

(1982) 08 GUJ CK 0028
In the Gujarat High Court

Suresh Chhaganlal Luhana

APPELLANT

Vs

D.K. Dhagal and Another

RESPONDENT

Date of Decision : 02-08-1982

Acts Referred:

Bombay Police Act, 1951 — Section 57(c), 57(c)

Citation : (1982) GLH 1061 : (1982) 2 GLR 535

Hon'ble Judges : M.P. Thakkar, C.J;R.J. Shah, J

Bench : Division Bench

Judgement

M.P. Thakkar, C.J.—The point raised in this petition challenging the order of externment as per Annexure "A" dated March 19, 1982 passed against the petitioner is concluded in his favour by a decision of this High Court rendered more than ten years back in Dana Nathu v. Sub-Divisional Magistrate 14 G.L.R. 209. It is surprising that the Deputy Commissioner of Police should be unaware of the decision rendered by this High Court in a matter arising out of an order passed by the Sub-Divisional Magistrate, Rajkot, ten years back and he should commit the same mistake in 1982 which the Sub-Divisional Magistrate committed in 1972. That there should be total lack of any method to avoid such an intolerable situation is sufficient to cause dismay to anyone. Can the competent authority not evolve any system to ensure that no technical faults are committed? To at least ensure in any event that faults already discovered are not recommitted The information-gap and the system-void can defeat measures bona fide taken in public interest. Is it desirable that the authority concerned should sit with folded hands, blind folded eyes and ears plugged with comforting cotton wool? The position is intolerable and causes dismay. We can only say: it is for the department concerned to do something about it if they are serious about it. The impugned order was passed on the ground that the petitioner had been convicted thrice of an offence punishable under the Bombay Prohibition Act, 1949 within a period of three years as envisaged by Section 57(c) of the Bombay Police Act, 1951. A similar order passed by the Sub-Divisional Magistrate, Rajkot, in Dana Nathu's Case was struck down on the ground that the exerting authority

had failed to consider the extent of the harmful activity of the petitioner and whether it had reached such a degree or extent that in the interest of general public the petitioner was required to be removed from that locality by putting him out of the harm's way so that the community in the locality could remain in peace and tranquility and safety. The externing authority who has passed the impugned order has committed the identical error of not having considered this dimension of the matter. The impugned order does not show that this aspect was present before the mental eye of the externing authority. He should have applied his mind to this aspect and recorded a finding in this behalf. It is inconceivable how he could commit the same error if he was vigilant. Atleast he ought to have known the decisions rendered by this High Court u/s 57(c) in the past. What is understandable is that he should not even know of an order passed in a matter arising from Rajkot Division itself in similar circumstances. We have had an occasion to advert to the aspect regarding the necessity for constituting an appropriate legal cell to give guidance in orders passed under the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act in the case of Chandravati Fakirchand v. State 23 (1) G.L.R. 760, wherein it was observed as under:

The Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act has been chiseled in order to extend protection to the society from being starved of essential commodities and from being exploited by unscrupulous elements who feel no compunction in indulging in mal-practices, unmindful of resultant miseries to the common man. In order to ensure that the provisions serve their purpose in practice, a high-powered Cell consisting of members who have made a does, concentrated and in-depth study of all the decisions rendered by the Supreme Court and notifications in regard to preventive detention, must be created. The presiding officer of the Cell must be aware of the latest decisions and must be able to brief the detaining authorities in regard to the law on the subject and the procedural safeguards insisted upon by the Courts. The Cell must prepare a note incorporating the propositions which emerge from the decisions and enumerate the "dos" and "don'ts". It may also contain clear instructions in simple language indicating the procedural precautions required to be taken and update the same say every month. The note must also contain the enumeration of the leading cases and set out the ratio of each of the decisions which must be carefully culled out and crystallized. Such a note must be got approved from the highest law officers and must be updated periodically in consultation with them. Only then those officers who have an occasion to exercise the powers would come to know what the law enjoins them to do or not to do and how to avoid technical pitfalls.

2. The same observations apply to prophylactic measures like the present one. Any competent person can prepare within a couple of days a list of "dos" and "don'ts" for the guidance of the authorities who exercise the powers of externment and detention. And all that he has to do is to go through the various judgments and cull out the propositions from these judgments identifying the

errors ordinarily committed and focus the attention of the authorities to such errors to avoid pitfalls. If the State Government is not prepared to do this, the State Government should avoid recourse to such measures in such matters.

3. The petition is, therefore, allowed. The impugned order dated 19th March 1982 at Annexure "A" is quashed. Rule is made absolute.