

(1987) 03 DEL CK 0022

In the Delhi High Court

Case No : Criminal Writ Appeal No. 96 of 1984

Sumer Chand

APPELLANT

Vs

Maxwell Pereira and Another

RESPONDENT

Date of Decision : 12-03-1987

Acts Referred:

Citation : (1987) 2 Crimes 89 : (1987) 32 DLT 140

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : S.T. Singh, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) The petitioner has filed this writ petition under Article 226 of the Constitution challenging the order dated 19th July 1984 passed by respondent No. I u/s 47 of Delhi Police Act directing that the petitioner be externed from the limits of North District of the Union Territory of Delhi for a period of two years within seven days from the date of the order and not to enter the said limits within two years excepting with the prior permissions.

(2) The challenge to the externment order has been thrown on various grounds. In short, it is stated that the order is arbitrary and has been made without any basis. The affidavit submitted by the Sho Sabzi Mandi on the basis of knowledge derived from official record states that the petitioner was involved in a number of cases and is a desperate character of the area and his movements are causing harm, alarm and danger to the residents of the locality and the area. It is further stated that the witnesses including the camera witnesses are not willing to come forward to depose against him in public for fear of their safety. It is further stated that there were and are eight cases of serious nature which have either been compromised due to pressure and defiance of law by the petitioner or have been dismissed for want of witnesses not coming forward due to the terror created by the petitioner.

(3) This petition had been assigned to Mr. R.P. Lao. He was in his office when he was sent for but he did not turn up. Under these circumstances I sent for Mr. Sodhi Teja Singh. Mr. Sodhi Teja Singh in the absence of the petitioner's counsel has very fairly taken me through the record. The notice under sections 47/50 of Delhi Police Act shows that from 1977 to 1981, eight cases were registered against the petitioner, four of them being under Arms Act and one under the Gambling Act. Three cases were under sections 325/34, 324/34, and 448/380 IPC. The contents of the notice show that the petitioner was asked to show cause as to why action u/s 47 of Delhi Police Act be not taken against him in view of the fact that since July 1977 within the jurisdiction of police station Sabzi Mandi and the ad-joining areas his movements and acts are causing alarm and danger to the residents of the aforesaid locality. He was also informed by the notice about his involvement in the aforesaid eight cases and was told that the witnesses including camera witnesses are not forthcoming in the above mentioned cases and are not willing to tender evidence for fear of their own safety.

(4) For initiating proceedings u/s 47 of Delhi Police Act the pre-condition is the satisfaction of the Commissioner of Police that the movements or acts of any person are causing or are calculated to cause alarm danger or harm to person or property or that there are reasonable grounds turn believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or that such person is so desperate and dangerous as to render his being at large hazardous to the community that he has been found habitually intimidating other persons by acts of violence. The Commissioner also has to be satisfied about the fact that due to his aforesaid disposition the witnesses are not willing to give evidence in public against such person by reason of apprehension as regards the safety of their person or property.

(5) When the law says that a particular authority must be satisfied it is object to judicial review. The satisfaction of the authority should be reasonably arrived at and it should be based on some cogent material. All that the notice says is that this satisfaction has been arrived at simply on the recitation of the nature of eight cases without taking into consideration the circumstances under which some of them came to be compromised and others were dismissed This does not meet the requirement of law. The notice is vague and does not indicate ^ to which of the witnesses have not come forward to give evidence for fear of their safety. After all the purpose of giving notice is To enable the petitioner to meet the case against him. The petitioner does not know what is passing through the mind of the Commissioner. He ought to be specifically told about the case which he has to meet. It may be that the first requirement of section 47 is satisfied but unless the second requirement that the witnesses are not forthcoming to testify against him for fear of their safety is met the proceedings would stand vitiated. As I have said earlier, notice u/s 47 of Delhi Police Act in the present case is vague on this point It is in effect a recitation of the provision of section 47 of Delhi Police Act. Moreover in arriving at satisfaction whether the petitioner is of

dangerous and desperate character, the authority cannot ignore the findings of the court and the grounds on the basis of which acquittals are recorded.

(6) The provisions of sections 47/50 of Delhi Police Act are to be strictly construed. The mere apprehension on the part of the police is not the requirement of the provision. There must be a clear and impending danger based on some cogent material that the movements and acts of the person in question are causing harm or alarm fraught with grave consequences. There must further be sufficient reason to believe that the person is so desperate and dangerous that his mere presence in the locality is damaging to the interest of the community at large. The proceedings cannot be initiated on vague allegations as the Act permits externment only in bonafide cases. The power granted by the Act has to be exercised with certain amount of fairness as it is subject to judicial review.

(7) In view of the fact that even the show-cause notice does not make it a case turn externment and in view of the fact that it is based on vague allegations conveying no specific allegations, it is obvious that the petitioner has been deprived of making defense properly. The averment of the respondents that due to the pressure of the petitioner some cases have been compromised is an exaggeration and out-come of the imagination of the concerned authority. It appears that the fault of the petitioner is that some of the cases were compromised. Regarding the fact that the witnesses are not forthcoming in other cases, I have already made my observation.

(8) With these remarks I find that the impugned order directing the externment of the petitioner has been passed without any justification. The writ petition is allowed and the impugned order is quashed.