
(2005) 02 DEL CK 0163

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 747 of 2004

Shammy

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Citation : (2005) CriLJ 2075 : (2005) 117 DLT 629 : (2005) 80 DRJ 685 : (2005) 4 RCR(Criminal) 222

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Mir Akhtar Hussain, for the Appellant; Mukta Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.C. Jain, J.—Through this petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. the petitioner seeks the quashing of order of his externment dated 29.12.2003 passed by the Additional Deputy Commissioner of Police, West District, New Delhi and that of the Lt. Governor of Delhi, dated 3.3.2004 thereby dismissing the appeal of the petitioner.

2. On receipt of a proposal for externment of the petitioner, a notice was issued to the petitioner u/s 47/50 of the Delhi Police Act, 1978 (hereinafter referred to as the "Act") giving an opportunity to the petitioner as to why an order for his externment be not made on the facts, circumstances and material disclosed in the notice. The petitioner appeared before the Additional Deputy Commission of Police and filed a reply. The competent authority after consideration of the facts, circumstances and the material obtaining on record, made an order dated 29.12.2003 thereby directing the petitioner to remove himself beyond the limits NCT of Delhi for a period of two years on the stipulation that he could return to the limits of the NCT of Delhi for the purpose of attending the hearing of the court cases pending against him. The competent authority concluded that the petitioner's activities were causing alarm, danger and harm to the persons and

property of respectable citizens of Delhi and unless and until he was removed from the said environment and separated from his associates, he will not desist his activities. It was shown before the competent authority that the petitioner was involved in as many as 13 cases, all of those being for violation of the provisions of Punjab Excise Act, 1914. as extended to the Union Territory of Delhi. The cases related to the period from January 1991 to May 2003. In some of the cases the allegation against the petitioner was that the petitioner was found in possession of large quantity of illicit liquor. Yet another factor was that due to the fear of their person and property at the hands of the petitioner, the witnesses were not prepared to depose against the petitioner. The statement of said witnesses is stated to have been recorded in camera.

3. Aggrieved by the said order of externment, the petitioner filed an appeal before the Lt.Governor of Delhi u/s 51 of the Act but without any success. Hence this petition.

4. I have heard Mr. Mir Akhtar Hussain, learned counsel representing the petitioner and Ms. Mukta Gupta, learned standing counsel for the State and have given my thoughtful consideration to their respective submissions.

5. Although the petitioner has set out several grounds in the petition for assailing the impugned order but during the course of hearing, learned counsel for the petitioner has primarily confined his attack to the following grounds:

(a) Nothing was brought on record to suggest that the petitioner is so desperate and dangerous a person as to render his being as much in Delhi or in any part thereof hazardous to the community or that his movements or acts were causing or were calculated to cause alarm, danger or harm to person or property.

(b) The cases in which the appellant was stated to be involved are only in respect of violation of Excise Law which cannot be considered very grave.

(c) Out of 13 cases in which the petitioner was stated to be involved, 9 cases related to the period between 1991 to 1999, Therefore, were remote in time and so irrelevant and there was no involvement of the appellant in any case between 1999 to 2003.

6. In support of his submissions on the first ground that there was nothing on record to suggest that the petitioner is a desperate and dangerous person and consequently no order of externment could have been passed, learned counsel for the petitioner has placed reliance upon a decision of the Supreme Court in the case of Prem Chand (Paniwala) Vs. Union of India (UOI) and Others, . In this case the Hon''ble Supreme Court laid down that Section 47 and 50 of the Act has to be read strictly and any police apprehension is not enough which can be considered sufficient for passing an order of externment and further that 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. It also laid down that a stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedoms.

7. Learned standing counsel for the State has not disputed the above legal proposition but has vehemently urged that the subjective satisfaction reached by the competent authority on the above aspect is final and cannot be assailed before this Court keeping in view of the provisions of Section 52 of the Act except on the ground that it was based on no material before the competent authority to justify such a conclusion or the material did not show that the witnesses were unwilling to come forward to give evidence against the petitioner. In support of her contention, she has referred to the decision of this Court in the case of Dheeraj Vs. State (NCT of Delhi) 2001 (2) JCC 306. In the said case a division bench of this Court referring to the observations made in the case of Smt. Shailender Kaur Vs. Lt.Governor & Ors. CrI.W.No.1041/2000 decided on 27th April, 2001 held that even where a person is involved in excise cases by very nature of their activities is calculated to cause danger to society. The Court observed that it would be perfectly legal and within the power of the competent authority to take all the facts and circumstances including the cases covered by the Punjab Excise Act into consideration and to pass order of externment if adequate credible evidence and material is produced before him to satisfy him reasonably that the conditions precedent to the passing of the order of externment are in existence. On a consideration of the above authorities, it can be said that in cases relating to violation of excise law can as well afford a basis for initiating proceedings for externment but this alone is not sufficient and this type of involvement itself cannot be considered sufficient for invoking the provisions of Section 47 and 50 of the Act. More importantly the material must be brought before the competent authority to establish the existence of one or more of the grounds appearing in clauses (a), (b) and (c) of Section 47 of the Act. In the case in hand no material was brought on record which could lead a competent authority to believe that movement of the petitioner were causing or were calculated to cause alarm, danger or harm to person or property or that he was engaged in the Commission of offence involving violence or that the petitioner was so desperate, dangerous as to his being at large in Delhi or in any part of Delhi was hazardous to community. In the case in hand it is alleged that the statement of some witnesses have been recorded in camera who are not willing to come forward to given evidence in public against the petitioner by reason of fear for their safety of person and property but no material was brought on record to show that any public witness(s) had in fact turned hostile in the Court on account of fear generated by the petitioner. No incident of intimidating any witness has been reported to the police. Therefore taking into account the totality of the facts and circumstances of the case and in absence of any cogent material having been brought on record, this Court has no hesitation

in coming to the conclusion that there was no material before the competent authority upon which it could record its satisfaction about the respondents activities being such as to cause alarm, harm and danger to the person and property of the respectable citizens of the city. Consequently this Court is of the opinion that the impugned order of externment cannot be upheld. The order is thus liable to be set aside on this ground alone.

8. Yet another ground on which the order should be set aside is that the competent authority has relied upon some cases of excise violation relating to the period as far back as 1991 to 1998 which having regard to the date of the order were remote and cannot be said to have a direct nexus or relevance for affording the grounds for invoking the provisions. Admittedly the petitioner was not involved in any any criminal offence between 1999 and 2003. So what was left out before the competent authority were only four cases registered against the petitioner in the year 2003. Thus out of the 13 cases relied upon by the competent authority only 4 cases could be said relevant and taking into account the entirety of the facts and circumstances and nature of these cases they could not afford a firm basis for initiating proceedings u/s 47 and 50 of the Act and making an order for externment of the petitioner and that too for the duration of two years. In support of her contention that the remoteness of the earlier cases is not a ground for upsetting the externment order, Ms. Mukta Gupta learned standing counsel for the State has sought support from the decision of this Court in the case of Mohd. Afzal Vs. The State and Others, . The question of remoteness of the earlier cases arose in that case on an altogether different set of facts inasmuch as the proceedings of externment which were commenced in 1994 could not be taken to a logical conclusion and were revived in 2002 with supplementary notices. The said decision does not cover the facts of the present case.

9. Having regard to the totality of the facts and circumstances and the material brought on record, this Court is of the opinion that the present petition deserves to be allowed and the externment order dated 29.12.2003 and that passed in appeal are liable to be quashed. Ordered accordingly.