

(2015) 01 DEL CK 0018
In the Delhi High Court
Case No : Writ Petition (Crl.) 1411/2014

Vikram

APPELLANT

Vs

Lt. Governor of Delhi

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Delhi Police Act, 1978 — Section 47, 50, 50(5), 51, 58
Penal Code, 1860 (IPC) — Section 279, 337, 34, 356, 379

Citation : (2015) 5 AD 708 : (2015) 1 JCC 726

Hon'ble Judges : Pratibha Rani, J.

Bench : Single Bench

Advocate : Mir Akhtar Hussain and Lakhi Singh, for the Appellant; Mukesh Gupta, ASC and Dinesh Dahiya, SI, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Rani, J.—The present writ petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C for quashing of orders dated 30.10.2013 passed by respondent No.1 herein upholding the order dated 18.03.2013 passed by respondent No.2.

2. The facts of the case are that the writ petitioner was served with a notice under Section 50 DP Act (Delhi Police Act) . The petitioner not only failed to respond to the notice but also preferred not to participate in the externment proceedings despite notices being sent and served on the family members of the petitioner, as and when he was not found present at home.

3. Finding no option but to conduct ex parte proceedings against the petitioner, vide impugned order dated 18.03.2013, petitioner was externed from NCT of Delhi for a period of two years from the date of the order.

4. The appeal preferred before the Lt. Governor under Section 51 of the Delhi

Police Act was also dismissed vide order dated 30.10.2013. The grounds on which the petitioner has challenged the order passed by Additional DCP as well by the Appellate Authority are:-

- (i) the externment order dated 18.03.2013 being ex parte is without jurisdiction;
- (ii) the statutory appeal filed against the externment order has been dismissed by a non speaking order;
- (iii) the externment order has been passed on the basis of notice which has been recorded at the back of the petitioner thereby denying an opportunity to cross-examine the witnesses;

5. Further, the impugned order is also vitiated on account of the fact that nature of accusations are not only vague but general in nature. The impugned order does not show in which case the witnesses have not come forward due to apprehension about their safety. The period of externment, that is, two years is very long and the family of the petitioner is likely to suffer during period of externment.

6. Mr. Mir Akhtar Hussain appearing on behalf of the petitioner submitted that the impugned order is liable to be set aside for the reason that it has been passed in violation of Section 50(5) , (6) and (7) of the DP Act. He has submitted that the order is vitiated as it has been passed in clear violation of the mandate required under Section 50 of the DP Act. Learned counsel for the petitioner further submitted that the alleged show cause notice is dated 09.12.2010, but in the impugned externment order the cases registered subsequent to the said date have also been considered without serving any supplementary show cause notice to the petitioner. While placing reliance on the decisions reported as Kalyan Khari Vs. State (NCT of Delhi) and Others, , Prem Chand (Paniwala) Vs. Union of India (UOI) and Others, , Prem Chand Sharma and Co. Vs. Union of India (UOI) and Others--> and Ishaq Shah Vs. State and Others, , he prayed for quashing of the impugned order.

7. Mr. Mir Akhtar Hussain also refers to the explanation to Section 47 of DP Act which reads as under:-

"Explanation - 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 habitually committed that act.

He submitted that even in view of the above explanation the petitioner could not be deemed to be a habitual offender.

8. Learned counsel for the petitioner Mr. Akhtar has been given an opportunity to go through the externment file brought by the State. He has also been informed that notice of the externment proceedings has been duly served on the petitioner

through his brother on various dates and despite execution of bailable warrants on the petitioner himself he preferred not to appear before the Additional DCP, file reply to show cause notice or cross-examine the witnesses.

9. Mr. Akhtar again submitted that even if it is assumed that the petitioner had been served with the show cause notice, these externment proceedings being not of civil nature, the Additional DCP could not have passed externment order ex-parte especially when he has taken note of the cases registered after issuance of show cause notice dated 09.12.2010, for which no supplementary notice was ever served.

10. State has filed its response wherein a specific plea has been taken that despite several notices being sent and served on the brother, father and wife of the petitioner and issuance of bailable warrants duly served on the petitioner, he preferred not to appear or file any reply to the show cause notice issued to him under Section 50 of Delhi Police Act. Even during the pendency of externment proceedings, the petitioner continued indulging in criminal activities. The externment order has been passed taking into consideration the material on record and involvement of the petitioner in thirty one criminal cases in a span of 09 years which itself was sufficient to pass the externment orders.

11. Learned ASC for State submits that the petitioner cannot take advantage of his own act and conduct by not participating in the externment proceedings despite notices being sent and served and even bailable warrants being executed. It has also been submitted that the externment order was passed keeping in view that criminal activities of the petitioner were detrimental to the general public and to the maintenance of law and order. The proceedings have been conducted as per established procedure. The appeal has also been disposed of taking into account all the material facts available on record.

12. I have considered the submissions made by learned counsel for the petitioner and also gone through the decisions cited by learned counsel for petitioner of this Court in Kalyan Khari (supra) , Prem Chand (supra) , Ishaq Shah (supra) and Shammy (supra) . At the outset, it is necessary to record that show cause notice has been served on the petitioner earlier through his brothers and at that time none of them reported that the petitioner was residing in Jaipur. The notice sent for the date of hearing dated 11.01.2011 was received by his brother Ricky. The second notice for the date of hearing dated 21.01.2011 was received by his elder brother Vicky and also signed by the younger brother Ricky. At that time also, none of them informed the process server or made endorsement that the petitioner was residing in Rajasthan. For the first time, when bailable warrant in the sum of Rs. 2,000/- was ordered to be issued for the date of hearing on 08.02.2011, Ricky informed the process server by making statement to the effect that since the death of their mother about three years back, Vikram had left that house and was residing in the Village Kunjoa Behtil Kothputli, Rajasthan and they were not having any connection with him. Subsequent reports on the bailable warrants are also to the same effect.

13. However, for the date of hearing on 17.11.2011, bailable warrant was executed at the same address on the petitioner. The personal bond has been signed by the petitioner and the surety bond by his brother Ricky. Despite execution of bailable warrants, the petitioner failed to appear before the Additional DCP and participate in the externment proceedings. Merely because the Additional DCP did not proceed against surety is of no consequence as the petitioner was personally made aware of the externment proceedings initiated against him, affording an opportunity to him to show cause as to why he should not be externed.

14. On the date when externment proceedings were initiated against the present petitioner, he was involved in 13 cases as per details given in Annexure A to the show cause notice. Thus, even under explanation to Section 47 of DP Act, the competent authority could have initiated externment proceedings against him as habitual offender.

15. Learned counsel for the petitioner though relied on Kalyan Khari (supra) , Shailender Kaur (supra) , State of NCT of Delhi and Anr. (supra) , Prem Chand (supra) , Ishaq Shah (supra) and Shammy (supra) but none of them is applicable to the facts of the present case. Since the petitioner was already involved in 13 cases at the time when externment proceedings were initiated against him, placing reliance on the aforementioned judgments is of no help to the petitioner.

16. Reference of 31 cases in externment order though show cause notice dated 09.12.2010 was in respect of 13 cases, is no ground to interfere with the impugned order for the reason that it has been done only to note his criminal activities even during pendency of externment proceedings. With a view to check propensity of the Petitioner and making prognosis of his future conduct, even his earlier involvement and the nature of cases in which he was previously involved, despite discharge or acquittal, can be taken into consideration by the Authority. (Ref. Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, .

17. In the decision reported as State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo, , the Apex Court has considered the scope and ambit of judicial interference in the matter of administrative decisions as well the power of the externing authority to decide the period of externment in paragraphs 14 and 15 which are extracted herein:-

"14. As regards the period, it was held that it is primarily for the externing authority to decide how best the order can be made effective, so as to subserve its real purpose. How long within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 58 it should extend are matters which must depend upon his decision on the nature of the data which the authority is able to collect in the externment proceedings. No general formulation can be made that order of externment must always be restricted to the area to which the illegal activities of

the externee. There can be doubt that the executive order has also to show when questioned that there was application of mind. It is the existence of material and not the sufficiency of material which can be questioned as the satisfaction is primarily subjective somewhat similar to one required to be arrived at by the detaining authority under the preventive detention laws. The scope of judicial review of administrative orders is rather limited. The consideration is limited to the legality of decision-making process and not legality of the order per se. Mere possibility of another view cannot be ground for interference.

15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See *State of U.P. and Others Vs. Renusagar Power Co. and Others*, . At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to, the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts *ultra vires*."

18. In para 23 of the report, it was further emphasised that the order of externment should show existence of some material and it need not be akin to a judgment.

19. In para 24, it was observed that:-

"It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment

should show existence of some material warranting an order of externment. While dealing with question mere repetition of the provision would not be sufficient. Reference to be made to some material on record and if that is done the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non."

20. On examining the impugned orders as well the record of externment proceedings, it can be seen that the contentions raised before this Court in the writ petition are not tenable. Requirement of affording an opportunity to show cause had been given to the petitioner repeatedly but despite having knowledge of the externment proceedings being initiated against him and execution of bailable warrant, the petitioner preferred not to appear to show cause or participate in the externment proceedings. The proceedings cannot be vitiated merely because instead of appearing before the externing authorities, he was waiting for the externment orders to be passed and then challenge it on the ground of violation of principles of natural justice. Here it may be noted that subsequent FIRs have been registered in Delhi only showing involvement of the petitioner in more serious crimes which led the externing authority to form an opinion that presence of the petitioner in Delhi was hazardous to the right and property of residents of Delhi as well apprehension in the mind of the witnesses not to come forward to depose against him due to his fear.

21. While passing impugned externment order dated 18.03.2013, the Additional DCP, Outer District, Delhi has considered the nature of the cases registered against the petitioner and their status at the time of externment proceedings. A perusal of the said order reveals that initially the petitioner was involved in cases under Punjab Excise Act and thereafter under Arms Act but then he graduated to more serious crimes. Even if we ignore one accident case as mentioned at Serial No.9 under Sections 279, 337 IPC, the cases mentioned at Serial Nos.10 to 31 (except cases at S. Nos. 13 and 14 which are under Arms Act) are under Sections 379, 356, 411/34 IPC. The petitioner has also suffered conviction and while some cases were pending trial, three cases were sent as untraced and in two cases he was discharged, which might be for the reason that the case property was not recovered.

22. The contention of the petitioner that the proceedings have been conducted ex parte is not of any help to the petitioner to seek quashing of externment order for the simple reason that the externment file has been perused by the Court and opportunity has also been given to learned counsel for the petitioner to go through the reports on various notices, bailable warrants to satisfy himself that Additional DCP proceeded ex parte against the petitioner after ensuring service on him. The petitioner cannot be permitted to derive benefit of his own acts and omissions if he preferred not to participate in the externment proceedings. In cases under Section 356/379 IPC, which possibly could be of chain snatching, public witnesses have to be examined. The involvement of the petitioner in number of cases under Arms Act and theft cases of different police stations

spread over different Districts of Delhi as per the list given below had been duly considered by the Additional DCP.

23. After going through the material against the petitioner, learned Additional DCP (Outer District) passed the impugned order which reads as:-

"After going through the material and having satisfied that sufficient material exist, the proceedings for externment of respondent were initiated. The respondent was informed of the general nature of the material allegations against him by issuing a notice u/s 50 of DP Act, 1978 on 9.12.2010 by the then Addl. DCP/Outer District, Delhi. But he never turns up before this Court despite service/execution of summons/warrants upon him. It appears that the respondent knowingly evading his presence before this Court.

PWs MHC (R) and SHO/Sultan Puri were examined ex-parte. During the examination-in-chief PW Insp.Puran Pant, SHO/Sultan Puri, Delhi ex-parte, stated that the respondent is involved in various criminal cases. He further stated that respondent is a desperate criminal and habitual offender and commits such type of crime. His presence in the area is hazardous to the life and property of law-abiding citizens. The witnesses are also not coming forward to depose against him in open due to fear of their person and property. It would be in the fitness of the thing in the interest of justice to restrict his entry in the area of NCT of Delhi.

I find that the respondent is a criminal of such a desperate nature that his presence in the area is hazardous to the society. The respondent is also not co-operating with the proceeding. The camera witnesses in their statements also stated that the witnesses were not willing to come forward to depose their statement against the activities of the respondent in the open due to fear of their persons and property. I am satisfied that there are sufficient reasons to believe that respondent is a man of criminal propensity and attracting action against him u/s 47 of DP Act. His externment is also essential in the interest of the innocent persons. As such, it is a fit case for externment of the respondent from the NCT of Delhi.

Keeping in view the evidence brought on file, i.e. notice, record of his criminal activities and other evidence, I have no hesitation to conclude that he is not likely to improve his conduct until stringent measures are taken against him, since the activities of the respondent are causing and are calculated to cause harm, danger and alarm to the respectable citizens in the area of NCT of Delhi, his presence in the area leads to alarm and apprehension in the minds of law abiding citizens of the area who have the right to lead a peaceful life. I am of the view that his case is well within the scope of Section 47 of DP Act, 1978 and he is a fit person to be externed from the limits of NCT of Delhi."

24. The Additional DCP (Outer District) has passed the above order recording his subjective satisfaction about the criminal activities of the petitioner which stood substantiated on the record.

25. Since the activities of the petitioner were dangerous to the public at large, and causing threat to the peace and tranquillity of the area, the petitioner was ordered to be externed from the limits of NCT of Delhi for a period of two years. The Appellate Authority has also considered the contention raised in the appeal on finding the order passed by Additional DCP to be just and fair upheld the same.

26. There is no merit in the pleas raised by the petitioner. Finding no infirmity in the impugned orders which have been passed on sufficient material available on record by the competent authority recording subjective satisfaction, the petition deserves dismissal.

27. The writ petition is hereby dismissed.

28. No costs.