

(2014) 01 DEL CK 0412

In the Delhi High Court

Case No : Writ Petition (Criminal) 2099 of 2013

Shakeela

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Delhi Police Act, 1978 — Section 47 47(a) 50
Penal Code, 1860 (IPC) — Section 290 308 323 34 341

Citation : (2014) 3 AD 221

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Vijay Sharma, Mr. Jairaj Mudgal, for the Appellant; Pawan Sharma, St. Counsel (Crl.) and Ms. Priyanka Kapoor and Amit Verma, SI, for the Respondent

Final Decision : Allowed

Judgement

Veena Birbal, J.—By way of this petition, the petitioner has challenged the order dated 30.10.2013 passed by the Lt. Governor of Delhi in Crl. Appeal No. 227/2013 whereby the order dated 7.10.2013 passed by Addl. Commissioner of Police-I, East District, Delhi externing the petitioner for a period of 2 years from the limits of NCT of Delhi has been upheld. The background of the case is as under:-

On 1.4.2010 a notice u/s 50 of the Delhi Police Act, 1978 (hereinafter referred to as "the Act") was sent to the petitioner by the Addl. Deputy Commissioner of Police alleging therein that she was engaged in the commission of crime involving offences punishable under Chapter XVI, XVII and XXII of IPC, NDPS Act, Excise Act and Gambling Act. About 14 cases were mentioned in the aforesaid notice. It was further alleged that her movements and acts were causing alarm, danger and harm to the person or property. It was further mentioned that there were reasonable grounds to believe that petitioner was likely to be engaged in the commission of offence punishable under Chapter XVI, XVII and XXII of IPC,

NDPS Act, Excise Act and Gambling Act. It was alleged that it was dangerous to render her being at Delhi or any part thereof. It was further alleged that the witnesses were not willing to come forward to give evidence in public against her by reasons of apprehension on their part as regards the safety of their person and property. The petitioner was called upon to explain as to why an order of externment out of the limits of the NCT of Delhi for a period of two years in accordance with the provisions of Section 47 of the Act be not passed against her.

2. Petitioner gave reply dated 26.5.2010 to the aforesaid notice wherein she took the stand that most of the cases mentioned in the said notice were same which had already been taken in the earlier externment proceedings against her in the year 2005 and she had already suffered the externment for a period of 2 years. She had alleged that the same cases could not be taken against her by passing fresh order of externment.

3. During the course of proceedings, supplementary notices u/s 50 of the Act were given to her on 4.10.2011, 12.1.2012 and 18.1.2013 respectively. Petitioner replied to the said notices also and stated that false cases were stated therein.

4. In the externment proceedings, Inspector Ravinder Kumar, SHO/Shakarpur was examined. The said witness had deposed that the petitioner may be externed due to her criminal record and involvement in the criminal activities. The said witness was cross-examined by the petitioner. In defence, petitioner also produced one witness i.e., Raja Ram s/o late Ram Singh who had stated that petitioner is a helpless widow lady who is earning her livelihood from a ancestral property and neighbours had no complaint against her.

5. After hearing the arguments, the Addl. Deputy Commissioner of Police-I, East District, Delhi passed the impugned order whereby petitioner was ordered to remove herself from the limits of NCT of Delhi for a period of 2 years within 10 days from the date of said order. The petitioner challenged the same by filing a statutory appeal before the Lieutenant Governor, Govt. of NCT of Delhi which was also dismissed on 15.10.2013. The aforesaid orders have been challenged before this court.

6. Learned counsel for the petitioner has submitted that the basis for externment order is that petitioner is involved in 14 cases and during the externment proceedings it is found that she is involved in two more cases for which another show-cause notice is given and reply has been taken on record. Thus, in all, 16 cases have been taken. Learned counsel has referred to the previous externment proceedings against her wherein petitioner was externed for a period of 2 years. Learned counsel has submitted that most of the cases mentioned in the show-cause notice dated 1.4.2010 are the same which has already been taken into consideration in the earlier externment proceedings wherein petitioner has been externed for 2 years, as such petitioner cannot be punished twice. It is further contended that before the proceedings u/s. 47 of the Act are initiated, it has to

be shown that the petitioner possessed of the character as envisaged u/s 47(a) or (b) or (c) of the Act. It is submitted that the conditions laid down in sub-Section (a), (b) and (c) of Section 47 are necessary and with each one of these conditions the existence of rider clause is also a must and the authority concerned is not entitled to proceed u/s 47 if the conditions of the rider clause is not fulfilled.

7. On the other hand, learned Standing Counsel has submitted that the order is legal and valid and does not call for interference of this court.

8. Section 47 of the DP Act is reproduced as under:-

47. 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 (45 of 1960) 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.

9. It has been observed by this court in *Laxmi Vs. Commissioner of Police and Another*, that power u/s 47 of the Act is an extraordinary power and is meant to tackle an extraordinary situation as such it has to be construed strictly. It is held that mere fact that a particular person satisfies what is indicated in clauses (a), (b) and (c) of section 47 by itself is not sufficient to attract section 47/50 of the Act unless it is further shown that due to aforesaid nature of the person, the witnesses are not forthcoming to depose against him for their own safety and for the safety of their property. The relevant portion of the judgment is reproduced as under:-

5. It has been indicated a number of time by this Court that the power u/s 47 of the Delhi Police Act is an extraordinary power and is meant to tackle an extraordinary situation; a situation in which it is absolutely difficult and even impossible to deal with the desperate character in a normal legal process. It is because of the extra-ordinary nature of this power that it is to be construed strictly. Before the proceedings under Sections 47/50 of the Delhi Police Act are initiated, the Court will always insist about the existence of the necessary conditions for its operation. In my view, the conditions laid down in Sub-sections (a), (b) and (c) of Section 47 are necessary and with each one of these conditions the existence of rider clause is also a must and the authority concerned is not entitled to proceed u/s 47 if the conditions of the rider clause are not fulfilled. Thus, the mere fact that a particular person satisfies what is indicated in clauses (a), (b) and (c) of Section 47 by itself is not sufficient to attract the operation of Sections 47/50 of the Delhi Police Act unless it is further shown that due to the aforesaid nature of the person the witnesses are not forthcoming to depose in public against him for their own safety and for the safety of their property.

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10. Learned Standing Counsel has fairly conceded that some of the cases mentioned in the show cause notice dated 1.9.2010 have already been taken into consideration while passing the earlier externment order dated 29th August, 2007 whereby the petitioner was externed from the limits of Delhi for a period of two years. In the status report dated 27.1.2014, the details of the cases have been given which have also been taken into consideration while passing the impugned order. It is submitted that the said cases have not been taken into consideration in the earlier externment proceedings. However, the fact remains that majority of the cases of earlier externment proceedings have been taken into consideration while passing the impugned order. Further, in the impugned order, it has been also mentioned that the witnesses are unwilling to depose in

public against the petitioner because of the apprehension on their part as regards the safety of their person and property. However, the names of cases and the details of witnesses have not been stated in the impugned order. The finding given in the impugned order about witnesses not coming forward is not based on any material. The order also does not indicate the material on which the said finding is based.

11. Learned standing counsel has referred to aforesaid status report showing the cases which have been taken into consideration while passing impugned order wherein witnesses have turned hostile. The cases pointed out by the Id. Standing Counsel are FIR no. 26/04 dated 14.1.04 u/s. 452/341/323/427/34 IPC P.S. Shakar Pur and FIR no. 209/03 u/s. 308/34 IPC wherein the witnesses have refused to depose against the petitioner. In the status report FIR number given is 209/13 but it is stated that there is typographical error and correct number is FIR no. 209/03.

12. Learned counsel for the petitioner has submitted that aforesaid two cases have already been taken into consideration in the earlier externment order and the petitioner cannot be made to suffer again. Nothing contrary is pointed on behalf of the State. In these circumstances, the aforesaid two cases could not have been taken into consideration while passing the impugned order against the petitioner. Considering the totality of facts and circumstances, it cannot be said that requirements of Section 47 of Delhi Police Act, 1978 have been fulfilled in the present case.

In view of the above discussion, no justification is seen in the impugned order. The petition is allowed. The impugned order along with the order of appellate court are hereby quashed.