proceedings in case this submission is accepted then it may not be possible to pass an externment order for the reason that externnee may always take plea that he could not engage his counsel. His counsel is not available; his counsel is sick or is out of station. Consequently we reject the contention.

21. It may be added that for passing such an order, detailed reasons are not required to be assigned. In the present case keeping in view the track record of cases of the petitioner and after applying the provisions of the Act and affording reasonable opportunity to the petitioner the order was passed by the Additional Deputy Commissioner of Police which had been upheld by the Appellate Authority, the Lt. Governor. We find sufficient compliance of the provisions of the Act. The order of Additional Deputy Commissioner of Police and the impugned order show that the same was based on the sufficient relevant material available to form the basis of subjective satisfaction. Whether the evidence was sufficient to arrive at subjective satisfaction cannot be examined by this Court in objective manner particularly when the Legislature has provided for the subjective satisfaction of the Externment Authority. We have not been able to persuade ourselves to hold that there was no subjective satisfaction of the Externment Authority or that the Authority signed the order mechanically and violated or transgressed any provisions of Section 50 or 47 of the Act.

22. For the reasons stated above, we find no merits in the petition. Notice discharged. Petition dismissed with no order as to costs.