
(1970) 01 GUJ CK 0001
In the Gujarat High Court

Usman

APPELLANT

Vs

N.T. Chinoy and Another

RESPONDENT

Date of Decision : 27-01-1970

Acts Referred:

Bombay Police Act, 1951 — Section 57, 59
Bombay Prohibition Act, 1949 — Section 85, 93

Citation : (1971) CriLJ 1793 : (1971) GLR 210

Hon'ble Judges : S.H. Sheth, J;B.J. Divan, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—This petition is directed against the externment order made against the petitioner by the Deputy Commissioner of Police, Special Branch, Ahmedabad. City of 6th March, 1969.

2. The petitioner is a resident of the City of Ahmedabad and is running a cycle shop. The Superintendent of Police "C Division, Ahmedabad served upon him notice u/s 59(1) read with Section 57 of the Bombay Police Act to show cause why he should not be externed for a period of two years from Ahmedabad City, Ahmedabad (Rural), Kaira and . Mehsana Districts. The allegations which were made against him in the show cause notice were that he had suffered three convictions u/s 85, Sub-section (1) of the Bombay Prohibition Act and that he was involved in a prohibition case in the month of November 1968. Upon these facts action was proposed to be taken against him u/s 57(e) of the Bombay Police Act, 1951.

3. The petitioner submitted a detailed reply to that show cause notice and tried to meet the allegations against him. He was heard in the matter, Thereafter on 6th March, 1969 an order was made against him u/s 57(c) of the Bombay Police Act, 1951 . externing him from Ah-medabad City and the contiguous districts of Ahmedabad (Rural), Kaira and Mehsana for a period of two years from the date of the impugned order. Prior to the making of the impugned order proceedings against him were instituted u/s 93 of the Bombay Prohibition Act, 1949 as a

result of which he had executed a bond with sureties for his good behaviour for the period specified therein as directed by the Magistrate.

4. Mr. Malik who appears for the petitioner challenges the impugned order on two grounds. His first contention is that the notice to show cause issued against the petitioner u/s 59 of the Bombay Police Act stated that in the third week of November, 1968 the police had seized from the petitioner's possession the prohibited "Garra" weighing about 8 annas and -that he had no permit to render its possession lawful and he submits that no such incident had happened in November, 1968 but that such an incident had happened in September, 1968. So far as the show cause notice is concerned, the month of November has been mentioned through a typographical error and it has been accordingly explained in the affidavit in reply. Nothing, therefore, turns on that error contained in the notice. The petitioner had an opportunity to make his representations in that behalf. He made those representations to the external authority and he was fully heard. In our opinion, therefore, the grievance which he makes out in that behalf has no substance.

5. In this behalf Mr. Malik further submits that so far as the incident which is stated in the show cause notice to have occurred in the month of November, 1968 is concerned, it was the "only" incident on account of which the external authority could have reason to believe that the petitioner was likely again to engage himself in the commission of similar offences.

6. In the affidavit in reply filed by Mr. Chinoy, Deputy Commissioner of Police, Special Branch, Ahmedabad City it has been stated that he had ample material before him in order to satisfy himself that the petitioner was likely to engage himself in the commission of similar offences and that he had taken it into account. These averments made by the external authority show that the external authority had sufficient material before it to satisfy that the petitioner was likely again to engage himself in the commission of similar offences and that it had acted upon it. Under the circumstances, therefore, the grievance made out by the petitioner loses substance.

7. The next contention which Mr. Malik raises is that u/s 93 of the Bombay Prohibition Act, 1949 an inquiry was held against the petitioner and that the petitioner was called upon to execute a bond for good behaviour which he had done. In view of the fact that he had executed the bond for his good behaviour proceedings under the Bombay Police Act could-not have been instituted against him. So far as Section 93 of the Bombay Prohibition Act is concerned, Sub-section (1) provides as under:

Whenever a District Magistrate or Sub-Divisional Magistrate receives information that any person within the local limits of his jurisdiction habitually commits or attempts to commit, or abets the commission of an offence punishable under this Act, such magistrate may require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such

period not exceeding three years as the Magistrate may direct

Clause (c) of Section 57 of the Bombay Police Act, 1951 provides as under:?

If a person has been convicted?

(c) thrice, of an offence within a period of three years, under any of the provisions of the aforesaid Prohibition Acts,....The Commissioner, the District Magistrate or the Sub-Divisional Magistrate specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage him self in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his; jurisdiction or such area and any district or districts, or any part thereof, contiguous: thereto by such route and within such time as the said officer may prescribe and not to enter or return to the area or the area and such contiguous districts or part thereof as the case may be, from which he was directed to remove himself.

8. On analysis of these two sections we find that Section 93 of the Bombay Prohibition Act, 1949 can be applied only to cases where a person habitually commits an offence punishable under the said Act or where a person habitually attempts to commit an offence punishable under the said Act or where a person habitually abets the commission of an offence punishable thereunder. Therefore, the habitual commission of an offence under the Bombay Prohibition Act, 1949 or the habitual attempt to commit an offence under the said Act or the habitual abetment of the commission of an offence punishable" under the said Act are the requirements of the section and if anyone of them is satisfied then Section 93 of the Bombay Prohibition Act, 1949 can be applied. Its application does not depend upon convictions for offences punishable under the Bombay _ Prohibition Act, 1949. Even if a person " has suffered three convictions as contemplated by Section 57(c) of the Bombay Police Act, 1951 he may or may not attain the character of a habitual offender. Whether a person is a habitual offender or not depends upon the facts of each case. The ingredients of Section 93 will be satisfied if a person against whom action is proposed thereunder is a habitual offender and if the District Magistrate or the Sub-Divisional Magistrate who proposed to take action against him under that section is satisfied on the basis of the material on record that he is a habitual offender. So far as Clause (c) of Section 57 of the Bombay Police Act, 1951 is concerned, it applies, inter alia, to cases where persons have suffered three convictions within a period of three years under the Bombay Prohibition Act, 1949. If a person has not suffered any convictions under the Bombay Prohibition Act but is suspected to be offending against the provisions of the said Act or if a person has suffered less than three convictions or if a person has suffered three convictions during a period extending over more than three years then Clause (c) of Section 57 of the Bombay Police Act, 1951 has no application whatsoever. Therefore, the fields in which Clause (c) of Section 57 of the Bombay Police Act, 1951 and Sub-section (1) of Section 93 of the Bombay Prohibition " Act, 1949 operate are altogether

different. In a conceivable case both the provisions may be applicable to a single individual as they are applicable to the petitioner in this case but it makes no difference. In our opinion, therefore, Clause (c) of Section 57 of the Bombay Police Act, 1951 and Sub-section (1) of Section 93 of the Bombay Prohibition Act 1949 are not mutually exclusive. Therefore, if an action has been taken against a person u/s 93 of the Bombay Prohibition Act, 1949 it does not operate as a bar to the application of the provisions of Section 57(c) of the Bombay Police Act, 1951. In this view of the matter the challenge which Mr. Malik has made to the impugned order fails.

9. The result, therefore, is that the petition fails and rule is discharged. There shall be no order as to costs of this petition.