

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on : 11.09.2014*
Pronounced on : 24.09.2014

+ W.P.(CRL) 743/2014

VIKAS BAKSHI

..... Petitioner

Through: Mr.Ajay Burman, Advocate.

versus

STATE & ORS

..... Respondents

Through: Ms.Rajdipa Behura, APP for
Mr.Rajesh Mahajan, ASC for State.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. Aggrieved by the issuance of show cause notice dated 20.03.2014 issued under Section 50 of Delhi Police Act by Addl. DCP, South-East Distt., the Petitioner Vikas Bakshi has preferred the present writ petition under Article 226 of the Constitution of India, praying for issuance of writ of mandamus and writ of certiorari or any other writ of like nature for quashing of the aforesaid notice. The Petitioner has further prayed for protecting his life, liberty and freedom of movement and also for issuance of necessary directions to the Respondents for not creating any hindrance in the free movement of the Petitioner.

2. At the outset, while submitting on the aspect of maintainability of the

writ petition against issuance of show cause notice under Section 50 DP Act, Mr.Ajay Burman, learned counsel for the Petitioner submitted that the show cause notice under Section 50 DP Act has been issued to the Petitioner on the basis of stale cases wherein the Petitioner already stands acquitted. Learned counsel for the Petitioner further submitted that if the Petitioner is able to bring on record that the notice has been issued *mala fide*, then the writ petition is maintainable and even show cause notice can be challenged invoking the writ jurisdiction of this Court. Mr.Ajay Burman, learned counsel for the Petitioner submitted that there are various decisions by this Court wherein notices issued under Section 50 of DP Act have been quashed on the ground that the same have been issued *mala fide* in the absence of any allegations which could form basis for issuance of such notice.

3. Before examining whether the Petitioner has been able to bring on record that the issuance of notice under Section 50 DP Act was *mala fide*, it is necessary to have a look into the averments made in the present petition.

4. The Petitioner has claimed that in the year 1998, case FIR No.901/1998 was registered against him under Sections 323/341/34 IPC at Police Station Kalkaji. In the year 2001, he was acquitted by the Court in the said case. In the year 1999 also, another FIR No.501/1999 was registered against him at Police Station Kalkaji, wherein also he was acquitted. Again, in the year 2002, FIR No.605/2002 was registered against him under Sections 506/509 IPC and that case also resulted in his acquittal.

5. As per the Petitioner, the issuance of notice under Section 50 of Delhi Police Act is mainly for the reason that in the year 2007, he filed a complaint against SHO Joginder Kumar, highlighting the atrocities committed by him on the Petitioner. That was the beginning of his problem

and thereafter various proceedings were initiated against him by other colleagues of Inspector Joginder Kumar, against whom he made complaints. He had been making complaints and taking recourse to litigation against the police officers, who were initiating action against him.

6. In the writ petition, the Petitioner has given a detailed history of these complaints and counter complaints.

7. The Petitioner has sought quashing of the notice under Section 50 of the Delhi Police Act on the following grounds:-

(i) The Addl. DCP has issued the notice under Section 50 of Delhi Police Act without any incriminating material against him.

(ii) The notice has been issued, ignoring the consequences that it would hamper the life and liberty of the present Petitioner and will impose unreasonable restriction on his freedom of movement.

(iii) The Addl. DCP had issued the notice on the basis of cases, which are stale relating to the period 1999-2002 and that Kalandara under Sections 93-97 of DP Act cannot be taken into account for the purpose of Notice under Section 50 DP Act.

(iv) The notice has been issued out of personal vendetta and grudge of police officials against the Petitioner, who exposed their corruption.

(v) There was no basis to issue notice, observing that the Petitioner was causing fear to the witnesses, as the witnesses have deposed on their own.

(vi) The closure report has been filed before the Court in some matters and in others, the Petitioner has been acquitted.

8. Notice of the writ petition was issued to the Respondents and in the meantime, Respondent No.2 was directed not to pass any final order in the

matter. Thereafter, counter affidavit has been filed on behalf of Respondent No.2.

9. Mr.Ajay Burman, learned counsel for the Petitioner submitted that acquittal of the present Petitioner in various cases by the learned Trial Court is sufficient to prove his innocence. The Petitioner, if externed from Delhi on the basis of *mala fide* notice and the proceedings initiated for his externment from Delhi is bound to have adverse affect on his life, liberty and freedom of movement. Hence, the said notice is required to be quashed. It has been further submitted that in the instant case basically the action has been initiated at the behest of Inspector Joginder Kumar and ACP Mahipal Singh, who is a friend of Inspector Joginder Kumar. They have been harassing the Petitioner by falsely implicating him in various cases. He further submitted that acquittal of the Petitioner in various cases is sufficient to prove his innocence. It was further submitted by counsel for the Petitioner that in the instant case notice has been issued at the behest of Special Commissioner which is contrary to the procedure prescribed under the Delhi Police Act. He further submitted that once action has been initiated at the behest of the superior officers, it is sufficient to establish the *mala fide* act of the Respondent and is a ground to quash the notice. Counsel for the Petitioner relied upon (i) **1988 (15) DLT 41 Mahinder Kumar (Jagdeep) vs. Mrs. Kiran Bedi, DCP (North) & Ors.**; (ii) **1984 (2) Crimes 955 (Delhi) Jamal Ahmad @ Jamil vs. Shri A.K.Kanth**; (iii) **AIR 1981 SC 613 Prem Chand vs. Union of India**; (iv) **32 (1987) DLT 11 Nirendere Singh @ Neeru vs. State and** (v) **ILR (1980) 1 Delhi 102 Hari Ram vs. Commissioner of Police & Ors.**, in support of his contentions.

10. On behalf of State, it has been submitted that the externment notice

has been issued to the Petitioner on the basis of material available with the Respondent. It has been further submitted that the cases which has resulted into acquittal can also be taken into account while issuing notice for externment. It was further submitted on behalf of State that there is nothing on record to even infer that the act of the Respondent to issue notice under Section 50 of the DP Act is *mala fide* and in such circumstances whatever facts are pleaded in this writ petition, it is for the Petitioner to incorporate the same in his response to the show cause notice and in case the Petitioner is aggrieved by the order of the DCP, he can file appeal with the Lt. Governor. It is further submitted that instead of filing reply to the show cause notice as to why externment order should not be passed against him, the Petitioner has directly invoked the writ jurisdiction of this Court praying for quashing of the show cause notice, which is not permissible.

11. I find force in the contentions raised by learned counsel for the Petitioner that when the *bona fides* of the impugned notices are challenged by invoking the criminal writ jurisdiction of this Court, the writ petition is maintainable as held by this Court in the case of ***Mahinder Kumar (Jagdeep) vs. Mrs.Kiran Bedi, DCP (North) & Anr.***(Supra) and ***Jamal Ahmad @ Jamil vs. Shri A.K.Kanth*** (Supra). We may also refer to the decision of this Court in ***Mohd. Usman @ Haji vs. The State 1996 Crl.L.J. 2647*** wherein the question of maintainability of writ petition challenging the issuance of show case notice and in what circumstances, the show cause notice can be challenged in writ jurisdiction was considered by this Court. In para 10 and 11 of the report, it was held as under :

‘(10) Coming to the third contention of the learned counsel for the petitioner I find that this contention also has no force in the

circumstances of the case. Only a notice under Section 50 has been issued to him and whatever factual picas he has he may lake before the competent authority under the Act before an order under Section 47 may be passed against him. There is no denying from the side of the State that the petitioner will have ample opportunity to advance these pleas before the competent authority.

(11) Of course, I am conscious that a notice issued under Section 50 of the said Act may be quashed by this Court and the petitioner may not be asked to go through the entire process laid down in the Act and make a challenge in the writ jurisdiction only after exhausting his statutory remedies under the Act. But such challenge may only be on fundamental grounds such as mala fides or want of statutory authority to issue the notice. Learned counsel torn the petitioner has no doubt relied on MANU/DE/0034/1984 : 27(1985)DLT45 , Jamil Ahmed v. A.K. Kanth but that case related to mala fides. In the present case, the petitioner has not made an allegation of mala fides and the assertion of want of jurisdiction to issue the impugned notice has already not been accepted by me as per discussion made above. '

12. The other contention raised by learned counsel for the Petitioner that the cases in which the accused have been acquitted could not have been considered by the DCP while issuing notice under Section 50 DP Act, is liable to be rejected in view of the decision of this Court in **Harcharan Singh vs. State 2000 III AD (Delhi) 292** wherein after considering the decision of Supreme Court in **Hari Khemu Gawali vs. Deputy Commissioner of Police 1956 Crl.L.J. 1104**, it was held as under :

'6. Therefore, there is no such general rule that criminal cases against a person which result in his acquittal cannot be taken into consideration by the authority proceeding against him under Sections 47/50 of the Act. It is not for this Court to sit in appeal over the decision of the concerned authority and reappraise the material on the basis of which an externment order has been passed. The legislature has provided for the subjective satisfaction of the authority concerned

to arrive at an opinion for passing the order under Section 47 of the Act. It is not for us to substitute the subjective opinion of the concerned authority by our opinion. Basically the order of externment is passed to prevent a person with criminal tendencies from engaging himself in commission of offences. It is the officer concerned who must consider the material placed before him to satisfy himself on the basis thereof as to whether such a person is likely again to indulge in commission of offences in future. Therefore, in order to check the propensities of a person and making a prognosis of his probable future conduct, his past activities can be taken into consideration. Therefore, FIR No. 262 of 1992 under Sections 327/328/506/34 IPC registered against the petitioner on August 3, 1992 could be looked into by the Dy. Commissioner of Police for exercising power under Section 47 of the Act.'

13. Now the sole question that arises for consideration is whether the notice dated 20.03.2014 issued against the Petitioner under Section 50 of the Delhi Police Act can be termed as *mala fide*. The only reason, on which the notice has been termed as *mala fide*, is the information sought by the Petitioner under the RTI Act and the litigation of the Petitioner with Inspector Joginder Kumar, the then SHO, P.S. Kalkaji and his colleague ACP Mahipal Singh.

14. I have perused the material annexed by the Petitioner along with this writ petition to infer *mala fide* in the act of the Respondents in issuing show cause notice. The record of Vigilance Inquiry and action taken on his complaints, which are annexed by the Petitioner, reveal that whenever any complaint was made by the Petitioner, the same was enquired into by the superior officers impartially, fairly and wherever any misconduct was noticed on the part of the police officials, departmental action was initiated against the delinquent police officials. Not only that, personal hearing was

also afforded to the present Petitioner by the Commissioner of Police. Even, investigation was transferred to the Crime Branch. It is Petitioner's own case that even closure reports have been submitted in the cases in which the Petitioner was involved. It is also the case of the Petitioner that he has been provided security and being a 'Protected person' he is being protected by the Delhi Police. Inspector Joginder Singh and his colleagues may be having some grudge against the Petitioner but the entire Delhi Police cannot be painted with the same brush. Filing of the closure report, providing protection to the Petitioner, initiating departmental action against the delinquent police officials on the basis of complaint made by the present Petitioner are sufficient to infer that there is no *mala fide* behind issuance of show cause notice under Section 50 DP Act. It may be added that the complaint by the present Petitioner was made against Inspector Joginder Singh in the year 2007 and prior to that too, the Petitioner was involved in various criminal cases. Irrespective of the fate of those cases, reference of such cases in the show cause notice is not sufficient to attribute *mala fide* in the instant case. The plea of Petitioner that the cases in which he has been acquitted, could not have been considered by the appropriate authority is also not tenable. [*Ref. Mohd. Usman @ Haji vs. The State (supra)*].

15. It may be noted that the Petitioner has ample opportunity to show cause before any externment order is passed. It is not for this Court to examine the material in detail to arrive at a conclusion as to whether on the basis of material referred to in the show cause notice, externment proceedings can be initiated against the Petitioner or not, as that has to be decided by the Authority issuing the notice and after considering the material available and the response submitted by the Petitioner. Since the

remedy of appeal is also available to the writ petitioner, in case any externment order is passed against him, he is not remediless in this regard.

16. In view of the above discussion, the prayer of the Petitioner to quash the impugned notice dated 20.03.2014 is rejected.

17. The writ petition is hereby dismissed.

Crl.M.A.No.5851/2014 (Stay)

Since the writ petition has been dismissed, the present application has become infructuous and the same is accordingly dismissed.

PRATIBHA RANI, J

SEPTEMBER 24, 2014

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