

(2010) 03 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9573 of 2009

Sunil alias Sannu

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 — Section 6, 8(1)
Penal Code, 1860 (IPC) — Section 506, 509
Public Gambling Act, 1867 — Section 3, 4, 4A

Citation : (2011) 2 MPHT 62

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Singh, J.—By this petition, under Article 226 of the Constitution, the Petitioner has prayed for quashing of order 30-3-2009, Annexure P-2, passed against him for externment by the District Magistrate, Raisen (Respondent No. 3) and the appellate order dated 20-8-2009, Annexure P-1, the Commissioner, Bhopal Division (Respondent No. 2) rejecting his appeal.

2. Briefly stated the facts giving rise to this petition are that on 27-6-2008 the Superintendent of Police, Raisen, submitted a report to the District Magistrate about the gaming activities, committed by the Petitioner from 2004, with a request that an externment order be passed against him in exercise of powers u/s 6(c) of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (in short, "the Adhiniyam, 1990"). The State then also examined Station Officer Kotwali G.L. Ariwal, Assistant Sub-Inspector Kotwali Ram Singh Thakur and Govind Singh Raghuvanshi in support of its case. All these witnesses stated that Petitioner was involved in gaming activities and despite his repeated conviction u/s 4-A of the Public Gambling Act, 1867 (in short, "the Act") he is continuing to engage himself in gaming activities. Being prima facie satisfied with the allegations of gaming activities made against the Petitioner, the District Magistrate served a

show-cause notice dated 21-11-2008 on him as required u/s 8(1) of the Adhiniyam, 1990. The Petitioner submitted his reply dated 5-1-2009 to the show-cause notice and denied the allegation of involvement in gaming activities. He, however, did not examine any witness in support of his defence and also did not make a request to cross-examine the witnesses examined by the State. The District Magistrate, on coming to a conclusion that Chief Judicial Magistrate, Raisen, has convicted the Petitioner in five different cases u/s 4-A of the Act and despite conviction Petitioner is continuing to engage himself in gaming activities, directed his externment for a period of one year from District Raisen and contiguous districts such as Bhopal, Vidisha, Sagar, Sehore, Hoshangabad and Narsinghpur. The order of externment was passed u/s 6(c) of the Adhiniyam, 1990. Aggrieved, the Petitioner preferred an appeal before the Commissioner but it was dismissed vide order dated 20-8-2009.

3. The learned Counsel for the Petitioner has argued that there was no material before the District Magistrate for passing the order of externment u/s 6(c) of the Adhiniyam, 1990 and the District Magistrate committed an illegality in relying upon conviction of cases u/s 4-A of the Act against the Petitioner which were registered prior to 2006 because Section 4-A was included in Section 6 (c) of the Adhiniyam, 1990 with effect from 5-9-2006.

4. The relevant extract of Section 6 of the Adhiniyam, 1990, reads as under:

6. Removal of persons convicted of certain offences.- If a person has been convicted:

(a) of an offence,:

(i) under Chapter XII, XVI or XVII or u/s 506 or 509 of the Indian Penal Code, 1860 (45 of 1860); or

(ii) under the Protection of Civil Rights Act, 1955 (22 of 1955); or

(b) twice, of an offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956); or

(c) thrice, of an offence within a period of three years u/s 3 or 4 or 4-A of the Public Gambling Act, 1867 (3 of 1867), in its application to the State of Madhya Pradesh;

the District Magistrate may, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted direct such person by an order to remove himself outside the district or part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route and within such time as the District Magistrate may order and not to enter or return to the District or part thereof or such area and such contiguous district or part thereof, as the case may be, from which he was directed to remove himself.

5. From the perusal of the above quoted section, particularly Section 6 (c), it

becomes clear that if a person has been convicted thrice of an offence within a period of three years u/s 3 or 4 or 4-A of the Act in its application to the State of Madhya Pradesh, the District Magistrate, if he has reason to believe that such person is likely to engage himself in the commission of an offence similar to that for which he has been convicted, direct such person by an order to remove himself outside the district and such continuous districts as the District Magistrate may order. Section 6 of the Adhiniyam, 1990 was amended because the State felt that the Principal Act did not contain sufficient provision to initiate effective preventive steps against Worli Matka (Satta) or other form of gaming operators, which creates hardship in the maintenance of public order, and inserted Section 4-A of the Act in its application to the State of Madhya Pradesh with effect from 5-9-2006 by the Madhya Pradesh Rajya Suraksha (Sanshodhan) Adhiniyam, 2006.

6. The record reveals that Chief Judicial Magistrate, Raisen, convicted the Petitioner in five different cases u/s 4-A of the Act between 2004 and 2008 and out of these cases, three were of 2004. According to Petitioner, if the District Magistrate had not taken into account the conviction of three cases, which were prior to 2006, he could not have passed the externment order u/s 6(c) of the Adhiniyam, 1990 on the basis of merely two cases of conviction u/s 4-A of the Act. The question, therefore, which calls for consideration is whether the District Magistrate committed any illegality in considering the conviction of Petitioner in respect of cases prior to 2006 while passing the order of externment.

7. The rule of construction in such cases is well narrated in the Principles of Statutory Interpretation by G.P. Singh, 12th Edition, 2010, Page 551 which reads as follows:

No man has such a vested right in his past crimes and their consequences as would entitle him to insist that in no future legislation shall an regard whatever be had to his previous history. It was, therefore, held that if a statute increased penalty on second conviction of an offence, a conviction before commencement of the statute could be taken into account [See : R. v. Austin (1913) 1 KB 551, p. 556]. Similarly, if the object of a statute is not to inflict punishment but to protect the public from the activities of undesirable persons who bear the stigma of a conviction or misconduct on their character, the conviction or misconduct of such a person before the operation of the statute may be relied upon [See : Queen v. Vine (1875) 10 QB 195].

8. In The State of Maharashtra Vs. Vishnu Ramchandra, , which is a direct authority on the point, the question was whether a person convicted in 1949 of theft could be directed to remove himself outside a specified area u/s 57 of the Bombay Police Act, 1951, which authorised removal of a person who "has been convicted" of certain offences including theft. The contention raised was that the conviction being prior to the Act, no removal could be founded on such a conviction. In overruling the High Court, where the above contention had found favour, Hidayatullah, J. for the Supreme Court stated : "Section 57 of the

Bombay Police Act, 1951, does not create a new offence nor makes punishable that which was not an offence. It is designed to protect the public from the activities of undesirable persons who have been convicted of offences of a particular kind. The section only enables the authorities to take note of their convictions and to put them outside the area of their activities, so that the public may be protected against a repetition of such activities. An offender who has been punished may be restrained in his acts and conduct by some Legislation, which takes note of his antecedents; but so long as the action taken against him is after the Act comes into force, the statute cannot be said to be applied retrospectively".

9. Recently, similar view has also been taken by Sanjay Yadav, J., in *Bhola v. State of M.P.* 2008 (4) MPLJ.

10. The Petitioner has admittedly been convicted thrice u/s 4-A of the Act in the year 2004 and despite that he continued his gaming operation and was again convicted twice of the same offence in 2007 and 2008. In view of the settled legal position on the point discussed above, I have no hesitation in holding that the District Magistrate did not commit any illegality in considering the conviction of Petitioner in respect of cases prior to 2006 while passing the externment order against him.

11. The learned Counsel for Petitioner also argued that Petitioner was not given proper opportunity of hearing before the impugned order was passed and, therefore, the entire proceedings resulting into his externment deserves to be quashed. I am not impressed with this submission. The show-cause notice was admittedly served on the Petitioner as required u/s 8(1) of the Adhiniyam, 1990. The Petitioner submitted his reply to the show-cause notice and, except for denying the allegation of his involvement in gaming activities, he did not examine any witness and also did not make a request to cross-examine the witnesses examined by the State. It is also not the case of Petitioner that record of the externment proceedings was not made available to him for examining the same. Thus, it cannot be held that proper opportunity of hearing was not given to the Petitioner.

12. For these reasons, I find no merit in the petition. The petition fails and is dismissed.