



2024:DHC:8840



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

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Date of Decision: 06.11.2024

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W.P.(CRL) 2901/2023 & CRL. MA 26963/2023

VIMAL KUMAR

..... Petitioner

Through: Mr. Raman Sahney, Advocate.

Versus

THE STATE & ORS.

..... Respondents

Through: Mr. Amol Sinha, ASC (CrI.) for the
State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition, the petitioner seeks quashing of externment order dated 14.03.2023 passed by Addl. Deputy Commissioner of Police-I, Shahdara District, Delhi and further setting aside of order dated 24.05.2023 passed by the Court of Hon'ble Lt. Governor of Delhi in Case No.16/2023, whereby appeal against the aforesaid externment order and all consequent proceedings arising therefrom was rejected.

2. Vide the impugned externment order dated 14.03.2023 passed under Sections 47/50 of Delhi Police Act, 1978 (hereinafter, "*DP Act*"), the petitioner was directed to remove himself beyond the limits of N.C.T. of Delhi for a period of two years within seven days from the date of the said order, with permission to attend Court at Delhi on all dates of hearing. The grounds for passing the externment order included, *inter alia*, prior externment of the petitioner for a period of two years vide order dated



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28.12.2017 on the basis of antecedent involvement in thirteen cases registered against him from 2001 to 2017; subsequent involvement in eight cases of a similar nature, including under Delhi Excise Act and Arms Act as well as considering that the petitioner is also a Bad Character (BC) of Bundle-A of P.S. Vivek Vihar.

3. Learned counsel for the petitioner submits that out of the eight cases relied upon against the petitioner while passing the impugned externment order, the petitioner is not even named in three FIRs, i.e., in FIR Nos. 440/2018, 529/2018 and 545/2018. It is further submitted that the notice issued under Section 50 of the DP Act was dated 25.11.2022 and the petitioner was directed to appear on 25.10.2022, i.e., a month prior to even initiation of the externment proceedings, thus showing non-application of mind. It is also contended that the petitioner has been implicated in false cases and that no complaint is filed against the petitioner to substantiate the allegation against him as to extending threats to the local residents or restraining them from becoming witnesses. Furthermore, out of the eight cases cited against the petitioner on the basis of which the externment order came to be passed, only two cases are presently pending trial/investigation, i.e., FIR No.78/2019 registered under Sections 33/52 Delhi Excise Act at P.S. Vivek Vihar, pending trial and FIR No.633/2022 registered under Section 33 Delhi Excise Act at P.S. Vivek Vihar, pending investigation. In fact, in three out of the aforesaid eight cases, the petitioner has been acquitted and in the rest three cases cited against him, the petitioner has not been arrested or named in them.

Learned counsel further submits that with regard to the alleged thirteen cases against the petitioner till 2017, on the basis of which an earlier



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externment order dated 28.12.2017 had been passed against him, the petitioner has been acquitted in most of them, and resultantly, the said order was set aside by the Hon'ble Lt. Governor in an appeal filed under Section 51 of the DP Act and the case was remanded back. It is also submitted that the petitioner has been denied his right to fair hearing as he was not informed of the witness against him/respondent No.3, who is in fact an accused in a complaint case filed by the petitioner, and that the petitioner was deprived of his right to cross-examine the said witness.

4. Moreover, learned counsel for the petitioner submits that the impugned externment order is devoid of application of judicial mind as it does not satisfy the basic ingredients of Section 47 DP Act. To this extent, it is contended that to initiate the proceedings under Section 47 of DP Act, there is a requirement of the registration of 3 cases against the petitioner in the preceding one year, which has not been satisfied in the present case. It is pointed out that out of the 8 new cases cited in the notice against the petitioner, only 2 are pending trial/investigation, registered in 2019 and 2022, respectively. Further, it is submitted that there are no allegations against the petitioner to the tune of him causing any alarm, danger or harm to any person or property, or to society at large. In support of the above contentions, learned counsel places reliance on Prem Chand v. Union of India and Others, reported as **1981 SCC (1) 639**. It is furthermore submitted that since the year 2017, there have been no allegations/FIR against the petitioner that he was involved in commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI, XVII or XXII of the IPC, and even in cases involving Arms Act, the petitioner has been acquitted.



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Lastly, it is submitted that the petitioner is the sole bread-earner of the family and the externment order violates his right to livelihood and right to life.

5. Learned ASC (Crl.) for the State opposes the present petition and submits that the petitioner has been involved in criminal activities since 19.05.2001 and that a total of 23 criminal cases have been registered against him at P.S. Vivek Vihar, P.S. Farsh Bazar and P.S. Uttam Nagar, Delhi. It is further submitted that the impugned externment order relies on previous involvement of the petitioner in 8 cases, registered against him subsequent to the issuance of the earlier externment order dated 28.12.2017. However, it is conceded that the externment order dated 28.12.2017 came to be set aside by the Hon'ble Lt. Governor of Delhi and the case was remanded back, whereafter, the petitioner was given a written warning dated 15.03.2018 to not to indulge in any criminal activity in future. It is contended that despite the said warning, the petitioner was found to be involved in 8 more cases, based on which, the impugned externment order came to be passed. The list of cases wherein the petitioner was found to be involved in are reproduced hereinunder:

S.No.	FIR No.	Date	Under Sections of Law	Police Station	Present Status
1.	100	30.01.2014	336/34 IPC & 25/27/54/59 Arms Act	Uttam Nagar	Pending Trial
2.	340	10.07.2018	33/52 Delhi	Vivek	Acquitted



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			Excise Act	Nagar	
3.	411	30.08.2018	33/52 Delhi Excise Act	Vivek Nagar	Acquitted
4.	440	15.09.2018	33/52 Delhi Excise Act	Vivek Nagar	Discharged
5.	529	20.10.2018	33/52 Delhi Excise Act	Vivek Nagar	Acquitted
6.	545	01.11.2018	33/52 Delhi Excise Act	Vivek Nagar	Discharged
7.	78	03.03.2019	33/52 Delhi Excise Act	Vivek Nagar	Pending Trial
8.	633	30.09.2022	33 Delhi Excise Act	Vivek Nagar	Pending Trial

In regard to the abovestated involvements, learned ASC submits that huge recoveries of illicit liquor have been made, to the tune of 7,000 bottles and 6,200 bottles in FIR Nos. 78/2019 and 633/2022, respectively, the latter recovery being from a secret room/tunnel at the petitioner's residence and it is the case of the prosecution that the petitioner is a supplier of illicit liquor in Delhi. Furthermore, FIR No.35/2023 dated 25.01.2023 has also been registered against the petitioner under Sections 33/58 Excise Act, P.S. Vivek Vihar and FIR No.254/2023 dated 29.06.2023 under Sections 307/186/353/332/333/341/506/34 IPC and Sections 53/116 DP Act at P.S. Vivek Vihar, for indulging in assaulting of police officials. It is pointed out that in the latter case, the petitioner had absconded, as a result of which, NBW was issued against him and proceedings under Section 82 Cr.P.C. was



initiated as well, however, he was granted interim protection therein by this Court.

Learned ASC further submits that the petitioner is a BC of Bundle-A, P.S. Vivek Vihar and that there is an apprehension of him causing danger/harm to persons/property and to the community. It is also submitted that a case FIR No.175/2019 registered under Section 3/4 MCOC Act at P.S. Vivek Vihar is also pending investigation against him. Moreover, it is submitted that on 30.01.2023, *Inspr. Narender Singh*, SHO PS Vivek Vihar was examined as prosecution witness who deposed that he had moved the externment proposal under Section 47 of DP Act against the petitioner and that the petitioner is a habitual offender. He also stated that the citizens are not willing to come forward to give evidence against the petitioner due to threat perception from the petitioner. It is also pointed out that the petitioner was given ample opportunities to produce defence witnesses and also cross-examine the prosecution witness, however, he did not avail the same. He was also advised to engage a counsel to defend his case or to approach the DLSA for a counsel free of cost, however, he chose not to.

Lastly, it is submitted that the petitioner's case falls under Section 47(a) of the DP Act, wherein the standard of being a '*habitual*' offender when read with the explanation annexed to the Section is not required to be fulfilled, i.e., the petitioner need not have three prior involvements in the preceding one year before passing of the said externment order. It is contended that the said explanation is applicable only when the accused person is alleged to be falling under Section 47 (c) sub-sections (ii), (iii) or (iv) DP Act, as the word '*habitual*' is only used in this context. As far as Section 47(a) DP Act is concerned, it is contended that the petitioner, being



a BC of the area, is anticipated to cause alarm, danger or harm to persons/property. In support of the same, reliance has been placed on Kaushalya v. State, reported as **MANU/DE/0315/1987**.

6. At this stage, learned counsel for the petitioner submits that the two cases as mentioned in the externment order, wherein the police had shown conviction of the petitioner, i.e., in FIR Nos. 85/2001 and 63/2010, both registered at P.S. Vivek Vihar, there was a fine imposed and that he was released on good conduct after the previous externment order dated 28.12.2017. It is further submitted that the case registered against him in MCOC Act was a false case and that vide order dated 30.05.2019, a Coordinate Bench of this Court stayed the proceedings against the petitioner and granted him interim protection.

7. I've heard learned counsels for the parties and perused the material on record.

8. At this stage, it is deemed apposite to reproduce Section 47 of the DP Act:

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.

9. A perusal of the impugned externment order would show that the respondent No.2 had duly recorded his satisfaction from the statement of the witnesses recorded in camera by him, as to the fact that the witnesses were not willing to come forward to make a public statement against the petitioner due to apprehension with regard to safety of their person and property. It was also noted that the petitioner was actively involved in 21 criminal cases ranging from Arms Act, IPC to multiple cases under the



Delhi Excise Act. It was thus concluded that there were sufficient grounds to pass the said externment order. The perils of selling of illicit liquor to the society at large had also been considered.

10. Although it has been noted in the impugned externment order that the petitioner is a '*habitual criminal*' due to his continued previous involvements, it is of significance to consider whether the petitioner needs to fulfil the requirement of '*habituality*' when interpreted in light of the explanation appended to Section 47 DP Act, especially when it is alleged that he squarely falls within the ambit of Section 47(a) of the DP Act.

11. A gainful reference can be made on the decision in Om Prakash v. Addl. Deputy Commissioner of Police, reported as **2001 SCC OnLine Del 1334**, wherein a Division Bench of this Court has held, as reproduced hereunder:

11. A reading of the explanation clearly shows that it defines when a person shall be deemed to have habitually committed that act. The word habitual has been used in Section 47 (c), (ii), (iii) & (iv). The reference to the externment order would show that the reasons for the externment of the petitioner are under Sections 47 (a), (b) and (c)(i) of the said Act.

12. Thus the explanation would have no application in the facts of the present case. The plea advanced by the learned counsel for the petitioner is thus not sustainable.

12. Considering the abovenoted legal position, this Court is of the considered opinion that registration of three cases in the preceding year is not the sole condition under which an externment order can be passed under Section 47 of DP Act. Further, the explanation appended to Section 47 of DP Act will not be applicable in the present case since the impugned externment order is passed against the petitioner under Section 47(a) of the



DP Act, which does not employ the term '*habitual*'.

13. Insofar as the question as to whether there exist sufficient grounds to pass the externment order against the petitioner when read with Section 47(a) DP Act, it is noted that the petitioner is a BC of his area, i.e., Bundle-A, P.S. Vivek Vihar, Delhi and due to his involvements in past 21 criminal cases, as highlighted in the contentions above, there is a fair apprehension of him causing alarm, danger or harm to persons or properties. Even subsequent to the initiation of the externment proceedings and the first order of externment passed against him dated 28.12.2017, he has been noted to be involved in other criminal cases, including under MCOC Act. Moreover, despite passing of the first externment order in 2017 on the basis of his involvement in 13 criminal cases, whereafter it was set aside alongwith a written warning given to the petitioner to not indulge in further criminal activity, he was found to again be involved in another 8 criminal cases of a similar nature between 2018 to 2022, endangering life or personal safety of others, and further recoveries of illicit liquor were also made at his instance.

14. In view of the totality of the facts and circumstances as well as in line with the abovenoted legal position, this Court finds no grounds to interfere with the externment order dated 14.03.2023 and the impugned order dated 24.05.2023 and accordingly, the present petition alongwith pending application is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 6, 2024/*rd*