
(1987) 03 DEL CK 0029

In the Delhi High Court

Case No : Criminal Writ Appeal No. 178 of 1986

Surinder Pal Singh

APPELLANT

Vs

Lt. Governor of Delhi and Another

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Citation : (1987) 2 Crimes 39 : (1987) 32 DLT 84

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : M.R. Chawla and S.T. Singh, for the Appellant;

Judgement

M.K. Chawla, J.

(1) On 31-8-84, Shri S.K. Singh, the then Deputy Commissioner of Police, North District, Delhi served a

(A)that you are found to have been involved in a case involving offence of robbery and criminal conspiracy;

(B)that there are reasonable grounds for believing that you are engaged in the commission of offences punishable under Chapter V(A) and XXVII of Indian Penal Code

(C)that your movements and acts are causing or are calculated to cause alarm, danger and harm to the persons and property:

(d) that the witnesses are not coming forward to depose against you in public due to fear of their person and property.

(2) Feeling aggrieved of the order of externment, the petitioner filed an appeal before the Lt. Governor of Delhi. His appeal was rejected by order dated 31-3-86. It is against this order, the petitioner has preferred to file the writ petition praying for the quashing of the order dated 27-1-86 dashed by Shri S.K. Singh. the then Deputy Commissioner of police externing him from the Union

Territory of Delhi u/s 47 of the Delhi Police Act and upheld by the learned Lt. Governor by order dated 31-3-86.

(3) The main contention of the learned counsel for the petitioner is that the Deputy Commissioner of Police has altogether ignored the "explanation" appended to Section 47 of the Delhi Police Act which lays down that a person who during a period within one year immediately preceding the commencement of an action under this section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this section shall be deemed to have been habitually committed that act. According to the learned counsel, the petitioner was involved only in one case in Fir No.135of1984 u/s 392/34/12-B.IPC Police Station, Narella, Delhi and, Therefore, the requirements of the Section were not fulfilled and the order of externment could not have been passed. None of the other conditions mentioned in the show cause notice are applicable to the present petitioner and the impugned order in these circumstances are liable to be quashed .Sodhi Teja Singh, learned counsel for the State tried to support the impugned orders by taking the plea that the case of the petitioner is not covered under Clause-C of Section 47 and as such the Explanation is not attracted. His further submission is that the impugned orders were passed after due application of mind by the concerned authorities and their subjective satisfaction cannot be challenged in these proceedings.

(4) It is not disputed that the petitioner is one of the Directors of the Company known and styled as M/s. Surindra Malleables Pvt. Ltd. with its registered office at Faridabad, State of Haryana. This firm is engaged in the manufacture and sale of metals of all kinds. The petitioner also owns a house bearing No. 382, Sector-15, Faridabad. No doubt, he was involved in a case u/s 392/34/120-B, Indian Penal Code as far back as 7-6-84 of Police Station, Narela but immediately, after his arrest he was granted bail by the Sessions Judge, Delhi. The proceedings in the case have not yet started even though more than 2[^] years have elapsed. He has neither been discharged nor any charge-sheet has been filed.

(5) Although at this stage, it is not desirable to express any opinion on the merits/demerits of the only case pending against the petitioner, but the mere delay in not filing the charge-sheet goes to show that there is some doubt in the mind of the prosecuting agency about the complicity of the accused. That may be so but the fact remains that there is no other case registered or contemplated against the petitioner. Under these circumstances can the grounds mentioned in the show cause notice, be said to have existed justifying the order of externment. The simple answer to this query can be in the negative. The authorities below have not given or mentioned any grounds for believing that the present petitioner is engaged in the commission of offences punishable under Chapter V-A and Xxvii of the Indian Penal Code . except the only case in which even the charge-sheet has not been filed. The impugned orders also does not show that the movements of the present petitioner are causing any danger or

harm to any person and his property.

(6) In the counter-affidavit, the respondents have mentioned the involvement of the present petitioner in as many as five cases of Police Station Shah Ganj, Agra (U.P.). Out of the five, only two are of the year 1975, one under the Arms Act and the other under the Excise Act. The remaining three cases are of the year prior to 1971. Surprisingly, none of these cases were shown pending against the petitioner either in the show cause notice or in the order of detention. It appears that the pendency of these cases did not influence the mind of the authorities below in passing the impugned order. Under these circumstances, these cases cannot be taken note of at this stage.

(7) The petitioner has also controverted the averments of the order inasmuch as he agreed not to contest the notice and to abide by the order of externment. According to him, he was neither served with the show cause notice nor any opportunity was afforded to him to file the reply. Even if the petitioner is alleged to have made such a concession, it was the duty of the authorities below to come to an independent conclusion about the involvement of the petitioner as the consequences of externment are punitive in nature.

(8) Further more, the impugned order does not indicate if it was passed u/s 47-A, (B) or (C) of the Act. In any case, an order under this provision can be passed if the externing authority is of the opinion that the witnesses are not willing to come forward to give evidence in public against such person by reason of the safety of their person and property. This requirement has not been satisfied inasmuch as there is no case pending against the petitioner in which the witnesses are required to depose against him. Prima facie it appears that the externing authority drew up the order of externment keeping before him the provisions of Section 47 of the Delhi Police Act without there being any worthwhile evidence in support of the allegations. This by itself is a circumstance justifying the setting aside of the impugned orders.

(9) I am not inclined to agree with the submission of the learned counsel for the petitioner that the externing authority altogether ignored the Explanation appended to Section 47 of the Delhi Police Act inasmuch as the petitioner should have committed or have been involved in not less than three cases during a period of one year, immediately preceding the commencement of this action under this provision. The Explanation applies to the cases, if any, under clause (c) of Section 47 which is not the case before this court. This Explanation restricts the case of an accused who is habitually involved in the offences enumerated in clause (c) and will not cover the case of an accused against whom specific grounds as mentioned in clauses (a) and (b) are found to exist.

(10) The provisions of Section 47 of the Delhi Police Act no doubt make a serious inroad the personal liberty of an individual and for that purpose the courts have to take care and ensure that the provisions of this Section are strictly complied with before an order of externment is passed. This caution appears to have not

been applied to the case of the present petitioner.

(11) In the result, I accept the petition and quash the order of externment dated 27-1-86 passed by then Deputy Commissioner of Police as upheld in appeal by the Lt. Governor of Delhi, dated 31-3-86.