

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(CRL) No.1807/2015**

Date of Reserve: 01.09.2015

Date of Decision: 09.09.2015

DHANI RAM @ RAJU @ BHEDIA Petitioner
Through: Ms.Saahila Lamba, Advocate.

versus

STATE GOVT OF NCT OF DELHI Respondent
Through: Ms.Richa Kapoor, ASC.
SI Rakesh, P.S.Bharat Nagar.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The petitioner is aggrieved by the order dated 2.7.2015 passed by the Additional Deputy Commissioner of Police-I, North West District, Delhi whereby he has been externed from the limits of NCT of Delhi for a period of one year as well as the order dated 22.7.2015 passed by the Appellate authority which upholds and sustains the order of externment.

2. A proposal for externment of the petitioner was made by the SHO, Bharat Nagar police station through the ACP, Ashok Vihar, Delhi on the ground that the petitioner is engaged in offences of voluntary causing hurt, committing acts which would endanger human life or personal safety of others, wrongfully restraining other persons, assaulting or using criminal force on a woman with intent to outrage

her modesty and causing damage to the property and with his acts and movements, has caused harm and danger to the persons and property of the area. The proposal indicated that the petitioner has become so dangerous that it would be unsafe to allow him to be at large in Delhi or any part thereof.

3. The proposal, referred to above, contained a reference of five cases, the details of which are reproduced hereunder:-

S. No.	Particulars of FIR	Sections in which FIR was registered	Status of FIR
1.	403/2013 PS: Bharat Nagar	336/34 IPC and 25/54/59 Arms Act	Pending Investigation
2.	120/2012 PS: Bharat Nagar	323/341/355/506/34 IPC	Pending Investigation
3.	158/2014 PS: Bharat Nagar	323/452/427/506 IPC	Pending Investigation
4.	193/2014 PS: Bharat Nagar	354/354-A IPC	Pending Trail
5.	DD No. 17PP PS: Bharat Nagar	107/150 Cr.P.C.	Case dropped on account of compromise

4. The proposal further indicated that no independent person of the area was willing to come forward to give evidence in police against him because of apprehension of reprisal at his hands. Such independent persons were examined by the SHO in camera.

5. The Additional Deputy Commissioner of Police, on being satisfied about the proposal, noticed the petitioner under Section 50 of the Delhi Police Act.

6. The petitioner was informed of the materials against him and he

was made known that he could either defend his case himself or through the services of a lawyer.

7. The petitioner produced a defence witness namely Nirmala Devi Koli, a neighbour who testified to the fact that the petitioner was known to her and that he bears a good character. She was not aware whether or not the petitioner was having any criminal case against him.

8. Inspector Satyavir Singh, SHO, Bharat Nagar police station was examined as PW who repeated the assertions made in the proposal and alleged that the petitioner is a dangerous/desperate criminal who habitually commits crimes and his presence in the area would be hazardous to peace and tranquillity of the society. He was not cross examined by the petitioner.

9. During the continuance of the proceeding, a fresh report was called for from the ACP, Ashok Vihar which revealed that after FIR No.193/2014 instituted under Sections 354/354A, the petitioner was not involved in any other case.

10. On the basis of the aforesaid material, the Additional Deputy Commissioner of Police-I, North West District, Delhi, by his order dated 2.7.2015 externed the petitioner and directed him to remove himself from beyond the limits of NCT of Delhi for a period of one year within seven days of the passing of the order. The petitioner was directed not to enter or return to Delhi within such period without written permission of the competent authority, but he has been permitted to attend to Court in Delhi on all the dates of hearing of the cases pending against him in the Court, with the stipulation that after

attending the Court on such dates, the petitioner would immediately remove himself outside the limits of NCT of Delhi.

11. The appeal preferred by the petitioner was dismissed by order dated 22.7.2015.

12. While challenging the aforesaid orders, it has been submitted on behalf of the petitioner that both the orders are non speaking; no reason has been accorded for coming to the conclusion that the petitioner's movement is hazardous and prejudicial for an even tempo of life in a society and that such orders have been passed without credible material on record.

13. Neither the Additional Deputy Commissioner of Police nor the appellate authority, it is urged, took note of the fact that the petitioner is the only bread earner of the family and has been made accused at the instance of one Charan Singh, Ashok and Sandeep. The uniform defence of the petitioner before the authorities was the assertion of a property dispute between the petitioner and his friends and aforesaid Charan Singh, Ashok and Sandeep. Ashok and Sandeep are real brothers and the aforesaid three persons, all of whom have been declared bad characters of the area have got false cases lodged against him.

14. The list of cases in the notice and which cases have been taken into account for externing the petitioner reflect that two cases were lodged in the year 2014, one case in the year 2013 and one case is of the year 2012. The nature of offences alleged in the aforesaid cases are offences under Sections 336, 323, 341, 355, 506, 354, 354A of IPC and Arms Act. Out of the five cases which have been cited one is

pending trial whereas three are pending investigation.

15. The status report by the State however, discloses that three cases are pending trial and only one case is pending investigation. The fifth case in the list of cases is a notice under Section 107/150 of the Code of Criminal Procedure which has been dropped because of compromise.

16. It has further been submitted that the petitioner has also lodged a case against Manoj and Bhagwan Singh, one of whom is the son of Charan Singh and the other is his associate. They had assaulted and attempted to outrage the modesty of the daughter of the petitioner.

17. The petitioner is stated to have a family comprising his wife, two daughters aged 15 years and 12 years and two sons aged about 14 years and 10 years and who are fed out of the meagre income of the petitioner which he earns from driving vehicles privately.

18. Section 47 of the Delhi Police Act provides for the powers of the police for externing a person whose movements are calculated to cause harm/hurt to person and property. Such an order of externment by the police could only be passed after a proceedee is alleged to be engaged in or about to be engaged in commission of offences which have been listed in the section and if such proceedee has become so desperate and dangerous so as to render his presence in Delhi or any part thereof hazardous to the community. The order of externment could also be passed if a person is a habitual offender. The explanation to Section 47 defines as to who could be called a habitual offender. Any person who during a period of one year, immediately preceding the commencement of an action under Section 47 of the Act is found

to have committed or involved in offences for three occasions, could be called a habitual offender. For the sake of completeness, Section 47 of the Delhi Police Act is being reproduced below:-

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.”

19. A reading of Section 47 makes it very clear that only under certain circumstances, a person could be removed from the territory of Delhi. A closer scrutiny of Section 47 would reveal that it 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.

20. Thereafter, the Commissioner of Police is required to formulate his opinion that witnesses are unwilling to come in open to depose against such a person for the fear of their lives and reprisal at the hands of the proceedee. Then only such a person could either be directed to behave himself or remove himself outside any part of Delhi or remove himself completely outside Delhi.

21. The order of the Additional Deputy Commissioner of Police does not reveal any material/sufficient material to warrant externment of the petitioner.

22. No reason has been accorded for being satisfied about the petitioner having become a dangerous person to be allowed to have a free existence in society. Only two cases have been cited in which the petitioner was made accused in the year 2015. Thus, strictly going by definition the petitioner is not even a habitual offender. The Additional Deputy Commissioner of Police has also not taken into account the fact that the four cases out of five listed in the notice were lodged at the instance of a group of persons with whom the petitioner had some property dispute in the past. Had this aspect being taken into account, an effort would have been made by the SHO of Bharat Nagar while moving a proposal for externment and the Additional Deputy Commissioner of Police to know as to who was the informant/complainant in such cases. If at all such an issue would have been adverted to, the same would have been mentioned in the order of the Additional Deputy Commissioner of Police. This was an important factor to be taken into account while issuing orders for externment.

23. There is nothing in the order of the Additional Deputy Commissioner of Police to show that any consideration was accorded to the fact that the son and associate of Charan Singh, a sworn enemy of the petitioner had made an attempt to outrage the modesty of the daughter of the petitioner for which a case was lodged by him.

24. The status report refers to a rival gang operating in the area. A list has been provided along with the status report about the action taken against members of both the gangs, the petitioner being member of one of the gangs. The aforesaid material namely presence of two

gangs in the area and the petitioner being a member of one such gang has not been put to the petitioner in the notice. Hence such statement cannot be taken into account for deciding the present case.

25. True it is that the Delhi Police has been clothed with such powers of externment for the purposes of maintaining law and order in the society. Without such permission to the police, perhaps, it would be difficult to maintain an orderly society. Nonetheless, the individual rights of a person cannot be lightly interfered with as any order of externment has the potential of depriving a person of one of his valuable rights of remaining in the society where he pursues his vocation and his personal right of being with his family members and provide sustenance to them. Any order of externment visits the proceedee with a severe blow on his character and has financial and social repercussions. An order of externment makes an inroad into the cherished and valuable rights of a person. The action of the police has to be in consonance and in accord with the legal position that a balance has to be struck between the necessity of harsh action for running an orderly society and the individual rights of a person. While saying so, this Court is not unmindful of the fact that at times, stringent measures are required to be taken against law breakers or against persons who are of criminal dispensation. But taking away the right of domicile of a person lightly is not what is desired or permitted under various provisions of Delhi Police Act. The order of externment passed by Additional Deputy Commissioner of Police does not reflect that such aspects were gone into while passing the order. There is no reason for holding that the petitioner has gone beyond the brink of

reformation.

26. The report about the present status of the petitioner which was called for by the Additional Deputy Commissioner of Police clearly revealed that no case after the list of cases listed in the notice was filed against the petitioner. This amply demonstrates that the petitioner has kept himself out of the arena of crime.

27. The nature of offences also do not disclose that the petitioner has committed any serious offence in the past. No doubt, even minor offences can assume relevance if a person is charged of such offences for many number of times in quick succession. The list of cases shows that only two cases were reported in the year 2014, one in the year 2013 and another in the year 2012. This being so, the petitioner cannot even be called a habitual offender.

28. The order of the Additional Deputy Commissioner of Police does not at all take into account relevant considerations namely the urgency of externing him in the year 2015 when the offences involving the petitioner were committed in the year 2014, non involvement of the petitioner in any case after 2014, which is reflective of the fact that the petitioner has mended his ways; the nature of the accusation and the financial burden on the petitioner which would befall in shifting his domicile from Delhi to another place; the financial stringency would necessarily be exacerbated in coming back to Delhi after seeking permission for attending to Court proceedings.

29. The order of Additional Deputy Commissioner of Police also does not refer to the stage of the investigation of the case which was

lodged by the petitioner as against the son and an associate of Charan Singh, a bad character of the area. The aforesaid case was lodged for outraging the modesty of a grown up daughter of the petitioner. The fact that the family of the petitioner would be subjected to perils of onslaught by the rival gang in the absence of the petitioner from Delhi was also not in the contemplation of the competent authority.

30. This Court is conscious of the fact that the subjective satisfaction of the state authorities based on materials available on record is the guiding factor to test an order of externment. The judicial scrutiny of such action is limited to the issue whether procedural safeguards as against illegal order have been taken care of and it would not be necessary to go into the sufficiency of material on which an executive order is based. Nonetheless, when the legality of an executive order per se is found to be questionable, the Courts cannot shut its eyes from the responsibilities of stopping an illegal order being executed.

31. The position of law with respect to judicial interference in matters of administrative decisions have been well crystallised by now. In order to test the reasonableness of the order, the Courts can traverse into the field and decide whether relevant factors have been taken into account by the executive authority to come to any conclusion. 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, nothing will prevent the Court from reviewing and correcting such an order and the general rule of subjective satisfaction of the executive authority being the guiding

principle would not come in the way of the Court taking a corrective/remedial measure.

32. In the whole and in totality of the circumstances, the order passed by the Additional Deputy Commissioner of Police does not appear to be based on sound reasoning.

33. The same is, therefore, unsustainable in law.

34. For the same reason, the appellate order also cannot be countenanced.

35. There does not appear to be any clear and present danger in allowing the petitioner to remain at large at his place of domicile.

36. For the afore-recorded reasons, therefore, the order dated 2.7.2015 passed by the Additional Deputy Commissioner of Police-I, North West District, Delhi as well as the order dated 22.7.2015 passed by the Appellate authority are set aside.

37. The petition is allowed.

Crl.M.A No.12100/2015

In view of the main petition having been allowed, this application has become infructuous.

Dismissed as infructuous.

ASHUTOSH KUMAR, J

SEPTEMBER 09, 2015

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