
(2001) 04 DEL CK 0110
In the Delhi High Court
Case No : Criminal W. No. 1041 of 2000

Shailender Kaur

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Police Act, 1978 — Section 46, 47, 48, 49, 50
Penal Code, 1860 (IPC) — Section 290, 489A, 489B, 489C, 489D
Punjab Excise Act, 1914 — Section 1, 14, 61

Citation : (2001) CriLJ 2779 : (2001) 91 DLT 243 : (2001) 3 RCR(Criminal) 588

Hon'ble Judges : Usha Mehra, J; Mahmood Ali Khan, J

Bench : Division Bench

Advocate : Raman Sawhney and P.N. Kohli, for the Appellant; Mukta Gupta, for the Respondent

Final Decision : Allowed

Judgement

Mahmood Ali Khan, J.—Challenge in this petition is made to an order of the Lt.Governor of Delhi dated 20.9.2000 by which he has dismissed the appeal filed by the petitioner u/s 51 of the Delhi Police Act (the Act) against an order of the Additional Deputy Commissioner of Police (East District) dated 23.6.2000. by the order impugned in the appeal the Addl. DCP (East Distt.) in exercise of the powers vested in the Commissioner of Police by Section 47 of the Act has directed the petitioner to remove herself from the limits of National Capital Territory of Delhi for a period of two years and has imposed certain other conditions for here entry into Delhi for attending Court cases.

2. The petitioner is residing in East Distt. The Addl. DCP (East Distt.) called upon her to explain as to why an order of her externment from Delhi be not passed u/s 47 of the Act. The imputations made against the petitioner were mentioned in the show cause notice issued in accordance with Section 50 of the Act. The show cause notice is extracted as under:

"To,

Smt. Shailender Kaur w/o Shri Dharmender Kumar r/o 28/11, Gali No. 14, Vishwas Nagar, Delhi.

Under Section 50 of the Delhi Police Act, 1978 you are hereby informed that the following allegations have been made against you in the proceeding instituted against you u/s 47, D.P. Act, 1978.

In order to give you an opportunity to sending your Explanations about the said allegations, I have fixed at-on-to receive your Explanations and to hear you and your witnesses if any, in regard to said allegations.

I, P.K. Bhardwaj, Additional Deputy Commissioner of Police, East District Therefore, direct you to appear before me in my office situated at near Peela Mandir. Opposite Swarn Cinema, Vishwas Nagar, Delhi to furnish a bond in sum of Rs. 5,000/- with one surety in the like amount for attendance during the proceedings. In case you fail to appear before me and furnish a bond of surety as directed the undersigned will proceed in accordance with the provisions of Section 50 of the Act.

ALLEGATIONS:

That you are engaged in the commission of crime, involving force or offences punishable under Local and Spl. Law Cases as apparent from the following cases in which you were involved:

S.No. FIR Dated u/s Police Station No.

1. 129 11.4.1995 61/1/14/Ex.Act Vivek Vihar

2. 353 15.10.1995 -do- -do-

3. 408 26.11.1995 -do- -do-

4. 163 2.4.1996 -do- -do-

5. 411 14.11.1996 -do- -do- That your movements and acts are causing and calculated to cause alarm, danger and harm to the person or property. There are reasonable grounds, for believing that you engaged or likely to engage in the commission of offence punishable under Local and Spl. Law Cases. You are so desperate and dangerous as to render you being at large in Delhi or in any part thereof is hazardous to the community.

That the witnesses are not willing to come forward to give evidence in public against you by reasons of apprehension on their part as regards the safety of their person or property. There are reasonable grounds that you are likely to engage yourself in the commission of offence like these mentioned in para (i) above.

You are hereby called upon to explain as to why an order for externment out of

the like limits of the National Capital Territory of Delhi for a period of two years in accordance with the provisions of 47, D.P. Act be not passed against you."

3. The petitioner did not file reply to the notice. The Addl. DCP (East Distt.) considered the material facts and the evidence against the petitioner including two witnesses examined by here and by order dated 23.6.2000 he passed the order of her externment from the NCT of Delhi for two years. The petitioner challenged this order in appeal before the Lt. Governor who had dismissed it by order dated 20.9.2000 and has confirmed the order. The petitioner has felt aggrieved by these orders and has preferred this writ petition.

4. The case of the petitioner is that she was a widow of 35 years of age with three children to support. She was falsely implicated in criminal cases when she refused to succumb to the illegal demands of the police personnel. She was innocent and had never committed any crime. All the criminal cases except two have culminated into here acquittal. She hoped to be acquitted in the remaining two cases were under the Punjab Excise Act, as it is in force in Delhi, and one case was under the IPC. She pleaded that if the impugned order of her externment from the limits of NCT of Delhi was not set aside, her entire family would be ruined and she would suffer such irreparable loss and injury which could not be compensated in terms of money.

5. She further stated that the orders of the Addl. DCP (East Distt.) and the Lt. Governor were passed on conjectures and surmises. Her submissions and documents were not taken into consideration. It was total non-application of mind by these Authorities before the order under challenge was passed. She contended that she had specifically pointed out to the Circular dated 11.9.1998 issued by the DCP (Hqrs.) which is Annexure R-4 to the petition and by which the DCPs were directed not to initiate proceedings u/s 47 of the Act on the basis of cases u/s 61 of the Punjab Excise Act. This Circular was not taken note of. There was no evidence, material and circumstances against her to satisfy the Commissioner of Police about the existence of the conditions precedent to the exercise of powers u/s 47 of the Act. She prayed that the order of externment be quashed.

6. In the counter-affidavit filed by the Addl. DCP (East Distt.) the allegations of the petitioner were refuted and it was stated that she was involved in 16 cases as mentioned in Annexure to the impugned orders and a proposal for her externment was received from the SHO, P.S. Frash Bazar. After having satisfied that sufficient grounds existed proceedings u/s 47 of the Act were initiated against the petitioner. The petitioner appeared on 30.5.1997. She further continued to indulge in the commission of the offence even after initiation of the proceedings on 2.4.1997. Therefore, the then Addl. DCP (East Distt.) passed an order on 23.6.2000 directing her to remove herself from the limits of the NCT of Delhi. It was further stated that the petitioner was so desperate and dangerous that the witnesses were not willing to come forward to depose against her in public due to the apprehension on her part as regard the safety to their person

and property. The petitioner was given sufficient opportunity to defend her through a defense Counsel, but she failed to avail it. Finally the externment order was passed which has been confirmed in appeal by the Lt. Governor of Delhi after due application of mind and consideration of the facts and circumstances of the case.

7. The Addl. DCP in his order dated 23.6.2000 has taken note of 16 cases in which the petitioner was involved out of them 15 cases were u/s 61 of the Punjab Excise Act and one case was for offences under the IPC. After considering the facts and circumstances and the material placed before him and hearing the petitioner, he held that the petitioner was selling liquor for earning her livelihood and her activities was not in larger public interest and it was affecting the health and it was increasing the criminality in the society and was detrimental to the health of the people at large. He was of the view that her presence in Delhi was not in the interest of the community and the accused herself. He accordingly in exercise of the powers vested in the Commissioner of Police by Section 47 of the Act directed the petitioner to remove herself beyond the limits of NCT of Delhi for a period of two years and restricted her entry into Delhi only for the purposes of attending the Court cases as prescribed by the order. The list of 16 cases in which the petitioner was involved was annexed with the order.

8. The appeal was preferred against this order to the Lt. Governor of Delhi u/s 51 of the Act. The Lt. Governor after hearing the petitioner and the department found that the petitioner had long track record of involvement in cases under Excise Act and she had continued to involve herself even after the initiation of the externment proceedings. He was of the view that bootlegging was hazardous to the community as it promotes criminality in the society and threatens the health and safety of the public. The petitioner seemed to be a part of network which had adopted bootlegging as a vocation. He was also satisfied from the proceedings that the witnesses were not coming forward to depose against her. He found sufficient justification and material and evidence to enable the Addl. (East Distt.) to pass the externment order. Accordingly, he dismissed the appeal.

9. Before us the petitioner has not challenged the power of the Commissioner of Police, which has been exercised by the Addl. DCP (East), under the provision of Section 47. What her learned Counsel submitted is that she was not a criminal and that she was implicated in 15 false cases under the Punjab Excise Act, and in one case under the IPC by the police and in all the cases except two she has been honourably acquitted, Therefore, there was no material and evidence before the Addl. DCP (East) to satisfy himself about the existence of the conditions required for passing the impugned order. It was stated that there was no application of mind by the Authorities when the order was passed by the Addl. DCP (East) and when the appeal was dismissed by the Lt. Governor. It was submitted on her behalf that in accordance to Section 50 before the order u/s 47 was passed the Commissioner of Police was required to give notice in writing informing the concerned person of the general nature of the material allegations

against him and to give reasonable opportunity of tendering an Explanation against him and to give reasonable opportunity of tendering an Explanation regarding them. It was urged that in the show cause notice only 5 cases registered against her u/s 61 of the Punjab Excise Act were mentioned. But, the impugned order has been passed by the Addl. DCP (East) as well as by the Lt. Governor taking into consideration as many as 16 cases in which she was roped in by them and they have been taken into consideration even though she was acquitted in as many as 15 cases out of 16. It was also contended that DCP (Headquarters) had issued a Circular in 1997 that the externment proceedings should henceforth be not initiated against the persons who are involved in the cases u/s 61 of the Excise act but this Circular has been totally ignored by both the Authorities though their particular attention was drawn to it.

10. The learned Counsel for the respondent conversely, argued that Circular issued in 1997 has been superseded by an Office Order issued on 28.9.2000. She also provided a copy thereof. She further contended that all the criminal case including under Punjab Excise Act could be taken into consideration, besides other circumstances, for passing order of externment. She stated that husband and other members of the family of the petitioner were engaged in bootlegging and that the number of criminal cases showed that she was a habitual offender with propensities to cause harm to the person and properties and her case was covered by Clause (a) of Section 47 of the Act. She urged that her actions were hazardous to the society and the witnesses were unwilling to come forward to give evidence in public against her. There was no legal infirmity in the impugned order, she argued.

11. Having stated relevant facts and submissions made by the parties at the Bar, we now turn to the law applicable. The order challenged in this appeal was passed u/s 47 of the Act. It is reproduced below:

"Removal of persons about to commit offences--Whenever it appears to the Commissioner of Police,--

(a) that the movement 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 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 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 times 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."

12. The externment order, in terms of this provision may be passed by the Commissioner of Police. It may be passed by him against a person, (1) if his acts and movements accuse or are likely to cause alarm, danger or harm to person or property; (2) if there are reasonable grounds of believing that he is engaged in the commission of offence involving force and violence punishable under the provisions of the IPC specified in Clause (b); if he is so desperate and dangerous that his being at large would be hazardous to the community; he habitually intimidated other persons by act of violence or show of force, he habitually commits affray or breach of peace or riot or habitually makes forcible collection of subscription or threatens the people to extort money, he habitually passes indecent comments and/or teases by overturns women and girls. The action against such persons could be initiated if in the opinion of the Commissioner of Police the witnesses are not willing to come forward to give evidence in public against such person by reasons of apprehension on their part as regard the safety on their person and property. The section gives power to the Commissioner of Police to direct a person to, (1) "conduct himself" as he deem necessary in order to prevent violence and alarm to the society and the property in general; or (2) remove himself outside Delhi or any part thereof and not to enter or return to Delhi or part thereof, as the case may be. The Section 49 puts an embargo on the period for which such an order could be passed by the Commissioner of Police. The maximum period shall not exceed two years from the date on which the order was passed.

13. As a matter of fact there are two more provisions which empower the Commissioner of Police to make orders similar to the order contemplated u/s 47. They are Sections 46 and 48. Order u/s 46 may be passed against a gang or body of persons or by members thereof, leaders or chief men of the gang and the body of person etc. u/s 48 externment order may be made against a person who has been convicted of certain offences enumerated in Clauses (a) to (h) of

this section. Section 50 provides for the hearing to be given before an order u/s 46, 47 and 48 of the Act is passed. Appeal against orders passed under these sections is provided in Section 51.

14. The provisions of Sections 47, 48 and 49 are preventive measure taken in the interest of the public and for safeguarding individuals right. The provisions are meant to prevent a person against whom there is credible evidence to satisfy the Commissioner of Police that he was a criminal and was acting in a way which may be a repetition of his criminal propensities. As a preventive measure the curbs are put on the individual's activities and on his freedom of movement and residence in the large interest of the society and public safety.

15. Section 47 of the Act empowers the Commissioner of Police to pass orders of externment of a person if he has evidence and material before him to satisfy the existence of all the conditions precedent to the passing of the order under this provision. It is subjective satisfaction of the Commissioner of Police. Since the order of externment from the limits of NCT of Delhi or its part affects liberty and fundamental rights of the person the provisions of Sections 46, 47, 48 and 50 are to be read strictly. (see *Prem Chand (Paniwala) Vs. Union of India (UOI) and Others*, . The material which may be considered may include the offences for which the person concerned is booked and is facing trial, has been tried or even he has been acquitted. Some other evidence, material and circumstances may also form the basis of the order of externment if they are credible and make the movements and acts of the person in question alarming or dangerous or fraught with violence. The Commissioner of Police should have sufficient reasons to believe that the person is desperate or dangerous that his presence in Delhi or part thereof is harmful to the person, property and the society and its safety. This Court in several cases has taken a view that the cases registered against a person u/s 61 of the Punjab Excise Act may be a material and evidence for invoking power u/s 47. Some of the cases which may be referred to are the judgments of the Division Bench of this Court in *Ravi Kumar Vs. Deputy Commissioner of Police, West District, Delhi*, *Kaushalya v. State*, 1989 CC Cas 110, and a case decided by a Single Judge in *Surjeet Singh Vs. State* and another, A Division Bench in the case of *Kaushalya v. State* (supra), also took a view that acquittal of the person concerned in some of the case mentioned in the notice would not be enough to hold that those cases could not be taken into consideration in passing an order under this section. We are in respectful agreement with this view. We, Therefore, do not find any merit in the argument of the learned Counsel for the petitioner that out of 16 cases the petitioner had been acquitted in 14 cases and the cases which culminated in acquittal of the petitioner could not be taken into consideration in passing an order u/s 47. So this argument is repelled.

16. Illegal trafficking and sale of liquor is, undoubtedly, a menace to the public interest, tranquillity, peace and safety. Those who indulge in offences covered by Section 61 of Punjab Excise Act by very nature of their activities and associations

cause and their acts is calculated to cause danger and harm to the persons and property. Therefore, their acts and movements will fall within the ambit of Clause (a) of Section 47. This view finds strength from the provisions of Section 48 whereby action for externment could be taken against a person who has been convicted of certain offences specified in the section including the offences u/s 61 of the Punjab Excise Act as in force in Delhi. Such cases, Therefore, cannot be excluded from the material and evidence available against the person against whom the externment order is proposed.

17. It will be perfectly legal and within the power of the Commissioner of Police and the DCP/Addl. DCP who have been delegated the powers of the Commissioner of Police, to take all the facts and circumstances including the case covered by the Punjab Excise Act into consideration. He can pass order of externment if adequate credible evidence and material is before him to satisfy him reasonably that the conditions precedent to the passing of the order of externment are in existence.

18. The learned Counsel for the petitioner has placed strong reliance on a Circular issued by the DCP (Headquarters) on 11.9.1998. The respondent on the other hand had referred to another Circular issued by the DCP (Headquarters) on 28.9.2000 which has modified this order. Both the Circular and the modification order are extracted as under:

CIRCULAR DATED 11.9.1998

"No. 24/98/C&T AC

Henceforth no externment proceeding shall be initiated against person is involved in the case u/s 61-1-14 Ex. Act.

This issue with the approval of C.P., Delhi."

ORDER DATED 28.9.2000.

"In modification of the Hdqrs., Circular No. 26/98/CT&T, AC-V issued vide No. 23161-200/C&T, AC-V, dated 11.9.1998, regarding externment proceedings against the persons involved in the cases u/s 61/1/14 Excise Act, it is specified that externment proceedings be initiated against the persons convicted under the Excise Act as per provision made in Section 48(f) in the Delhi Police Act."

19. Indeed the DCP (Headquarters) issued a Circular that proceedings for externment be not taken against the persons involved in the offences u/s 61 of the Punjab Excise Act. The modification order has, on the other hand, modified the above Circular only to the extent that the proceedings may be initiated against the persons who are convicted under the Excise Act in accordance with the provisions of Section 48(f) of the act. But the circular or the externment order will not take away the statutory power vested in the Commissioner of Police in taking into consideration the cases u/s 61 of the Punjab Excise Act, Along with other facts and material for passing externment order after the other

conditions are also fulfilled. The administrative order will not over-ride the statutory provision. The Commissioner of Police may be ignoring the administrative instructions of its own office but that would not deprive him of exercising the legal powers which are vested in him to decided the question involved under this provision.

20. We are, Therefore, of the considered view that the Circular dated 11.9.1998 does not debar the Commissioner of Police or the officers who have been delegated powers by him for taking action under the provisions of Sections 46, 47 and 48 of the Act on the basis of involvement of the persons concerned u/s 61 of Punjab Excise Act, as it is in force in Delhi.

21. As noticed earlier Section 50 requires the Commissioner of Police to give a notice in writing to the person in question informing him of general nature of material allegations against him and also give reasonable opportunity of tendering an Explanation. The show cause notice issued by the Addl. DCP (East Distt.) dated 2.4.1997, which has already been reproduced in the foregoing paragraphs. The facts, circumstances and the material which the Addl. DCP proposed to take into consideration before the power given by Section 47 was exercised were dully mentioned in it. Needless to state here that the Commissioner of Police has duly delegated power vested in him by Section 47 to the DCPs and Addl. DCPs. No dispute is raised about the competence of the Addl. DCP (East Distt.) to make an order of externment u/s 47 before us. The show cause notice dated 2.4.1997 showed that the Addl. DCP had before him the facts of 5 cases registered against the petitioner u/s 61 of the Punjab Excise Act at the time of issuing notice but he has passed the impugned order dated 23.6.2000, under challenge, taking into consideration in all 16 criminal cases against her. The Lt. Governor who decided the appeal filed by the petitioner u/s 51 of the Act has also taken into consideration 16 criminal cases in which the petitioner was involved. 15 cases out of 16 cases noted by them in their orders were under Punjab Excise Act and the one was for various offences under the IPC. Of them 9 cases were not mentioned in the show cause notice dated 2.4.1997 and which formed the basis of initiation of the proceedings against the petitioner. Section 50 of the Act has mandated the Commissioner of Police to give notice in writing and also inform the person in question of the general nature and the material allegations against him. The acts, movements and criminal cases which were proposed to be taken into consideration before passing orders u/s 47 were required to be mentioned in the notices served on the petitioner against whom the order of externment was proposed. It was necessary to give reasonably opportunity hearing and tendering her Explanation to the show cause notice. It has not been stated before us that after the service of the show cause notice dated 2.4.1997 the Addl. DCP (East Distt.) had given further notice to the petitioner or during the hearing had made it known to the petitioner the other case sin which she was involved whether under the Punjab Excise Act or under the IPC and they were also the material allegations which could be used against her in the proceedings. Admittedly it has not been done in this case. The order of

externment of Addl. DCP (East Distt.) and the order passed in appeal by the Lt. Governor of Delhi, Therefore, are vocative of Section 50 of the Act. The orders are vitiated and cannot be sustained.

22. A Division Bench of this Court in Pyare Lal v. State, Crl.W.No. 145/2000 decided on 21.2.2000 in which one of us (Usha Meha, J.) was a member has taken similar view.

23. No other ground was urged to pressed before use. Consequently, we find merit in the appeal, allow it and quash the order dated 20.9.2000 passed by the Lt. Governor in appeal and the order dated 23.6.2000 passed by the Addl. DCP (East Distt.) u/s 47 of the Act but leave the parties to bear their own costs.

24. Appeal allowed.