

**(2002) 04 DEL CK 0114**

**In the Delhi High Court**

**Case No :** Criminal Writ Petition No. 1094 of 2001

Shri Bhim Singh

APPELLANT

Vs

Lt. Governor of Delhi and Another

RESPONDENT

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**Date of Decision :** 09-04-2002

**Acts Referred:**

**Citation :** (2002) 4 AD 960 : (2002) CriLJ 4748 : (2002) 98 DLT 216 : (2002) 63 DRJ 421

**Hon'ble Judges :** Vinod Sagar Aggarwal, J;B.A. Khan, J

**Bench :** Division Bench

**Advocate :** Sandeep Sethi, for the Appellant; Mukta Gupta, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Khan, J.—Petitioner was externed from Delhi for six months by order dated 20.8.2001 passed by DCP (NW). He took appeal against this before Lt. Governor which was dismissed by order dated 12.9.2001. He has now filed this petition challenging the two orders.

2. Petitioner's case, in short, is that he was a person of substance, an Income Tax payee and an agriculturist and that he was falsely implicated in nine cases out of which he had earned acquittal in seven and, Therefore, there was no basis or justification for removing him from the limits of Delhi. His counsel Mr. Sandeep Sethi attacked the order on the ground that Commissioner had failed to reflect the opinion in it that no witness was willing to come forward to depose against the externee. Nor was there anything to show that witnesses were unwilling to come forward to depose against petitioner for fear of safety of their person or property. The camera witnesses examined had nowhere stated so but had only said that petitioner was a person of desperate character. He also pointed out that commissioner had failed to explore and weigh different options provided in Section 47 to deal with proposed externee and his order thus suffered from arbitrariness and non-application of mind. He cited Supreme Court judgments in Prem Chand (Paniwala) Vs. Union of India (UOI) and Others, and a judgment of

this court in *Swaran Lal alias Swarana Pandit Vs. State and Another*, and *Mukhtiaruddin Vs. Lt. Governor of Delhi and Another*, to show that the order of externment would not sustain if it failed to satisfy the requirements of Section 47 of DPA.

3. State counsel Ms. Mukta Gupta, however, justified the order on the ground that DCP had it passed on the basis of available material and inconformity with requirements of Section 47. Any acquittal earned by petitioner before or after his externment was of no consequence. She submitted that once camera witnesses had deposed that petitioner was a criminal of desperate nature, it was implied that they were not willing to come forward to depose against him.

4. Needless to emphasise that an order of externment was loaded with serious consequences for an externnee and had grave implications. It had the effect of uprooting a person from his abode and depriving him of his livelihood besides restricting his freedom of movement. The order was, Therefore, required to be passed on due consideration and application of mind and in strict conformity with the relevant provisions of DPA. It would be vitiated if it failed to satisfy the statutory requirement or when it was found to have been passed arbitrarily or cursorily reflecting non-application of mind by the Authority.

5. It is true that police force had an onerous task of not only maintaining law and order but also to prevent commission of offences by persons having previous criminal record and criminal propensity. But that would nor afford a long rope for passing of externment orders infringing constitutional right and guarantee of life and liberty in the process. it, Therefore, become necessary to make sure that such order was passed fairly and justly on the basis of material and not mere apprehension and that it satisfied all relevant statutory requirements. Though it was to be passed on subjective satisfaction of the commissioner and though the sufficiency or otherwise of the material considered by the Authority in passing this could not be examined or appraised or appreciated even if a contrary view was possible on such material, yet the order was not beyond the pale of judicial review because it was obligatory on the commissioner to show that it was passed in tune with the statutory requirements. This is how the Supreme Court viewed the issue in *Prem Chand v. Union* holding:-

"The courts are conscious of the difficulties of detention 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 the police. Therefore, Sections 47 and 50 have to be read strictly. Any police apprehension is not enough. Some ground or 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 Delhi or any part thereof is hazardous to the community and its safety."

6. Section 47 of DPA confers an extraordinary power on the police commissioner to meet an extraordinary situation. He is empowered to remove a person from the limits of Delhi when movements of such person were (a) causing or were calculated to cause danger, alarm or harm to the person or property; or (b) where he had reasonable ground to believe that the person was engaging himself or was to engage himself in commission of offences involving force or violence or offences punishable under Chapter XII, XVI, XVII, XXII of IPC; or (c) if such person was so desperate and dangerous as to render his being at large hazardous to the community; or (d) was habitually intimidating to other person by acts of violence or by show of force; or (e) was habitually committing affray, alarm of breach of peace of riot, or was threatening people for illegal gains for himself and others; or (f) was passing indecent remarks against women and girls and in the opinion of the Commissioner, witnesses were not willing to come forward to give evidence in public against such person for fear of safety of their person or property.

7. The police commissioner was, Therefore, to exercise the power to extern a person on anyone of the grounds contained in the section and upon formation of an opinion that witnesses were not willing to come forward to give evidence in public against such person apprehending danger to their person and property. In other words, the commissioner could pass the order on one of these grounds provided in Section 47(a), (b), (c)(i) to (iv) accompanied with formation of opinion that witnesses were not willing to come forward to depose against such person for fear of safety of their person and property. Where the order was not based on any one of these grounds or/and did not reflect the requisite opinion regarding unwillingness of the witnesses to come forward to depose against the proposed externee, it would naturally not sustain.

8. It is also noteworthy that Section 47 provides various options to deal with the removal of persons. These include requiring a person to conduct himself in a manner as was deemed necessary to prevent violence and alarm or to remove himself outside Delhi or any part thereof. A person's removal from outside Delhi was not the only way out and a fair accompli. Short of this, he could also be asked to conduct himself in a way or manner so as to prevent him in indulging in the objectionable activity or he could also be asked to remove himself from some part of Delhi only in the facts and circumstances of the case.

9. The police commissioner had to weigh and explore these options and then to pass appropriate orders which could also include asking a person to conduct himself in a particular manner or to remove himself from a particular area. Looking at the grave implications involved in an order of externment and to prevent any abuse of the extraordinary power conferred on the commissioner by Section 47, it was incumbent on him to reflect the weighing of these options in the order and where he decided to resort to extreme option of externment outside Delhi to give some reason for discarding the other two options. Or else his order would be vulnerable to a charge of arbitrariness and non-application or

mind.

10. Tested thus, impugned externment order in the present case surely falls short of requirement on various counts. It has been passed on the ground that petitioner was a criminal of a desperate nature and that his presence was hazardous to the society which is covered by Section 47(c)(i). But it is not supported by the additional requirement viz - formation of opinion that witnesses were not willing to come forward to depose against the petitioner for fear of safety of their person and property. The order only refers to the statement of camera witnesses purported to have been examined by the commissioner and only deposing that petitioner was a criminal of desperate nature and that his presence in the area was hazardous to persons and property of the area. It nowhere indicates that these witnesses had at any point stated that they were not willing to come forward to depose against petitioner apprehending any danger from him to their person or property. Nor was there any other material to reflect formation of any such opinion by commissioner resulting, thus, in non-compliance of statutory requirement. The order also does not provide any clue that the commissioner had explored various options provided in Section 47 to deal with the petitioner. Nor does it contain any reason why he had taken recourse to the extreme option of externing him from the limits of Delhi.

11. We accordingly hold that both, impugned externment order as also the order passed by the appellate authority are vitiated for non-fulfillment of essential statutory requirements of Section 47. These orders, Therefore, can't survive and are quashed and this petition allowed.