

(1998) 03 DEL CK 0047

In the Delhi High Court

Case No : Criminal Writ No"s. 583 and 641 of 1997

Surjeet Singh

APPELLANT

Vs

State and another

RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Police Act, 1978 — Section 47, 48

Citation : (1998) 2 AD 906 : (1998) CriLJ 2473 : (1998) 72 DLT 389 : (1998) 45 DRJ 198 : (1998) 1 ILR Delhi 417 : (1998) 3 RCR(Criminal) 383

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : Sodhi Teja Singh, for the Appellant; Mr. S.K.Aggarwal, for the Respondent

Judgement

Mohd. Shamim, J.—These are two connected petitions, being Crl. Writ Petition No. 583/97 (Surjeet Singh Vs. State and another) and Crl. Writ Petition No. 641/97 (Smt. Niyamti Vs. State and another). The petitioners through the present petitions have taken exception to the externment orders dated April 8, 1997 and March 13, 1997 whereby the petitioners herein were directed to remove themselves beyond the limits of the National Capital Territory of Delhi for a period of two years from the date of issue of the said orders. They were further directed by the impugned orders not to enter or return to the National Capital Territory of Delhi within the aforementioned period of two years without the written permission of the competent authority.

2. Since common questions of law and fact are to be gone into in both the writ petitions I propose to dispose them of by one and the same judgment.

3. Brief facts which led to the presentation of petition No. 583/97 are that a proposal for the externment of the petitioner was put up before the Deputy Commissioner of Police by SHOPS Inderpuri through ACP, Naraina, on the ground that the petitioner was a desperate and dangerous type of person whose

activities were causing alarm, danger and harm to the persons and property of the locality in the area of PS Inderpuri. The petitioner was not enjoying good reputation. He was also harbouring criminals at his residence. As a corollary of the above people were unwilling to come forward against him in the public or in the court on account of the apprehension to the safety of their person and property. The petitioner was a desperate criminal who earned his bread by way of commission of offences.

4. In view of the above a notice dated November 27, 1996 u/s 50 of the Delhi Police Act was served on the petitioner. In pursuance of the said notice the petitioner appeared before the Dy. Commissioner of Police. He was apprised of the contents of the notice. The petitioner was also asked to produce defense witnesses, if any.

5. The learned D.C.P. after appraisal of the material which was placed by the SHO, PS Inderpuri, and consideration of the defense evidence came to the conclusion that it was a fit case for passing an externment order against the petitioner u/s 47 of the Delhi Police Act (hereinafter referred to as the "Act" for the sake of reference). Consequently, the petitioner was directed to remove himself from the limits of the National Capital Territory of Delhi for a period of two years.

6. The petitioner, Niyamti has, on the other hand, challenged the externment order dated March 13, 1997 passed by Addl. Dy. Commissioner of Police, North District. Proposal for her externment was received from SHO, Prasad Nagar through ACP and was put up before the DCP on January 8, 1997. After going through the said proposal and examining the material on record, a notice for externment was issued to the petitioner Smt. Niyamti in terms of the provisions of Sections 47 & 50 of the Act. After a careful consideration of the material on record the petitioner was ordered to remove herself beyond the limits of the National Capital Territory of Delhi for a period of two years from the date of issue of the said orders.

7. The petitioners challenged the above order before the Lt. Governor by way of appeals. Their appeals were dismissed vide judgment and order dated June 30, 1997 and July 29, 1997 respectively. The petitioners in the above circumstances have approached this Court through the present writ petitions.

8. Learned counsel for the petitioners Sodhi Teja Singh has vehemently contended that the impugned orders passed by the authorities referred to above are absolutely illegal and invalid. The petitioners were not afforded any opportunity to defend themselves. The petitioners are innocent persons. They have been falsely implicated by the police. They have so far not been convicted in any of the said cases which find a mention in the impugned orders. Involvement in cases under the Excise Act cannot form the basis of externment. The statements of the witnesses were recorded in camera. The petitioners were not afforded any opportunity to cross-examine the said witnesses. The

petitioners neither know the names of the said witnesses nor their addresses. The said statements thus cannot be used against them. The allegations leveled against the petitioner Niyamti in the notice dated January 7, 1993 (Annexure B in the Crl. Writ Petition No. 641/97) are of a general and sweeping nature. No specific instances have been given. Hence the same cannot form the basis of the proceedings u/s 47 of the Act. The impugned orders are arbitrary and mala fide.

9. Learned Standing Counsel Mr. S.K. Aggarwal has urged to the contrary. According to him externment proceedings are preventive in nature. A duty has been cast on the shoulders of the police force not only to stop the actual commission of the crime but they are also under an obligation to take such steps which may prevent the commission of the crime. The externment proceedings are meant for the said purpose. Thus the police are under no obligation to disclose the names of the witnesses and their addresses. Externment proceedings are initiated only in those discerning few cases where a person is a desperate criminal. People are afraid to come forward to depose against them for the fear of reprisal from them. In case the names of the witnesses and their particulars are disclosed then there is not only a fear of reprisal but there is also an apprehension that the people would not come forward to depose against such type of criminals in future.

10. I have heard the learned counsel for the petitioners Sodhi Teja Singh and the learned Standing Counsel Mr. S.K. Aggarwal at sufficient length and have very carefully examined their rival contentions.

11. Sodhi Teja Singh learned counsel for the petitioners has contended that the cases under the Excise Act whereunder the petitioners are being prosecuted and have so far not been convicted in any of those cases shown in the body of the impugned orders passed by the learned DCP and the learned Addl. DCP, cannot form the basis of the externment orders. He has thus challenged the legality and the validity of the said orders. He in connection therewith has led me through the judgments passed by a Division Bench of this Court as reported in Ravi Kumar Vs. Deputy Commissioner of Police, West District, Delhi, wherein the Learned Judges (vide paras 9 and 10) observed; "We are inclined to agree with the contentions urged by Mr. Nand Kishore. We are of the view that the cases in which the petitioner was tried and acquitted cannot form the basis for an action for externment u/s 47....."

"The record shows that out of the 14 cases, 9 cases are under the Excise Act, 4 cases under the Indian Arms Act and one case u/s 411 of the Indian Penal Code. None of these cases come within the ambit of clause (b) of section 47....."

12. Learned counsel thus urges in view of the above observations of a Division Bench of this Court, that the impugned externment orders, cannot be sustained by any stretch of imagination. The petitioner Surjit Singh is facing trial in eleven cases. Out of these eleven cases ten cases are u/s 61/1/14 of the Punjab Excise Act. The other case is u/s 279/337/427/467/468/471 of the IPC. He has so far

not been convicted under any of the said cases. Smt. Niyamti is facing trial in thirty one cases, out of which thirty cases are under the Punjab Excise Act, and one is u/s 22/61/85 of the NDPS Act. She has so far not been convicted in any of the said cases. Hence the impugned orders are illegal and invalid and are liable to be set aside.

13. I am sorry I am unable to agree with the contention of the learned counsel. The learned counsel while so urging is oblivious of the fact that the said judgment was overruled by a Division Bench of this Court through the subsequent judgment as reported in *Kaushalya v. State*, 1989 Chandigarh Criminal Cases 110. I am tempted here to cite a few lines to repel the above said two contentions from paras 11 and 14 of the above said judgment. They are in the following words : ".....The allegations against the petitioner are that since 1976 she had been indulging repeatedly in the commission of offences punishable under the Excise Act. There could be no doubt that if a person indulges in the commission of offences under the Excise Act this would be dangerous and harmful to person and property of the public generally. The court can take judicial notice of the fact that from time to time there have been number of deaths because of the sale of illicit liquor. The kind of activities in which the petitioner is alleged to be indulging from their very nature could never be confined to a few individuals and such activities always affect a very large section of the public. The second contention of Bawa Gurcharan Singh has no force."

14. In the first case, which is the judgment by one of us (R.N.Aggarwal,J.) it is true that it was held that the case in which a person was tried and acquitted cannot form the basis for an action for externment u/s 47 of the Delhi Police Act. In the second case, as well, there is an observation by one of us (R.N.Aggarwal,J.) that in cases in which the petitioner was tried and acquitted cannot form the basis for an action for externment u/s 47 of the Act. We are doubtful if the above view is sound in law. Action u/s 47 can be taken if it appears to the Commissioner of Police that the movements or acts of any person are causing or are calculating to cause alarm, danger or harm to person or property or that there are reasonable grounds for believing that such person is engaged or is about to engage in the commission of an offence involving force or violence....." I am thus of the opinion that the above said contention raised for and on behalf of the petitioners are of no avail to them and are thus rejected.

15. Learned counsel has then argued that the statement of the witnesses against the petitioners were recorded in camera. Neither the names nor the addresses of the said witnesses were disclosed to the petitioners. In fact they did not know who those witnesses were who appeared against them. They were not afforded an opportunity even to cross-examine them. It is a well settled principle of law that nobody can be condemned without affording him an opportunity of a fair trial. Learned counsel in support of his above argument has relied upon a judgment of the Hon''ble Supreme Court as reported in *Prem Chand (Paniwala)*

Vs. Union of India (UOI) and Others, . V.R. Krishna Iyer,J. while speaking for the Court observed as under: "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. We are clear that easy possibility of abuse of this power to the detriment of the fundamental freedoms of the citizen persuades us to insist that a stringent test must be applied. We are further clear that natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Articles 14, 19 and 21 of the Constitution as expounded by the Court in Maneka Gandhi, (1978) 1 S 248."

16. Inspired with the said observations learned counsel for the petitioners contends that in the present case there were secret hearings inasmuch as statements of the prosecution witnesses were recorded in camera. Their names were not disclosed and the petitioners were not afforded an opportunity to cross examine them. There are vague and general allegations against the petitioners. No specific instances have been cited in the notice u/s 50 of the Act.

17. I am unable to agree with the contention of the learned counsel. Observations in a judgment and order are to be read in the context in which the same were made. Citations of the observations out of context would be, this Court feels, of no assistance to a petitioner. According to the facts of the said case the petitioner was a stock witness of the police since his early age. He was alleged to have appeared in as many as 3000 cases. It was an admitted fact that he was always at the beck and call of the police to appear as a witness. However, there was a change in his circumstances. He made headway in his life. His conscience started pricking him and he started listening to the voice of his conscience and refused to oblige the police. It is said " Conscience is God's presence in man" - (Sweden Borg). It was in the above circumstances that an externment order was passed against the petitioner in order to coerce and pressurise him to continue to remain as a stock witness of the police. Thus the observations in the said case were made in the above circumstances, while setting aside the externment order.

18. Furthermore, an earlier authority of a Constitution Bench of the Hon''ble Supreme Court reported in Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, , was not brought to the notice of the learned Judges of the Supreme Court. According to the facts of the said authority the constitutional validity of Sections 56 & 57 of the Bombay Police Act which are *pari materia* the provisions of Sections 47 & 48 of the Act was challenged. While animadverting on the validity of the said sections it was observed by the Hon''ble Supreme Court " ... that the evidence or material on the basis of which a person

may be proceeded against under any one of the section 55, 56 or 57 may have been collected by police officers of the rank of an Inspector of Police or of lower rank. The proceedings may be initiated by a police officer above the rank of Inspector who has to inform the person proceeded against of the general nature of the material allegations against him. But the order of externment can be passed only by a Commissioner of Police or a District Magistrate or a Sub Divisional Magistrate specially empowered by the State Government in that behalf. Hence the satisfaction is not that of the person prosecuting, if that word can at all be used in the context of those sections. The person proceeded against is not prosecuted but is put out of the harm's way. The proceedings contemplated by S. 57 or for the matter of that, the other two sections 55 or 56, are not prosecutions for offences or judicial proceedings, though the officer or authority charged with the duty afore- said has to examine the information laid before him by the police."

19. Repelling the contention raised for and on behalf of the petitioners with regard to the insufficiency of the material for passing an order u/s 47 of the Act the learned Judges observed in the said judgment that it was beyond the ken of the Court to scrutinise the evidence as to whether the same was sufficient or insufficient for passing the order externment order as the same was to be passed on the basis of the subjective satisfaction of the authority which passed that order. " What has been urged against the legality of the order impugned is that it is based on previous orders of discharge or acquittal. It is said that those orders were passed because there was not sufficient evidence to bring the charge home to the accused....."

"These are all matters which cannot be examined by this Court in an objective way, when the legislature has provided for the subjective satisfaction of the authorities or officers who have been entrusted with the duty of enforcing those special provisions of the Act. It cannot be laid down as a general proposition of law that a previous order of discharge or acquittal cannot be taken into account by those authorities when dealing with persons under any of the provisions we have been examining.....

20. The next contention raised by learned counsel for the petitioners is that the evidence which was recorded in camera could not have been read against the petitioners and could not form the basis of the externment orders. I feel this argument of the learned counsel is also without any force. The said contention of the learned counsel can very easily be brushed aside by relying on the observations of the Supreme Court in the judgment and order alluded to above. " The grounds available to an externnee had necessarily to be very limited in their scope, because if evidence were available which could be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example, u/s 107 or 110.

21. But the special provisions now under examination proceed on the basis that the person dealt 55, 56 with under any of the Sections 55, 56 and 57 is of such a

character as not to permit the ordinary laws of the land being put in motion in the ordinary way, namely, of examining witnesses in open court who should be cross-examined by the party against whom they were deposing. The provisions we are now examining are plainly intended to be used in special cases requiring special treatment, that is, cases which cannot be dealt with under the preventive sections of the Code of Criminal Procedure."

22. It is thus manifest from above that the intention of the legislature while enacting the provisions of Sections 47 & 48 of the Act was to give a handle in the hands of the police to deal with the desperate type of criminals who, in their opinion, cannot be dealt with in the open courts in accordance with the ordinary provisions of laws of the land. The said preventive measures in the form of Sections 47 & 48 are resorted to in those discerning few cases where the witnesses are not available to depose to against the desperate type of criminal on account of an apprehension to their person and property. In such type of cases the police officers can deal with them in accordance with the provisions of Sections 47 & 48 of the Act i.e. they can be directed to remove themselves outside Delhi for a particular period so that they may not cause harm, danger to the person and the property of the people of Delhi. In case the contention of the learned counsel is upheld that the names of the witnesses and the material which is to be used against a particular person should be furnished to him in that eventuality the very purpose of enactment of Section 47 of the Act would be frustrated because, as observed above, the said Section is meant to deal with desperate type of criminals, under extraordinary situations and circumstances, who do not allow witnesses to appear against them and the witnesses do not come forward to depose against them for fear of reprisal.

23. A matter very much akin to the matter in hand came up before the Hon'ble Supreme Court as reported in Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, , wherein it was observed " If the show-cause notice were to furnish to the proposed externee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which it is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee " of the general nature of the material allegations against him."

24. To the same effect are the observations of the Hon'ble Supreme Court as reported in State of Maharashtra and Another Vs. Salem Hasan Khan, .

25. Admittedly the petitioners in the instant cases are bad characters of the area. While the petitioner Surjeet Singh is involved in as many as 10 cases under the

Punjab Excise Act and also in a case which pertains to police station Panipat under Sections 279/337/427/467/468/471 IPC, petitioner Niyamti is involved in as many as 30 cases under the Punjab Excise Act and one case under the NDPS Act. Selling of illicit liquor to the members of the public is detrimental to their health, safety and culture. It may also lead to the commission of the crimes. More often than not crimes are committed under the influence of liquor. A large number of persons died in Delhi itself after consuming illicit liquor. The people as per the impugned order are not likely to come forward to depose against the petitioners.

26. Considering the above facts and circumstances I do not think present cases are fit cases for interference by this Court. Dismissed.