

**(2002) 12 DEL CK 0020**

**In the Delhi High Court**

**Case No : Criminal Writ Petition No. 701 of 2002**

Ram Niwas

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

**Date of Decision : 20-12-2002**

**Acts Referred:**

Arms Act, 1959 — Section 27  
Constitution of India, 1950 — Article 14, 19, 21  
Delhi Police Act, 1978 — Section 47, 50, 57  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 306, 342

**Citation :** (2003) 103 DLT 146 : (2003) 67 DRJ 211 : (2003) 2 RCR(Criminal) 180

**Hon'ble Judges :** H.R. Malhotra, J; Dalveer Bhandari, J

**Bench :** Division Bench

**Advocate :** Jayant Sud, for the Appellant; Mukta Gupta, for the Respondent

**Final Decision :** Allowed

## **Judgement**

Dalveer Bhandari, J.—This Criminal Writ Petition has been preferred against the order dated 1.2.2002 passed by the Addl. Deputy Commissioner of Police and the same which was later affirmed by the Ltd. Governor vide his order dated 203.2002.

2. Brief facts which are necessary to dispose of this petition are recapitulated as under.

3. It is alleged that the petitioner has been a victim of conspiracy because of his involvement in politics. It is alleged that in order to malign the reputation of the petitioner the rival party and its workers have been getting false cases registered against him in connivance with the local police. Since 1995 the following cases have been registered against the petitioner:-

S, No. FIR No. & Date Section of Law Police Station

1. 455 dt, 3.9.95 147/148/149/45/ 342/426 IPC & 27 Arms Act Bhajanpura

2. 624 of 1996 324/341/506/34 IPC Seelampur.

3. 233 of 2000 25/54/59 Arms Act Shahdara.

4. 39 ,of 2001 341/307/34 IPC Nand Nagri

5. 452 of 2001 341/506/323/34 IPC Seelampur.

4. In a case arising out of FIR No. 455/95 under Sections 147/148/149/45/306/342/426 IPC & 27 Arms Act registered at P.S. Bhajanpura, the trial has been completed and even the final arguments have been addressed and the case has been posted for orders. It is submitted by the counsel for the petitioner that all the witnesses in the said case have come forward and deposed before the court of law. The basis of the externment order, that the witnesses are not coming forward to give evidence against the petitioner is totally baseless. It was also submitted that in any event this FIR being stale could not be relied upon. The incident is of 1995 and cannot form the basis for the externment order passed on 20.3.2002.

5. The other FIR 624/96 relates to a case in which the petitioner has been acquitted after recording of the evidence. Therefore, the allegations that the witnesses did not come forward to give evidence against the petitioners is without any basis.

6. Similarly in FIR 233/00 a charge sheet has been filed after through investigation and recording of the statements of the witnesses. This FIR also cannot be the basis of the externment order.

7. In FIR No. 39/01 the petitioner is a co-accused with Neeraj Basoya. In this case no witnesses have been summoned by the court. It is, Therefore, preposterous and unimaginable to believe that no witnesses are going to depose against the petitioner.

8. FIR No. 452/01 was registered by a former mentor of the petitioner Data Ram Bisola, a former MLA who lost the elections. The petitioner had incurred the wrath with the said Data Ram. Charge sheet has been filed in the case. This FIR can hardly be the basis of the externment order.

9. It is also alleged that the petitioner appeared before respondent No. 2 the Addl. Deputy Commissioner of Police. The petitioner even produced 3 witnesses of the locality who completely exonerated the petitioner and stated that the petitioner was a person of a good moral character and a law abiding citizen. It is alleged that the petitioner is not involved in any of the cases. No one in the locality had ever complained against the petitioner and there was no ground to hold that he was a dangerous or desperate character and a threat to the locality. It is alleged that the learned Addl. Deputy Commissioner of Police in complete violation of the statutory guidelines and various judgments of this Court and the Supreme Court passed an order dated 1.2.2002 directing the petitioner to remove himself beyond the limits of the NCT of Delhi for a period of one year.

The appeal preferred by the petitioner was dismissed on 20.3.2002.

10. The petitioner was forced to leave the bounds of Delhi as he was under regular threats of being implicated in false cases during this externment period.

11. It is alleged that the impugned orders have been passed in a casual and mechanical manner and are liable to be quashed. It is also submitted that these alleged offences can be adequately dealt by the provisions of the Code of Criminal Procedure and no externment order could be passed.

12. It is further alleged that the externing authority has failed to appreciate that the incidents relate back to 1995-96 and are stale. It is also submitted that the impugned action smacks of total arbitrariness and the cases have been registered on political considerations. It is also submitted that there is total non-application of mind on the part of the respondents as is clear from the fact that the respondents have not been cared to look into the nature of the offences as alleged against the petitioner. A glaring example of non-application of mind is that the FIR No. 455/95 is registered u/s 506 IPC while the notice u/s 50 of the Delhi Police Act, the order of externment as well as the order passed by the Lt. Governor dated 20.3.2002 mention the offence as alleged against the petitioner as Section 306 IPC. Section 306 IPC pertains to abetment of suicide. It is further alleged that this is a glaring example of total non-application of mind by all the concerned authorities who did not appreciate the nature of the offences alleged against the petitioner either before issuing the notice or passing the impugned orders. The respondents failed to appreciate that Delhi is not a Union Territory, but National Capital Territory of Delhi. The order has been passed in a routine and mechanical manner without taking into consideration the impact of the order on the liberty of a citizen. The entire proceedings stand vitiated and are as such, liable to be struck down being violative of the fundamental rights of the petitioner.

13. Reply to the show cause notice has been filed by respondent No. 2, Addl. Deputy Commissioner of Police, North East District, Delhi,. It is mentioned that from 1995 to 2001 the petitioner was found involved in 5 criminal cases, including cases of riots, attempt to murder, threat and arms act. It is also mentioned that the brother of the petitioner is running a wrestling school and is also involved in criminal activities. The petitioner and his brother used to terrorise the people of the area with their musclemen and used to pick up quarrel on one pretext or the other. It is admitted that in the case arising out of FIR No. 624/96 the petitioner was acquitted. With regard to the allegation of non-application of mind on the part of the externing authority as Section 306 has been mentioned in the notice u/s 50 of Delhi Police Act as well as the order u/s 47 of Delhi Police Act, it is submitted that the same is due to typographical mistake and it has been specifically mentioned in the body of the order that the petitioner is involved in cases including threat.

14. The learned counsel for the State placed reliance on the judgment of the Supreme Court in Hari Khemu Gawali Vs. The Deputy Commissioner of Police,

Bombay and Another, . It has been held in the majority judgment that "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 u/s 57." Reliance has also been placed on Bhagubhai Dullabhabhai Bhandari Vs. The District Magistrate, Thana and Others, . In this case their Lordships of the Supreme Court held that. "It cannot be laid down that unless each and every witness is unwilling to give evidence in open court, the provisions of Section 56 are not available to the police." This judgment has been followed in a later judgment of the Supreme Court in Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, . Reliance has also been placed on Pratap Singh Vs. State and Others, , Kaushalya Vs. State, , Shailender Kaur Vs. Lt. Governor and Others, Maduru alias Damruwa Vs. State of M.P., and Ashok Kumar Kirtiwar and another Vs. State of M.P., on the same proposition of law.

15. We have carefully perused these judgments. We are bound by the judgment of the Apex Court and otherwise also we are in respectful agreement with the ratio laid down in these decisions.

16. We are not examining the constitutional validity of Sections 47 and 50 of Delhi Police Act in these proceedings. In Prem Chand (Paniwala) Vs. Union of India (UOI) and Others, their Lordships of the Supreme Court observed that. "We are conscious of the difficulties of detection and proof and the strain on the police in tracking down criminals. But fundamental rights are fundamental and personal liberty cannot be put at the mercy of the Police. Therefore, Sections 47 and 50 have to be read strictly. Any police apprehension is not enough for passing the order of externment. Some ground or the other is not adequate. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in the locality or any part thereof is hazardous to the community and its safety. A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedoms. Natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Articles 14, 19 and 21 of the Constitution. 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."

17. In Hari Khemu Gawali v. The Deputy Commissioner of Police, Bombay and Anr. (supra) the Supreme Court has held that the Legislature has provided powers to the police under this Act to pass externment orders, but at the same time the Legislature has provided certain safeguards against tyrannical and wholly unfounded orders passed by the police officials.

18. In the instant case bonafides of the orders have been questioned. It is alleged that these orders have been passed purely on political considerations. In this view of the matter, we have to be extremely careful in examining the basis

on which the impugned order has been passed. These are extraordinary provisions and have been incorporated to meet those exceptional cases where no witnesses for fear of violence to their body are willing to depose against the bad characters whose presence in certain areas constitute a menace to the safety of the public residing therein.

19. It may be pertinent to mention that the provisions of this Act in some ways are harsher than the detention of detenus in other preventive detention laws. In those cases there is at least an Advisory Board consisting of Judges of the High Court which scrutinize the material on which the authorities have passed the orders. The externment orders are passed after receiving approval from the Lt. Governor are final.

20. In *Hari Khemu Gawali v. The Deputy Commissioner of Police, Bombay and Anr.* (supra) the Supreme Court has held that these provisions are intended to be used in special cases requiring special treatment.

21. When we scrutinize and evaluate the facts of this case in the light of the settled principles of law, the irresistible conclusion would be that the orders passed by the Additional Deputy Commissioner of Police dated 1.2.2002 have been based on non application of mind and cannot be sustained.

22. Following five cases have been made basis of the externment order. We propose to analyze the cases. FIR No. 455/95 relates to an incident of 1995 and the order has been passed after a lapse of seven years in 2002. In the trial all the witnesses have come forward and deposed before the Court. Final arguments have been addressed and the matter is posted for orders.

23. Admittedly, the case emanating from FIR 622/96 has ended in acquittal. So far as FIR 233/00 is concerned, investigation is complete and charge sheet has been filed and the witnesses till date have not been called for deposition by the Court. As such, there is no question of witnesses not coming forward to depose against the petitioner.

24. In FIR 39/01 the petitioner is a co-accused with Neeraj Basoya, a political leader. In this case the witnesses have not been summoned by the Court. Therefore, it is preposterous to come to the conclusion that the witnesses are not coming forward to depose against the petitioner.

25. The FIR 452/01 has been registered at the behest of former mentor of the petitioner, Data Ram Bisola. The charge sheet has been filed and the case is in progress. This case is also not devoid of any political consideration.

26. In FIR 455/95 all the witnesses have been examined and after final arguments the case is now listed for orders. Therefore, an order under Sections 47 and 50 of the Delhi Police Act as far as this case is concerned could not have passed.

27. Similarly, FIR 624/96 has ended in acquittal. So on the strength of this case

also no such order could have been passed.

28. In FIR 233/00 chargesheet has been filed and the witnesses have not yet been summoned or deposition. Therefore, any apprehension expressed in the order on the basis of this FIR is totally misplaced.

29. In FIR 39/2001 the petitioner is co-accused with another political leader. In this case no witnesses have been summoned till date. Therefore, the apprehension as expressed in the notice and order are totally without any foundation. In FIR 452/01 charge sheet has been filed and the case is in progress.

30. In none of these cases the witnesses have expressed their apprehension that they are unable to appear because of the fear of the petitioner. As a matter of fact, in FIR 455/95 all the witnesses have already deposed before the concerned court and arguments have been heard and the order has been reserved.

31. This order cannot be sustained in view of the legal position as culled out in *Prem Chand v. Union of India and Ors.* (supra) wherein their Lordships have categorically mentioned that Sections 47 and 50 of the Delhi Police Act have to be read strictly. In the said case the Court observed that any police apprehension is not enough. Some ground or other is not adequate. In other words, there must be a clear and present danger based upon credible material which makes the movements and actions of the person in question alarming or dangerous or fraught with violence. There must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in the locality or any part thereof is hazardous to the community and its safety. The order of externment has very serious repercussions on the petitioner and his family. A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedoms. It is the settled position of law that all powers, including police power, must be informed by fairness if it is to survive judicial scrutiny.

32. On the basis of judicial scrutiny based on the legal position as crystalised in number of cases of Apex court, the impugned order passed by the Additional Deputy Commissioner of Police and as affirmed by the Lt. Governor cannot be sustained. The order of externment deserves to be quashed and we order accordingly. The writ petition is allowed and disposed of.