

(1993) 02 DEL CK 0040

In the Delhi High Court

Case No : Criminal Writ Appeal No. 399 of 1992

Sanjay Pahari

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Citation : (1993) 50 DLT 47 : (1993) 26 DRJ 19 : (1993) 2 RCR(Criminal) 50 : (1993) RLR 257

Hon'ble Judges : Mahinder Narain, J;Jaspal Singh, J

Bench : Division Bench

Advocate : V.M. Issar and P.S. Sharma, for the Appellant;

Judgement

Mahinder Narain, J.

(1) Rule D.B.

(2) By consent of parties, we proceed to bear this petition which involves a short question of construction of section 47 of the Delhi Police Act. Section 47 of the Delhi Police Act 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 Xh, Chapter Xvi, Chapter Xvii or Chapter Xxii of the Indian Penal Code, 1960 (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 20 (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, 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.

(3) According to the provisions of section 47, it is necessary that the Commissioner of Police, should be of the opinion that the witnesses are not willing to come forward to give evidence in public against the person who is sought to be externed by reason of apprehension on their part as regards the safety of their person or property.

(4) It is not disputed that in the instant case neither the notice u/s 50 of the Delhi Police Act dated 06.03.1992. nor the order of externment dated 14.07.1992 contains averments that witnesses are unwilling to come forward to give evidence in public against the petitioner. Inasmuch as the aforesaid essential requirement of section 47 of the Delhi Police Act has not been complied with, the aforesaid notice dated 6th March, 1992 and the order of externment dated 14th July, 1992 are not in accordance with law, and have to be quashed, and are hereby quashed.