
(2009) 08 MP CK 0057

In the Madhya Pradesh High Court

Ravindra Singh Sikarwar and etc.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 107, 110, 116, 151

Citation : (2009) CriLJ 4544 : (2010) ILR (MP) 86 : (2010) 1 JLJ 151 : (2010) 1 MPHT 158 : (2010) 7 RCR(Criminal) 427

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Sharma, J.—Regard being had to the similitude of the controversy involved in the aforesaid writ petitions, they were heard analogously together and disposed of by this singular order. For the sake of convenience, the facts in the case of W.P. No. 1801/2009 have been dealt with.

2. The petitioner before this Court has filed this present writ petition being aggrieved by an order of externment dated 06th November, 2008 (Annexure P/2) passed by the District Magistrate, Morena and is also aggrieved by the dismissal of the appeal by an order dated 25th March, 2009 by the Commissioner, Chambal Division, Morena (Annexure P/1). The contention of the petitioner is that he belongs to a family having a political background and the father of the petitioner is holding the post of Sarpanch for the last 40 years and he was elected as the President, Co-operative Society Sikronda, Jaura, District Morena. The petitioner has further stated that a show cause notice was issued to him on 3rd December, 2004 as per the provisions of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as the Adhiniyam, 1990) and a reply was filed by him. The petitioner has categorically informed the District Magistrate in the reply filed by him that only 3 cases are pending against him and all the other cases have come to an end without any punishment in the matter. The

grievance of the petitioner is that without considering his reply and the cases in which the petitioner has been acquitted, the District Magistrate, Morena has passed an order of externment for a period of one year. His further contention is that the Commissioner, Chambal Division, Morena, in a most mechanical manner has dismissed the appeal vide order dated 26th March, 2009.

3. The learned Counsel appearing on behalf of the petitioner has categorically stated before this Court that while issuing the show cause notice to the petitioner on 3rd December, 2004, the respondent/District Magistrate has not provided him copy of the statement of the police officers recorded in the matter and copy of the statement of the witnesses recorded in the matter. Learned Counsel has further stated that in paragraph 2 while passing the order of externment, the District Magistrate has categorically observed that he has recorded the statement of certain police officers as well as independent witnesses, however, these statements were not furnished to the petitioner. The petitioner has prayed for quashing the orders passed by the respondents. In support of his contention, he has relied a judgment delivered by this Court in the case of Dinnu alias Dinesh v. State of M.P. reported in 2005 II MPJR SN 16 .

4. Learned Counsel for the petitioner has also argued before this Court that the petitioner's reputation which is an important part of his life has been tarnished on account of the order of externment passed by the District Magistrate and, therefore, the principles of natural justice and fair play should have been observed while passing the impugned order.

5. The learned Counsel appearing on behalf of the respondents has vehemently argued before this Court that the order of externment has rightly been passed as per the provisions of the Adhiniyam, 1990. She has placed heavy reliance on Section 8 of the Adhiniyam, 1990. It has been argued by her that the aforesaid statutory provision does not provide for supply of the statements of the witnesses recorded in the matter nor provides for supply of statements of the police officers recorded in the matter. She has further argued before this Court that the order of externment has been passed in the case of the petitioner on the basis of the criminal cases recorded in the matter. The record relating to the externment order has also been produced before this Court.

6. By placing reliance upon a judgment delivered by the Chhattisgarh High Court in the case of Tirupati Constructions Vs. South Eastern Coalfields Ltd. and Others, , she has further argued before this Court that the principles of natural justice and fair play are not at all attracted in respect of the cases under the National Security Act and the Adhiniyam, 1990 as the order of externment in the case of the petitioner has been passed under the provisions of the Adhiniyam, 1990 for taking preventive action against him and it is not an order imposing punishment, hence the petitioner is not entitled for any relief. She has further argued before this Court that the petitioner is an anti-social element and large number of cases were registered against him and the people are afraid of in coming forward to give evidence against the petitioner. The contention of the

learned Counsel is that the petitioner is involved in all kinds of illegal activities and in fact during pendency of the proceedings under the Adhiniyam, 1990, the petitioner was involved in various criminal activities hence, the order of externment passed by the District Magistrate as well as the order passed by the appellate authority deserves to be upheld.

7. The learned Counsel for the respondents has also relied upon a Judgment delivered by this Court in the case of Baboo Khan Vs. State of M.P. and Another, , wherein the petitioner therein was continuously involved in the commission of several heinous and serious criminal cases from the year 1991 onwards, the order of externment was upheld by a learned single Judge of this Court holding that under the writ jurisdiction, this Court would only see the jurisdictional aspect of the matter and it cannot now sit as a second appellate Court to examine the inference drawn from the cases which the petitioner therein was facing in the criminal Courts, to contend that the petitioner's plea in the present case that he was acquitted in most of the cases pending against him is not of much importance.

8. The learned Counsel appearing on behalf of the respondents has vehemently argued before this Court that the Adhiniyam, 1990 is a special enactment which provides for a procedure for passing an order in respect of externment. She has further argued that the aforesaid statute provides for only issuance of show cause notice informing the person in writing of the general nature of the material allegations against him and to give him a reasonable opportunity of tendering an explanation regarding the nature of material against him and it does not provide for supply of statements of the witnesses nor the statements of the police officers recorded in the matter and therefore, the order passed by the District Magistrate is just, proper and has been passed as per the procedure prescribed in the matter. She has further argued that the object of the Act has to be seen while dealing with such cases and the petitioners who are notorious criminals are not entitled for any relief as there is no jurisdictional error in the matter and this Court cannot sit as a second appellate Court to examine the inference to be drawn from the cases which the petitioner is facing in the criminal Courts.

9. Heard learned Counsel for the parties at length and perused the record.

10. In the present case, a show cause notice was issued to the petitioner u/s 8(1) of the Adhiniyam, 1990 directing the petitioner to file a reply in the matter. The petitioner did submit a reply to the aforesaid show cause notice. In the present writ petition, it has been categorically stated by the petitioner that he has been acquitted in respect of most of the offences enlisted in the order of externment, i.e. twenty in number. The petitioner has categorically stated before this Court that now only 03 cases are pending against him.

11. Section 8 of the Adhiniyam, 1990 reads as under:

8. Hearing to be given before order u/s 3, 4, 5 or 6 is passed :- (1) Before an order u/s 3, 4, 5 or 6 is passed against any person, the District Magistrate shall

inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them.

(2) If such person makes an application for the examination of any witness produced by him, the District Magistrate shall grant such application and examine such witness unless for reason to be recorded in writing, the District Magistrate is of opinion that such application is made for the purpose of vexation or delay.

(3) Any written statement put in by such person shall be filed with the record of the case and such person shall be entitled to appear before the District Magistrate by any legal practitioner for the purpose of tendering his explanation and examining the witnesses produced by him.

(4) The District Magistrate proceeding under Sub-section (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under. Section 3, 4, 5 or 6 require such person to appear before him and to execute a security bond with or without sureties for such attendance during the inquiry.:

(5) If the person fails to execute the security bond as required or fails to appear before the District Magistrate during the inquiry, it shall be lawful for the District Magistrate to proceed with the enquiry ex parte and thereupon such order, as was proposed to be passed against him, may be passed.

12. The aforesaid statutory provision makes it mandatory that the District Magistrate shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them.

13. This Court while deciding a case of externment in the case of Dinnu alias Dinesh v. State of M.P. 2005 (II) MPJR SN 16 and relied upon by the learned Counsel for the petitioners has held in paragraphs 3 and 4 as under:

A perusal of para 5.1 of the reply filed by the respondents supported by an affidavit of Rai Singh Narveria CSP, Lashkar, Gwalior indicates that on receipt of information from the Superintendent of Police, the matter was taken up, case was registered and after examining the witnesses, show cause notice annexure P/3 was issued to the petitioner. Authorities of police station Janak Ganj, served the aforesaid show cause notice on the petitioner. In the return, it is denied by the respondents that the petitioner was never taken in police custody but the fact remained that only show cause notice was issued to the petitioner and along with the show cause notice, other material on the basis of which, show cause notice was issued namely statement of Station House Officer recorded on 1-4-2004 and statement of other witnesses recorded on the same date were not supplied to the petitioner along with the show cause notice. The record indicates that before issuing show cause notice on 1-4-2004, statements were recorded

and it is on the basis of these statements that show cause notice was directed to be issued. Copies of the statements and other documents having not been supplied to the petitioner, the petitioner has been denied proper opportunity of submitting reply to the show cause notice. Record indicates that on 1-4-2004, statement of Shri Arvind Khare, Station House Officer, Janak Ganj, Lashkar so also the statement of one Sonu, Auto Driver and Babu Khan, Auto Driver were recorded and it was on the basis of these, the case was registered and the show cause notice dated 1 -4-2004 was issued to the petitioner. Non supply of these vital documents to the petitioner vitiates the entire proceedings. Even during the proceedings that took place on 7-4-2004, 15-4-2004 and 19-4-2004 these documents were not supplied to the petitioner merely because, the petitioner did not appear on 23-4-2004 and therefore, passing of the ex parte order without supplying all these documents to the petitioner is not proper. That being so, this petition has to be allowed in this ground alone.

As order impugned passed removing petitioner from the district in question is without affording him proper opportunity of hearing and without supplying to him all the relevant documents, proceedings have to be quashed on this ground alone and therefore, it is not necessary now to go into the merits of this case and decide other questions raised in the petition. Accordingly, on this ground alone, the petition is allowed. Orders impugned annexure P/1 and P/2 passed by District Magistrate, and the appellate authority on 23-4-2004 and 29-11-2004 are quashed.

A learned single Judge of this Court while deciding the aforesaid case has categorically held that the statements of witnesses recorded in the matter and the statements of police officers recorded in the matter should have been supplied to the person concerned in a format. The order of externment was set aside.

14. The learned Counsel for the petitioner has further relied upon a judgment delivered by this Court in the case of Asaf Ali s/o Sheikh Mubarak v. State of M.P. 2006 (3) MPLJ 592 , wherein in paragraph 7 it was held as under:

Thus, on the basis of such old and stale offences under the Indian Penal Code in which the petitioner has been acquitted and also the petty offences under Sections 107, 110, 116(3), 151 of the Criminal Procedure Code, the order of externment u/s 5 (b) of the Adhiniyam cannot be sustained. See Bala alias Iqbal v. Additional Collector, Indore 1996 Cr LRMP 72. In case of Ayub Khan v. State of M.P. 1994(1) VIBHA 168 a Division Bench of this Court has observed that the powers of externment are to be exercised sparingly with care and circumspection. They cannot be used for punishing a man for his past deeds. In view of the aforesaid legal position the petitioner's externment u/s 5(b) of the Adhiniyam cannot be sustained and is quashed.

15. The learned Counsel for the petitioner has also relied upon a judgment delivered by this Court in the case of Dharmendra Singh v. State of M.P. 2007 (2)

MPLJ 108 and in paragraphs 6 and 7 it has held as under:

It is not the case of the respondents that apart from the cases wherein the petitioner was acquitted there was sufficient material which formed basis of satisfaction of the authority to pass the order of externment. Hon''ble Supreme Court of India in the case of Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another, has held:

From the above decisions it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satis/action of the detaining authority one way or the other and influenced its mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. It is clear to our mind that in case on hand, at the time when the detaining authority passed the detention order this vital fact, namely, the acquittal of the detenu in cases Nos. mentioned at serial Nos. 2 and 3 have not been brought to its notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases were pending. The explanation given by the learned Counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material fact - namely the acquittal of detenu in the above-said two cases resulting in non-application of mind of the detaining authority to the said fact has vitiated the requisite subjective satisfaction, rendering the impugned detention order invalid.

Learned Government Advocate has made available the original record of the case of externment. It also depicts in favour of the petitioner. On 14-2-2003, the prosecution examined its witnesses and disclosed that no further evidence would be produced. Case was reserved for consideration. Thereafter, no order was passed for more than 2 years and 10 months and again a report from the S.P. Satna dated 12-9-2005 was placed on record. Prior to it, the earlier report of the S.P. Satna dated 2-7-2002 was already on record. There is no material in the file as to how, when and why the second report was requisitioned. Similarly, it is not clear from the file as to who did requisition the second report. Thus, the contention of the learned Counsel for the petitioner is strengthened that on the basis of the earlier report dated 2-7-2002 there was no sufficient material to form an opinion against the petitioner that he was liable to be externed and the material available on record was insufficient for the subjective satisfaction. There is no explanation in the return as to why and in what circumstances the order was withheld for more than 2 years and 10 months and what caused the District Magistrate, Satna to withhold the proceedings for more than 2 years and 10 months. Inaction for a period of 2 years and 10 months in a case of externment clearly suggests that the order of externment was not warranted during the said period. It being not the case of the respondents that subsequent events or the record of the petitioner (after exclusion of the cases of acquittal) has provided a

basis to form an opinion about subjective satisfaction with regard to externment of the petitioner this Court in view of the Supreme Court's decision (*supra*) holds that the authorities have failed to make application of mind to the attending facts and circumstances and the same coupled with the non-consideration of effect of acquittal in so many cases has vitiated the subjective satisfaction about externment of the petitioner rendering the externment order invalid. Consequently, the impugned orders contained in Annexure P/9 and P-10 are not liable to be sustained.

In the aforesaid case, the order of externment was passed by the District Magistrate after holding the proceedings for more than 2 years 10 months and the same was also taken into account while quashing the order of externment by this Court.

16. In the present case, the District Magistrate took almost 5 years for concluding the proceedings under the Adhiniyam, 1990 and there is no explanation for the same on behalf of the respondents.

17. The learned Counsel for the petitioner has relied upon a judgment delivered by this Court in the case of *Pyare Fukki Vs. District Magistrate and Others*, and paragraph 4 of the judgment is relevant which reads as under:

On a close scrutiny of the record, I find that on receipt of the information from the Superintendent of Police the matter was taken up and the statements of the witnesses were recorded. Thereafter, a show-cause notice u/s 8(1) of the Adhiniyam was issued to the petitioner, I find that along with the show cause notice other material on the basis of which the said show-cause notice was issued, i.e. statement of witnesses were not supplied to the petitioner. The record indicates that before issuing show-cause notice the statement of four witnesses including the Police Personnels were recorded and it is on the basis of these statements the show-cause notice was directed to be issued. Having not supplied copies of the statements, in my considered view, the petitioner has been denied proper and effective opportunity of submitting reply to the show-cause notice. From the record, I find that the statements of in all four witnesses were recorded and on the basis of the aforesaid statements the case was registered against the petitioner and he was issued a show-cause notice. The non-supply of these vital documents to the petitioner vitiates the entire proceedings. Even after the petitioner appeared through his counsels the aforesaid documents were not supplied to him and therefore, passing of the *ex parte* order of externment without supplying all these documents to the petitioner is not proper (*See Dinnu alias Dinesh v. State of M.P. 2005 (II) MPJRSN 16*) .

18. In the case of *Pyare Fukki (supra)*, the learned single Judge of this Court has again held that the statements of witnesses including the police personnel recorded in the matter should have been supplied to the person facing the proceedings under the provisions of the Adhiniyam, 1990 and as the same was

not done, the order of externment and the order passed by the appellate authority affirming the same were set aside.

19. The learned Counsel for the petitioner has further relied upon a judgment delivered by a Division Bench of this Court in the case of Ramkhiladi Gurjar v. State of M.P. 2008 (2) JLJ 430 : 2008 Cri LJ (NOC) 1169 wherein an order of detention of the petitioner therein passed by the competent authority under the National Security Act, 1980 has been set aside on the ground that no objective consideration of the matter was done by the competent authority while passing an order under the Act, 1980.

20. Lastly, the learned Counsel for the petitioner has relied upon a judgment delivered by the Hon"ble Apex Court in the case of State of Maharashtra Vs. Public Concern for Governance Trust and Others, , wherein the Hon"ble Apex Court has held that the principles of natural justice and fair play are to be afforded where an order has been passed against a person adversely affecting the person concerned. Paragraphs 39 to 41 (Paras 34 to 36 of AIR) are relevant and the same reads as under:

The party-in-person has also pointed out certain findings in the judgment of the High Court. We do not propose to go into the merits of the other contentions which are the subject-matter of SLP No. 336 of 2006. In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play. Reputation of an individual is an important part of one's life. It is observed in D.F. Marion v. Minnie Davis and reads as follows:

The right to enjoyment of a private reputation, unassailed by malicious slander is of an ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.

This Court also in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, has observed that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.

It is thus amply clear that one is entitled to have an preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural Justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review.

21. Keeping in view the fact that the impugned order of externment dated 6th November, 2008 (Annexure P/2) passed by the District Magistrate, Morena and the order dated 25th March, 2009 passed by the Commissioner, Chambal

Division, Morena (Annexure P/I) having been passed without affording proper opportunity of hearing and without supplying all the relevant material documents are therefore set aside, both the writ petitions stand allowed and the matter is remanded to the District Magistrate, Morena, for a fresh decision in the matter. The entire exercise shall be concluded by the District Magistrate, Morena, within a period of sixty days from the date of receipt of a certified copy of this order.

22. The writ petitions stand allowed and disposed of with the aforesaid. No order as to cost.