

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(CRL) No.2057/2015**

Reserved on: 18.12.2015

Date of Decision: 22.12.2015

SATISH CHAUHAN Petitioner
Through: Mr.Pradeep Gupta, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS. Respondents
Through: Mr.Rajesh Mahajan, ASC.
SI Ramesh Kumar, P.S.Sultan Puri.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

Crl.M.A Nos.13694-96/2015

1. Exemption granted subject to all just exceptions.
2. Applications stands disposed of.

WP(CRL) No.2057/2015

1. The petitioner has challenged the order of externment passed by the competent authority namely Additional Deputy Commissioner of Police, Outer District, Delhi dated 27.07.2015 whereby the petitioner was directed to remove himself beyond the limits of NCT of Delhi for a period of one year within seven days from the date of receipt of the order. By the aforesaid order, the petitioner was directed not to enter or return to the limits of NCT of Delhi within the said period without written permission of the competent authority. The petitioner was, though, permitted to attend the Courts in NCT of Delhi on all the dates of hearing of all cases pending against him with the condition that the

petitioner would immediately remove himself from the limits of NCT of Delhi after attending to the dates in such cases.

2. The petitioner has also laid challenge to the order passed by the Lieutenant Governor (Appellate authority) in case No.150/2015 on 02.09.2015 whereby the order of externment passed by the competent authority has been upheld and the appeal of the petitioner has been rejected.

3. An externment proceeding was initiated against the petitioner in terms of Section 47 of the Delhi Police Act, 1978, alleging, inter-alia, that the movement and acts of the petitioner are causing and calculated to cause alarm, danger and harm to persons or property. The externment proposal disclosed that it would be hazardous to the community if the petitioner is not externed as witnesses are not willing to come forward to give evidence in public against him for the fear of their being attacked. Thus, according to the notice issued to the petitioner, there existed reasonable grounds for the presumption that the petitioner was likely to engage himself in commission of an offence.

4. It is not in dispute that criminal proceedings were initiated against the petitioner. The notice which was given to the petitioner lists five cases: one case is of the year 2009 and 2012 respectively. In the year 2014, the petitioner is said to have been involved in two cases and the fifth case in the list is of the year 2015. All the aforesaid cases, were instituted at police station Sultan Puri.

5. During externment proceedings, two prosecution witnesses were examined namely MHC (R) of P.S.Sultan Puri (PW-1) and

Inspector Madan Lal Meena, SHO, Sultan Puri (PW-2). Both the witnesses stated that the petitioner was involved in various criminal cases punishable under the Indian Penal Code. They also stated before the competent authority that the petitioner was a desperate criminal, habitual offender and his presence in this area has posed a hazard to the life and property of law abiding citizens. Witnesses are also not coming forward to depose against him due to fear of their person and property. It was stated by them that the petitioner threatened the people of the area that they would be implicated in false cases because his son is an advocate. The witnesses apprised the competent authority that prior to the present proceeding, similar proceeding was initiated against the petitioner and in the aforesaid proceeding, the petitioner was made to furnish a bond for keeping peace and good behaviour for a period of one year by order dated 27.06.2013. Despite such bond which was furnished by the petitioner, he continued with his criminal activities.

6. Defence witness namely Salim was examined who submitted that the petitioner has a good character and he has been doing good work of teaching school going children in his own premises. The aforesaid witness is a neighbour of the petitioner.

7. During the course of proceeding, the petitioner was found involved in other criminal cases as well. Hence a supplementary notice under Section 50 of the Delhi Police Act, 1978 was issued and the petitioner was asked to file his reply. The petitioner denied his involvement in the aforesaid cases mentioned in the supplementary list.

8. Two in-camera witnesses also gave their statements before the competent authority.

9. Based on the aforesaid materials, the competent authority came to the conclusion that the petitioner was not likely to improve his conduct until stringent measures were taken against him. The petitioner was, therefore, by order dated 27.07.2015 externed from the territorial limits of NCT of Delhi for one year with certain concessions namely permission to enter Delhi for attending to Court cases. The Appellate authority, after taking note of the submissions made on behalf of the petitioner and after perusing the records, sustained the externment order and dismissed the appeal of the petitioner.

10. Learned counsel appearing for the petitioner submitted that the order of externment is based on no material and the police, in collusion with some of the persons with whom he is antagonistic, has falsely implicated him in frivolous cases in the past and as a sequel to such vindictive action, has proposed for externment of the petitioner.

11. It was submitted on behalf of the petitioner that he is a member of the Market Association of the area and President of Shristi Dalit Samaj Kalyan Sudhar Samiti, a NGO. The petitioner is also said to be imparting coaching to poor children of the locality in his own premises.

12. It has been specifically pointed out on behalf of the petitioner that in front of his house there is a school run by Municipal Corporation of Delhi. In the premises of the school, some of the named persons, with tainted antecedents have been carrying out illegal activities like gambling, drug peddling etc. When this was opposed by

the petitioner, instead of police taking action against them, the petitioner has been framed in criminal cases.

13. With respect to specific cases, it is submitted by the petitioner that FIR No.169/2009 was lodged by one of the relatives of the persons against whom the petitioner had complained in the past. In the aforesaid case, prosecution witnesses are being examined. FIR No.590/2012 which was lodged by one Bobby Kinnar was cancelled by order dated 28.05.2015 passed by the Metropolitan Magistrate. FIR No.877/2014 was lodged after 40 days of the alleged incident whereas in DD No.28B of the year 2014, the petitioner's involvement was not found and the case was closed. FIR No.386/2015, sole case reported in the year 2015, was lodged for offences under Sections 354-B/509/323 IPC by one Meeta who alleged indecent behaviour and abusive language. The aforesaid case is pending investigation.

14. It is further contended on behalf of the petitioner that he had earlier preferred a complaint before the ACMM, Rohini Courts against the police officials for their complicity in helping the mafia elements and falsely implicating the petitioner. The aforesaid complaint was lodged on 24.11.2014 which is pending before the learned Metropolitan Magistrate-01. On 20.04.2015, the petitioner and his family members were threatened for taking back the complaint referred to above. In that regard, the daughter of the petitioner has lodged FIR No.387/2015 dated 20.04.2015.

15. The petitioner, therefore, submits that as a counterblast to the FIR lodged by the daughter of the petitioner, FIR No.386, the last of the cases in the list and the only one in the year 2015, was lodged

against him. In the aforesaid case, till date, no statement has been recorded under Section 164 of the Code of Criminal Procedure nor any chargesheet has been filed.

16. Thus it was argued on behalf of the petitioner that the order of externment and the appellate order are not fit to be sustained in the eyes of law as the externment proposal itself smacks of vindictive action on the part of the local police.

17. Mr.Rajesh Mahajan, learned Additional Standing Counsel, referred to the contents and accusation of the various cases listed against the petitioner and stated that the petitioner has a criminal proclivity and no fault could be found with either the externment order or the appellate order. He further submits that the two in-camera witnesses who were examined during the proceedings, deposed against the activities of the petitioner but wanted their identity to be kept confidential.

18. The orders impugned are also defended on the ground that what is required to be seen is the existence of the materials against the proposed externee and not sufficiency of those materials. It is the subjective satisfaction of the authority, after going through the entire evidence against the proposed externee and that the opinion of the competent authority is based on objective findings, and therefore, there is no reason for any interference with such decision. In support of his contentions, Mr.Rajesh Mahajan has taken reference of ***State of NCT of Delhi vs. Sanjeev @ Bittoo*** 2005 SCC (CrI) 1025 and ***Lieutenant Governor, NCT & Ors vs. Ved Prakash @ Vedu*** (2006) 2 SCC (CrI.) 449.

19. In order to appreciate the contentions of the petitioner as well as the State, it would be necessary to refer to the provisions of Sections 47, 48, 50 & 52 of the 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.

48. Removal of persons convicted of certain offences.- If a person has been convicted--

(a) of an offence under Chapter XII, Chapter XVI or Chapter XVII of the Indian Penal Code or (45 of 1860);

(b) of an offence under section 3 or section 4 of the Delhi Public Gambling Act, 1955 (Delhi Act 9 of 1955), or under section 12 of that Act in so far as it relates to satta gambling or on two or more occasions under any other provision of that Act (including section 12 of that Act in so far as it does not relate to satta gambling); or

(c) of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956); or

(d) of any offence under section 25, section 26, section 27, section 28 or section 29 of the Arms Act, 1959 (54 of 1959); or

(e) of any offence under section 135 of the Customs Act, 1962 or (52 of 1962);

(f) of any offence under section 61, section 63 or section 66 of the Punjab Excise Act, 1955(Punjab Act No. 1 of 1955), as in force in Delhi; or

(g) on two or more occasions of an offence under-

(i) the Opium Act, 1878 (1 of 1878); or

(ii) the Dangerous Drugs Act, 1930 (2 of 1930); or

(iii) the Drugs and Cosmetics Act, 1940 (23 of 1940); or

(iv) section 11 of the Bombay Prevention of Begging Act, As 1959 (Bombay Act No. 10 of 1960), in force in Delhi; or

(h) on three or more occasions of an offence under section 105 or section 107 of this Act, the Commissioner of Police may, if he has reason to believe that such person is likely again to engage himself in the commission of any of the offences referred to in this section, by order in writing, direct such person remove himself beyond the limits of 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 any part thereof, as the case may be, from which he was directed to remove himself.

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 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.”*

20. The Supreme Court in ***Lieutenant Governor, NCT and Ors vs. Ved Prakash alias Vedu***, (2006) 5 SCC 228, after going through several decisions, pointed out the law operating in the field as hereunder:-

- “(i) In a proceeding under the Act all statutory and constitutional requirements must be fulfilled.*
- (ii) An externment proceeding having regard to the purport and object thereof, cannot be equated with a preventive detention matter.*
- (iii) Before an order of externment is passed, the proceedee is entitled to an opportunity of hearing.*
- (iv) The test of procedural safeguards contained in the Act must be scrupulously complied with.*

(v) The satisfaction of the authority must be based on objective criteria.

(vi) A proceeding under Section 47 of the Delhi Police Act stands on a different footing than the ordinary proceeding in the sense that whereas in the latter the details of the evidence are required to be disclosed and, thus, giving an opportunity to the proceedee to deal with them, in the former, general allegations would serve the purpose.”

21. I have perused the records including the deposition of in camera witnesses.

22. It is noticeable that the cases which have been cited against the petitioner and on the analysis of which cases, the competent authority came to the conclusion that the petitioner has become a dangerous person to be allowed to roam free within the territory of Delhi, have all been lodged under minor sections and the cases are interspersed over a period of six years i.e from 2009 to 2015. The petitioner has also lodged cases against the local police and some of the persons who according to the petitioner, have been instrumental in getting him externed. The deposition of the in camera witnesses are on exactly similar lines as far as the contents and phrasing of the sentences are concerned. On a closer scrutiny of the deposition of in-camera witnesses, it is amply clear that such parrot like statements have been obtained through the mouth of those witnesses.

23. The petitioner has not been externed on the basis of his being a habitual offender. He has been directed to remove himself from the territory of Delhi for one year for the reasons that he possesses criminal proclivity, and has posed danger to the even tempo of life and

that witnesses are not coming in open to depose against him.

24. The nature of cases which have been cited in support of the proposal for externment of the petitioner do not indicate or justify the opinion of the competent officer about petitioner having become a dangerous person. Even the deposition of in camera witnesses do not appear to be trustworthy as each and every word of their statements tally. It is difficult, therefore, to countenance the line of reasoning that witnesses are not coming forward to depose against the petitioner. On the contrary, witnesses have deposed against the petitioner in the cases which have been lodged against him. No doubt, it is not necessary that all the witnesses must be found unwilling to give evidence in public but for a competent authority to come to a conclusion that because of fear of the petitioner, it is difficult to obtain evidence against him in open, there should be definite, cogent and real grounds for coming to such conclusion.

25. Section 47 of the Delhi Police Act, 1978 consists of two parts. The first part relates to the satisfaction of the competent authority for taking a decision regarding the petitioner having become a dangerous person and the second part requires the competent authority to come to a definite finding that witnesses are not willing to come forward to depose against the petitioner for the fear of reprisal. Though the subjective satisfaction of the competent authority has been attached with a finality in the Statute but such opinion of the competent authority has been held to be justiciable and subject to judicial scrutiny. Notwithstanding the provisions of Section 52 of the Delhi Police Act, which limits the scope of consideration by the Courts,

judicial review of such administrative action cannot be shut out. Sufficiency of materials available before the competent authority may not be within the parameters of the scope of the judicial review of such administrative orders but then the whole object of judicial scrutiny of such administrative orders would become illusory if it is not seen whether the satisfaction of the authority is based on materials which are or not referable or in consonance with the object for which such section has been enacted or that the satisfaction arrived at is demonstratively perverse and based on literally no evidence.

26. The materials justifying externment should show that but for such stringent measures, the society in general would be put in difficulty; there is no scope for improvement in the petitioner and that without the externment of the proceedee, evidence cannot be obtained against him in Courts of law.

27. The impugned orders do not indicate that all the factors were taken into account for coming to the conclusion that the petitioner is required to be externed. There is no reference of any counter allegation by the petitioner against the police and others in the orders impugned. The nature of cases, spread over a long period of six years do not reveal any such criminal proclivity of the petitioner as has been made to appear in the impugned orders. After the order of the competent authority on an earlier occasion whereby petitioner was required to furnish bond for good behaviour for a year, there was no involvement of the petitioner in any criminal case. The nature and quality of the statement made by in-camera witnesses also do not inspire any confidence regarding their statements being voluntary and

not obtained by the police authorities.

28. After analysing the entire materials available in the case records, this Court is of the opinion that the petitioner could very well be dealt with under the regular system of dealing with law breakers and the petitioner was not required to be given a blow of deportation.

29. The relevant provisions of Delhi Police Act which have been referred to above are for the purpose of preventing commission of crime by pathological law breakers. This Court is mindful of the fact that in many cases, for tracking down law breakers, stringent measures are required to be adopted, but one of the most important fundamental rights of the citizen namely personal liberty cannot be relegated to the background and be left in the hands of the police entirely.

30. There does not appear to be any clear and present danger based upon any relevant material on which the competent authority has come to the conclusion that allowing the petitioner to remain Delhi would be alarming, dangerous and could lead to serious repercussions.

31. Thus for the aforesaid reasons, the impugned orders cannot be sustained in the eyes of law and are set aside.

32. The petition is allowed.

Crl.M.A No.13693/2015

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

2. Application is disposed of accordingly.

(ASHUTOSH KUMAR)
Judge

DECEMBER 22, 2015/k