
(2013) 11 DEL CK 0234

In the Delhi High Court

Case No : Writ Petition (Criminal) 1374 of 2013

Sachin @ Sonu

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Delhi Police Act, 1978 — Section 47, 50
Penal Code, 1860 (IPC) — Section 290, 34, 356, 379, 489A

Citation : (2013) 11 DEL CK 0234

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Dinesh Garg, for the Appellant; Saleem Ahmed, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sistani, J.—By the present petition filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. the petitioner seeks quashing of the order dated 21.5.2013 (hereinafter referred to as "the first impugned order") passed by Additional Deputy Commissioner of Police, North-East, Delhi, in case No. 1828/44/Ext. Cell/NE/NE District, whereby externment of the petitioner from the local limits of Delhi was directed. The petitioner also seeks quashing of the order dated 31.7.2013 (hereinafter referred to as "the second impugned order") passed by Lieutenant Governor, Delhi, whereby Appeal No. 102/2013 filed by the petitioner, against the order of externment dated 21.5.2013, was dismissed. The necessary facts, to be noticed for disposal of the present petition, are that on a proposal for externment of the petitioner made by SHO, P.S. Harsh Vihar, through ACP, Seelam Pur, Delhi, the Additional Deputy Commissioner of Police, North-East, held proceedings for externment of the petitioner on 30.8.2012. During the course of the externment proceedings, according to the externment order, independent witnesses of the area were examined in-camera since they were not coming forward to make a statement against the petitioner in public

due to apprehension with regard to their safety. Consequently, a notice u/s 50 of Delhi Police Act, 1978, was issued to the petitioner. The notice contained the following details of offences committed by the petitioner:

2. Pursuant to the notice having been issued, the petitioner participated in the externment proceedings and also examined defence witnesses. Upon hearing, the order dated 21.5.2013 was passed by Additional Deputy Commissioner of Police, North-East, by which the petitioner was directed to remove himself beyond the limits of NCT of Delhi, for a period of one year w.e.f. 28.5.2013. The petitioner thereafter preferred an appeal against the order dated 21.5.2013, however, the said appeal was dismissed on 31.7.2013, which led to the filing of the present petition.

3. Learned counsel for the petitioner submits that both the impugned orders have been passed in utter violation of the statutory guidelines and the directions issued by the High Courts and the Supreme Court of India. Counsel further submits that the impugned orders were passed in a casual and mechanical manner and, thus, the same are liable to be quashed. It has been strongly urged before this Court that the respondents overlooked a very material fact that in the FIRs mentioned at Sl. Nos. 3 to 10 and 12 of the above tabulation, the petitioner was discharged since he had been falsely implicated in those cases and there was no material to connect the petitioner with the alleged offences. Counsel further contends that in case FIR No. 36/2011, mentioned at Sl. No. 1 of the above tabulation, the petitioner has never been arrested since there is no evidence found against him and, thus, to say that the petitioner would face trial or that the witnesses would not depose against him was incorrect. Rendering an explanation with regard to FIR No. 397/2011, mentioned at Sl. No. 13 of the above tabulation, counsel for the petitioner contends that no recovery has been affected from the petitioner, nor charges have been framed against him and, thus, in all likelihood, the petitioner would be discharged from the aforesaid cases. It is further contended by the counsel for the petitioner that in FIR No. 111/2011, mentioned at Sl. No. 2, and FIR No. 277/2011, mentioned at Sl. No. 11 of the tabulation, charge sheets have been filed and evidence of the witnesses are being recorded and, thus, it is incorrect to state that the public witnesses are not coming forward to depose against the petitioner or that the witnesses were apprehensive of their safety and security. Counsel also contends that no one from the locality has complained against the petitioner and, thus, the ground to hold that the petitioner is a dangerous or desperate character or a threat to the locality, is bad. It is, thus, prayed that both the impugned orders be quashed.

4. Status report dated 28.10.2013, which has been handed over by counsel for the State in Court, states the grounds raised in the externment order. Although, it was pointed out that out of thirteen cases, detailed in the externment order, the petitioner had been discharged in nine cases and in one case he was not arrested yet there has been recovery of a gold chain in three cases. On 28.10.2013 this court had directed the respondent to file another status report

clearly stating as to whether any witness had declined to depose against the petitioner or not; the stage of each case, which is pending against the petitioner; and as to whether charge sheet has been filed or not.

5. Today, learned counsel for the State has handed over a supplementary status report in Court wherein it is stated that three cases are pending against the petitioner. Operative portion of the supplementary status reads as under:

Moreover, out of three charge sheeted cases the present position of all three cases is as follows:

1. In case FIR No. 111/11 U/S. 356/379/34 IPC P.S. Welcome, the charge-sheet has been filed and the case is pending trial. The public witnesses including the complainant have deposed before the Hon"ble Court of Sh Ankur Jain, Ld. M.M., K.K.D. Court.

2. In case FIR No. 286/11 U/S. 356/379/34 IPC P.S. Mandawli, the charge-sheet of the case has been filed and the case is pending trial. The public witnesses including the complainant have deposed before the Hon"ble Court of Ms. Neha Paliwal, Ld. M.M., K.K.D. Court.

3. In case FIR No 397/11 U/S. 379/356/34 IPC P.S. Shakarpur, the charge-sheet of the case has been filed before the Hon"ble Court of Sh. A.K. Aggarwal Ld. M.M., K.K.D. Court and the charge has not been framed yet.

Out of the pending trial cases none of the witnesses declined to depose before the court during the evidence and no such complaint in this regard has been made by the witnesses.

6. I have heard learned counsel for the parties, considered their rival submissions and also perused the impugned orders and the status report. Section 47 of Delhi Police Act, 1978, reads as under:

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

(a) that the movements or 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 be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code (45 of 1860) or u/s 290 or sections 489A 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.

Explanation.-A person who during a period within one year immediately preceding the commencement of an action under this section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this section shall be deemed to have habitually committed that act.

7. A bare perusal of Section 47 shows that it authorises the Commissioner of Police, in case it appears to him that the movement of a person is causing or is likely to cause danger or harm to any person or property or there are reasonable grounds to believe that a person is engaged or about to be engaged in the commission of an offence, involving force or violence and such person is a desperate and dangerous person for the community at large or he has been found habitually intimidating other persons by his acts of violence, to pass an order of externment against such person. Further Section 50 of Delhi Police Act, 1978, provides for hearing, which is to be granted to such person.

8. Undoubtedly, the petitioner was granted a hearing by the Additional Deputy Commissioner of Police, North-East. In the first impugned order the Additional Deputy Commissioner of Police has given detailed reasons for passing the said order. In the said order, thirteen cases have been detailed wherein in some of the case the petitioner was discharged and some cases are pending trial. Both the status report show that out of thirteen cases, which have been detailed, the petitioner was discharged in nine cases and three cases are pending trial. One of the prime reasons for passing the externment order is that witnesses are not willing to come forward to give evidence against the petitioner due to apprehension of their safety and security. It will be useful to refer to the observations made by the Supreme Court of India in the case of Prem Chand

(Paniwala) Vs. Union of India (UOI) and Others, . Relevant portion of the judgment reads as under:

... 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 Police. Therefore, Sections 47 and 50 are 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.

9. Applying the law laid down by the Apex Court to the facts of the present case, it cannot be said that the witnesses are not willing to come forward to give evidence against the petitioner, which is clearly evident from the supplementary status report, which has been handed over in Court by the State. The grounds for externment must be clear and the respondents must show that the movement of a person are causing or likely to cause danger or harm to a person or property. Such danger is to be based on credible material and not merely a vague assertion. The order of externment is based on an extra-ordinary provision of law, recourse to which must be taken only in exceptional cases and not in a routine manner, as such order would have a strong repercussion on the person and his family. The status report also shows that out of 13 cases filed against the petitioner he was discharged in 9 cases and 3 cases, which are pending, relates to the year 2011 and moreover in the pending cases the complainant as well as public witness have deposed. Resultantly, the petition is allowed. The impugned orders dated 21.5.2013 and 31.7.2013 are quashed. Petition stands disposed of.