
(2014) 05 MP CK 0183
In the Madhya Pradesh High Court
Case No : W.P. No. 1464/2013

Raja @ Abdul Habib

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 — Section 6
Penal Code, 1860 (IPC) — Section 506, 509
Public Gambling Act, 1867 — Section 3, 4

Citation : (2014) 05 MP CK 0183

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : S.B. Shrivastava, Advocate for the Appellant; Puneet Shroti, learned Panel Lawyer, Advocate for the Respondent

Final Decision : Allowed

Judgement

Alok Aradhe, J.—With the consent of learned counsel for the parties, the matter is heard finally.

2. In this writ petition, the petitioner, inter-alia, has assailed the validity of the order dated 14/5/2013 and order dated 7/1/2014 passed under the M.P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as "the Act").

3. Facts giving rise to filing of the writ petition, briefly stated, are that the petitioner is resident of District Damoh. A show cause notice dated 01/04/2013 was issued to the petitioner u/s 6 of the Act by which the petitioner was asked to show cause as to why the order of externment has not been passed against him. The petitioner did not submit any reply to the show cause notice. He was proceeded ex-parte. Thereafter the District Magistrate by an order dated 14/5/2013 by taking into account the fact that the petitioner for a period from 1997 to 2013 has been tried in connection with 22 criminal cases, passed an order of externment against him for a period of one year u/s 6 of the Act. The aforesaid order has been affirmed in appeal. In the aforesaid factual matrix, the

petitioner approached this Court.

4. Learned counsel for the petitioner submits that the order of externment against the petitioner is per se, without jurisdiction and suffers from vice of non-application of mind inasmuch as power u/s 6 of the Act can be invoked when a person is convicted in any of the offences. It is further submitted that the petitioner has not been convicted in any of the cases and in seven criminal cases he has been acquitted and remaining cases are pending against him.

5. Learned Panel Lawyer for the respondents was unable to point out from the record that the petitioner has been convicted in any of the cases pending against him. Section 6 of the Act reads as under:

6. Removal of persons convicted of certain offences.-If a person has been convicted-

(a) of an offence,-

(i) under Chapter XII, XVI or XVII or u/s 506 or 509 of the Indian Penal Code, 1860(45 of 1860); or

(ii) under the Protection of Civil Rights Act, 1955(22 of 1955); or

(b) twice, of an offence under the Suppressions of Immoral Traffic in Women and Girls Act, 1956(104) of 1956); or

(c) thrice, of an offence within a period of three years u/s 3 or 4 of the Public Gambling Act, 1867(3 of 1867), in its application to the State of Madhya Pradesh;

The District Magistrate may, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted direct such person by an order to remove himself outside the district or part thereof, contiguous thereto by such route and within such time as the District Magistrate may order and not to enter or return to the District or part thereof or such area and such contiguous district or part thereof, as the case may be, from which he was directed to remove himself.

Explanation.-For the purpose of this section, the expression, "an offence similar to that for which he was convicted" means:-

(i) in the case of a person convicted of an offence mentioned in clause (1), an offence falling under any of the Chapters or Sections of the Indian Penal Code, 1860(45 of 1860), mentioned in that clause or an offence falling under the provisions of the Act mentioned in sub-clause (ii) of that clause; and

(ii) in the case of a person convicted of an offence mentioned in clause (b) and (c) an offence falling under the provisions of the Acts mentioned respectively in the said clauses.

6. Admittedly, the petitioner has not been convicted in any of the offences which are pending against him, on the other hand, he has been acquitted in seven

criminal cases which were pending against him, therefore, in the facts and circumstances of the case, satisfaction recorded by the District Magistrate that there is sufficient ground for proceeding against the petitioner u/s 6 of the Act suffers from vice of non-application of mind. Apart from that, the return filed by the respondents, on this issue, is conspicuously silent.

7. For the aforementioned reasons, impugned order dated 14/5/2013 passed by District Magistrate, Damoh and order dated 7/1/2014 passed by Commissioner, Sagar Division, Sagar are hereby quashed.

8. In the result, the writ petition is allowed.

9. Certified copy as per rules.