

(2015) 12 DEL CK 0106
In the Delhi High Court
Case No : WP(Crl.) No. 2026/2015

Vishnu

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 445, 446, 447, 448

Delhi Police Act, 1978 — Section 47, 50

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 21, 46, 47, 48

Penal Code, 1860 (IPC) — Section 290, 489A

Citation : (2016) 226 DLT 129

Hon'ble Judges : Ashutosh Kumar, J.

Bench : Single Bench

Advocate : Mir Akhtar Hussain and S. Lakhi Singh, Advocates, for the Appellant;
Kamna Vohra, ASC, for the Respondent

Final Decision : Disposed Off

Judgement

Ashutosh Kumar, J.

Crl.M.A No. 13496/2015

Exemption allowed subject to just exemptions.

The Application is disposed of accordingly

WP(CRL) No. 2026/2015

1. Vishnu, the petitioner, has assailed the order dated 02.07.2015 passed by the Deputy Commissioner of Police, North East District, Delhi whereby he has been externed from the limits of NCT of Delhi for a period of one year with effect from 09.07.2015 as also the Appellate order dated 05.08.2015 whereby the externment order passed by the Deputy Commissioner of Police, North East District Delhi has been upheld.

2. Externment proceedings were initiated against the petitioner on 04.06.2013 when a proposal was sent for the same by the SHO of M.S. Park police station. The petitioner was noticed for his having involved himself in six cases, the details of which are as hereunder:--

3. The petitioner appeared before the Deputy Commissioner of Police when he was made to understand the accusations against him. Despite the fact that there was no counsel accompanying him to defend his case, the petitioner was granted bail and was made to furnish his security bond. During the proceeding, he produced one defence witness namely Rakesh Kumar whose statement was recorded. On behalf of the prosecution, the SHO of M.S. Park was examined as a witness.

4. During the course of aforesaid externment proceedings, the petitioner was found to be involved and therefore arrested in another case namely FIR No. 378/14 (P.S.M.S. Park) instituted on 10.07.2014 for offences under Sections 20 /21 /61 and 85 of the NDPS Act. Pursuant to such an externment, a supplementary notice was issued to the petitioner on 14.10.2014. The aforesaid notice was also replied by the petitioner.

5. The Deputy Commissioner of Police, on perusal of the records and on hearing the parties came to the conclusion that the petitioner is a habitual bootlegger and has made his presence dangerous in the society. The police authority was also of the view that there was little possibility of the petitioner improving his conduct in future. Even the witnesses were found to be unwilling to depose in public against him because of the apprehension of reprisal at the hands of the petitioner. The petitioner was thus found to have had the propensity to indulge in further criminal activity.

6. Hence the order dated 02.07.2015, externing the petitioner from the territorial limits of National Capital Territory of Delhi for a period of one year with effect from 09.07.2015.

7. The petitioner was however directed to participate in the hearing of the Court cases.

8. Aggrieved by the aforesaid order of externment, the petitioner preferred an appeal before the Lieutenant Governor of Delhi. The appellate authority vide its order 05.08.2015 sustained and upheld the externment order.

9. Learned counsel for the petitioner has submitted that the order of externment as well as the appellate order are not sustainable in the eyes of law as no good ground has been made out for externing the petitioner.

10. From the perusal of records it appears that out of six cases for which the petitioner was noticed under Section 50 of the Delhi Police Act in the first instance, two cases are of the year 1993 and 1998 respectively under the Excise Act in two different police stations. In the aforesaid two cases of 1993 & 1998, the petitioner has been acquitted. There is one case of the year 2003 which

again is under the Excise Act and lodged in M.S. Park police station. In the third case also the petitioner stands acquitted. After the year 2003, the petitioner was made accused in the year 2011 when FIR was lodged under the Gambling Act with GTB Enclave police station. In the aforesaid case the petitioner was convicted and was fined Rs. 1000/-. Thereafter the petitioner was found to be involved in two cases of Gambling Act and Delhi Excise Act respectively in the year 2013 in quick succession. The aforesaid cases were lodged in M.S. Park police station and are pending trial.

11. During the pendency of the externment proceedings, the petitioner was made accused in a case involving Narcotic Drugs and Psychotropic Substances Act (FIR No. 378/2014 P.S.M.S. Park). In the aforesaid case petitioner was granted bail on the ground that chargesheet had been filed in the case; the case was based on the testimony of police witnesses only; and the recovery of the contraband was not of commercial quantity.

12. Ms. Kamna Vohra, defending the impugned orders, has submitted that the very fact that the petitioner was found involved in a case of NDPS Act during the externment proceedings is reflective of the mindset of the petitioner and his propensity to commit crimes. It has further been submitted that the number of cases which have been filed against him demonstrate that the petitioner is a habitual offender and that his presence is dangerous for the even tempo of life in a civilized society. It has been reiterated that the petitioner has displayed a recalcitrant tendency and is not eschewing from committing criminal acts.

13. In order to appreciate the contention of the parties and to test the correctness of the orders impugned it would be apposite to refer to the relevant provisions of Delhi Police Act, 1978.

"Section 47 - Removal of persons about to commit offences

Whenever it appears to the Commissioner of Police--

(a) that the movements or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code (45 of 1860) or under section 290 or sections 489A to 489E (both inclusive) of that Code or in the abetment of any such offence; or

(c) that such person--

i) is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community; or

ii) has been found habitually intimidating other persons by acts of violence or by show of force; or

iii) habitually commits affray or breach of peace or riot, or habitually makes forcible collection of subscription or threatens people for illegal pecuniary gain for himself or for others; or

iv) has been habitually passing indecent remarks on women and girls, or teasing them by overtures, and that in the opinion of the Commissioner of Police witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, the Commissioner of Police may, by order in writing duly served on such person, or by beat of drum or otherwise as he thinks fit, direct such person to so conduct himself as shall seem necessary in order to prevent violence and alarm or to remove himself outside Delhi or any part thereof, by such route and within such time as the Commissioner of Police may specify and not to enter or return to Delhi or part thereof, as the case may be, from which he was directed to remove himself.

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.

Section 50 - Hearing to be given before order under section 46 , 47 or 48 is passed

(1) Before an order under section 46 , section 47 or section 48 is made against any person, the Commissioner of Police shall by notice in writing inform him of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them.

(2) If such person makes an application for the examination of any witness to be produced by him, the Commissioner of Police shall grant such application and examine such witness, unless for reasons to be recorded in writing, the Commissioner of Police is of opinion that such application is made for the purpose of causing vexation or delay.

(3) Any written explanation put in by such person shall be filed with the record of the case.

(4) Such person shall be entitled to be represented in the proceeding before the Commissioner of Police by a counsel.

(5) (a) The Commissioner of Police may for the purpose of securing the attendance of any person against whom any order is proposed to be made under section 46 , section 47 or section 48 require such person, by order in writing, to appear before him and to furnish a security bond with or without sureties for attendance during the inquiry.

(b) The provisions of sections 1.19 to 1.24 (both inclusive) of the Code of

Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to the order under clause (a) to furnish security bond.

(6) Without prejudice to the foregoing provisions, the Commissioner of Police, while issuing notice to any person under sub-section (1) may issue a warrant for his arrest and the provisions of sections 70 to 89 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to such warrant.

(7) The provisions of section 445 , section 446 , section 447 or section 448 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to all bonds executed under this section.

Section 51 - Appeal against orders under sections 46 , 47 or 48

(1) Any person aggrieved by an order made under section 46 , section 47 or section 48 may appeal to the Administrator within thirty days from the date of the service of such order on him.

(2) An appeal under this section shall be preferred in duplicate in the form of a memorandum, setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by that order or a certified copy thereof.

(3) On receipt of such appeal, the Administrator may, after giving a reasonable opportunity to the appellant to be heard either personally or by a counsel and after such further inquiry, if any, as he may deem necessary, confirm, vary or set aside the order appealed against:

Provided that the order appealed against shall remain in force pending the disposal of the appeal, unless the Administrator otherwise directs.

(4) The Administrator shall make every endeavour to dispose of an appeal under this section within a period of three months from the date of receipt of such appeal.

(5) In calculating the period of thirty days provided for an appeal under this section, the lime taken for obtaining a certified copy of the order appealed against, shall be excluded.

Section 52 - Finality of order in certain cases - An order passed by the Commissioner of Police under section 46 , section 47 or section 48 or the Administrator under section 51 shall not be called in question in any court except on the ground--

(a) that the Commissioner of Police or the Administrator, as the case may be, had not followed the procedure laid down in Sub-section (1), sub-section (2) or sub-section (4) of section 50 or in section 51 , as the case may be; or

(b) that there was no material before the Commissioner of Police or the Administrator, as the case may be, upon which he could have based his order; or

(c) in the case of an order made under section 47 or an order in appeal therefrom to the Administrator under section 51 , the Commissioner of Police or the Administrator, as the case may be, was not of the opinion that witnesses were unwilling to come forward to give evidence in public against the person against whom such order has been made."

14. Section 47 of the Act refers to the situation under which a person could be removed from the territory of Delhi. The situation enumerated are that if the movement of such person causes alarm, danger or harm or the proceedee is or about the commit offences under various sections of the Indian Penal Code or that such person is so desperate and dangerous so as to render his roaming at large in Delhi hazardous to the community or has been habitually intimidating persons or causing affray or passing indecent remarks on women and girls. If in conjunction with any one of the grounds or all the grounds, the competent authority namely the Commissioner of Police frames his opinion that out of fear nobody is coming forward to depose against such person, he could either be directed to behave or to remove himself outside Delhi or to remove himself from any specified part of Delhi for a fixed duration/tenure.

15. The explanation appended to the section defines "habitual offender". If a person has involved himself in cases on three occasions or more within one year immediately preceding the commencement of the action, he is a "habitual offender".

16. Section 47 of the Act, therefore, refers to two aspects. The Commissioner of Police has first to be satisfied about the proceedee to be a dangerous person and that allowing him to roam at large would be hazardous to the society or cause harm and danger to any person or property or reasonable grounds for believing that he would involve himself in offence affecting human body, property, counterfeiting coins and currency notes. Thereafter, the Commissioner of Police is required to formulate his opinion that witnesses are unwilling to come in open to depose against such person for the fear of their lives. Then only a person/offender/proceedee could either be directed to behave himself or remove himself outside any part of Delhi or remove himself completely outside Delhi.

17. There does not appear to be anything on record to suggest that witnesses are unwilling to depose against the petitioner in public because of the apprehension regarding their safety at the hands of the petitioner.

18. The time gap between the different cases in which the petitioner was found to be involved further reflects that the petitioner may not be called a habitual offender. The offences alleged against the petitioner are under the Excise Act and Gambling Act. Though the offences under the aforesaid two legislations may not form part of the offences which have been described in the relevant provisions of the Delhi Police Act for the purposes of externment, nonetheless, if such offences are committed in quick succession, they do disturb the social fabric and thereby disturb the even tempo of life. However, in the present case there were two

cases of the year 1993 and 1998 respectively and one case of the year 2003. In all the three cases the petitioner was acquitted. In a case of gambling lodged in the year 2011, the petitioner was convicted and fined for Rs. 1000/-. Thereafter two cases in quick succession were lodged against the petitioner in the year 2013. Assuming the involvement of the petitioner in the aforesaid two cases of the year 2013 to be true, then also the petitioner cannot be called a habitual offender as notice was issued to him in the year 2013 only.

19. Since the offences are found to be interspersed over a period of 20 years, beginning from 1993, it is difficult to sustain the opinion of the Deputy Commissioner of Police that the petitioner is a habitual offender.

20. The involvement of the petitioner in a case involving NDPS Act also does not make the case of the petitioner any worse. It is an isolated incident and in the absence of clear and cogent material against the petitioner, he was released on bail.

21. The involvement of the petitioner in the cases which have been listed do not bear any nexus with the grounds falling under various clauses of Section 47 of the Act. It is difficult to infer that the movement of the petitioner would cause or is calculated to cause alarm, danger or harm to the person or property. Similarly, the circumstances and the materials available on record do not warrant an inference that the petitioner is so desperate and dangerous that for maintaining the even tempo of life and society, he needs to be externed.

22. The previous acquittals and conviction in one case clearly belies the assertion of the police and the formation of opinion that witnesses are not coming forward to depose against the petitioner for his dangerous disposition. Such an opinion of the Deputy Commissioner of Police is based on no consideration.

23. It has been submitted on behalf of the State that it is only the subjective satisfaction of authorities based on materials available on record that the externment order has been passed. It has been submitted that the sufficiency of the material on which the externment order has been passed cannot be gone into. What is required to be seen is the existence of materials and not the sufficiency of materials. If the materials available on record, satisfies the competent authority to arrive at such conclusion, the same ought not be interfered with.

24. It has further been submitted that merely because the petitioner was acquitted in some of the cases and was granted bail in a case involving NDPS Act that would not be a sufficient ground to hold that the order of externment suffers from the vice of non consideration of relevant factors.

25. The position of law with respect to judicial interference in matters of administrative decisions has been well crystallized by now. The oft quoted and referred decision in this regard is in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, (1947) 2 All E.R 680 . The principle enunciated in

the aforesaid case is popularly known as Wednesbury principles. The aforesaid decision takes note of the fact that in order to test the "reasonableness" of the order, the Court has to find out whether relevant factors have been taken into account for coming to any conclusion. What is important to see is whether the action of the executive is within the parameters of law and that the decision passes the test of reasonableness. If the administrative order is irrational, or has been arrived at without taking into consideration relevant factors which ought to have been taken into account and/or suffers from the procedural irregularities, the same can definitely be reviewed and corrected.

26. True it is that the sufficiency of the material for the police authority to come to the conclusion about the petitioner being dangerous cannot be gone into; nonetheless such executive order cannot be sustained if it is based on distorted/illogical grounds.

27. The relevant provisions of the Delhi Police Act have been enacted for the purpose of preventing crime and making society worth living. Keeping this object in mind, even before the threshold of the commission of crime by any person, considering his criminal dispensation and proclivity, he could be removed from the confines of Delhi.

28. Nonetheless, there can be no dispute that an externment order brings in societal and personal deprivation and is a great blow on the finances of the externnee. An order of externment makes an inroad into the cherished and valuable right of a person to have his domicile at the place of his choice.

29. This Court is mindful of the fact that unless such stringent measures are taken against such law breakers, it would be difficult for police authorities to maintain an even tempo of the society. At the same time the rights and liberties of a person cannot be lightly interfered with and has to be guarded with utmost zeal.

30. The provisions of Section 47 and 50 therefore, have to be read strictly. Considering the strain that it puts on an externnee, the considerations for externing a person ought to be in consonance with the requirements of law and the satisfaction arrived at by the executive authorities must pass the test of reasonableness. Any executive order which is not informed with fairness cannot be sustained on any account.

31. There must be a clear and present danger in allowing the petitioner to remain at large in jail for countenancing the order of externment.

32. From the perusal of the externment order as also the appellate order, this Court is of the opinion that there was no sufficient reason to believe that the petitioner was so desperate and dangerous that his presence in NCT or any part thereof would be hazardous to the community and its safety. Both the orders referred to above, suffer from vice of non application of mind with respect to relevant considerations namely

- "i. the frequency of the cases in a particular year,
- ii. consideration of the fact whether the petitioner has improved himself,
- iii. the urgency of externment of the petitioner in 2015,
- iv. requirement of the petitioner to be Delhi to attend to cases which are pending trial,
- v. the financial burden on the proceedee in coming from outside Delhi to Delhi Courts,
- vi. the possibility of delay in disposal of cases and, therefore, delay in vindication of the assertion of either i.e. the petitioner or the prosecuting agency,
- vii. two acquittals and one conviction of the petitioner and so on and so forth."

33. There does not appear to be any material so as to justify the assessment that witnesses are not daring to come in open to depose against the petitioner.

34. Tested on the touchstone of aforementioned facts and principles, the externment and the appellate orders cannot be sustained in the eyes of law.

35. The externment order dated 02.07.2015 passed by the Deputy Commissioner of Police and the appellate order dated 05.08.2015 passed by the LG, Delhi are, therefore, quashed.

36. The petition stands disposed of accordingly.

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37. In view of the main petition having been allowed, this application becomes infructuous.

38. This application is disposed of accordingly.