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

+ **CRL.REV.P. 604/2015**

Date of decision: 16.12.2015

MOHD.RAFFIQUE @ RAFFI Petitioner
Through: Mr.Vijay Kinger, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Ms.Rajni Gupta, APP.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. The petitioner assails the judgment and order dated 30.04.2015/29.05.2015 passed by the learned ACMM, North East, Karkardooma Courts, Delhi convicting him in DD No.79B dated 29.03.2005 whereby the petitioner stands convicted for the offence under Sections 53/116 of the Delhi Police Act, 1978 and sentenced to undergo imprisonment for a period of six months. The petitioner is also aggrieved by the order passed in Crl.Appeal No.13/2015, by the Additional Sessions Judge-03 (NE), Karkardooma Courts, Delhi, whereby the judgment and order of conviction and sentence against the petitioner has been upheld.

2. The petitioner was externed from the limits of Delhi by order dated 15.04.2004 passed by the Additional Deputy Commissioner of Police, Central District, Delhi. By the aforesaid order, the petitioner

was directed to remove himself from the limits of NCT of Delhi for a period of two years with effect from 20.04.2004. He was, however, permitted to attend Courts at Delhi/New Delhi on all dates of hearing and was directed to remove himself thereafter, to outside the limits of NCT of Delhi. The relaxation was only for Court hours and for the purposes of appearing and attending in cases before Courts of law.

3. The petitioner, within the period of externment, was found in the territorial limits of NCT of Delhi. He was apprehended at Sulabh Sauchalaya, D Block, Sriram Colony, Delhi. A kalandra was filed under Section 53/116 of the Delhi Police Act against the petitioner in the Court.

4. At the trial, the petitioner took the plea that the version of the prosecution was not believable as the IO had no knowledge about him being an externee. It was submitted by the petitioner during trial that there was no credible information to the IO regarding his being an externee. Certain material contradictions were also pointed out by the petitioner in the prosecution version. Head Constable Netrapal Singh (PW-1), ASI Mahesh Chand (PW-2), Constable Iqbaluddin (PW-3), Constable Phool Singh (PW-4) and Head Constable Satish Kumar (PW-5) are said to have given varying information regarding the distance from where the secret informer had pointed out towards the petitioner.

5. Mohd.Rafiq was examined on behalf of the petitioner during trial as DW-1 who deposed that on 29.3.2005, three persons in civil

dress and one person in police uniform lifted him from his house on the pretext that he was required at the police station for some enquiry and he would be released in the evening. However, he came to know later that the petitioner had been arrested. No public witness had been made to join in the arrest proceeding.

6. The Trial Court rejected the aforesaid contentions of the petitioner and held that the prosecution was successful in discharging the onus and proving beyond all reasonable doubts that the petitioner had violated the prohibitory orders. It was held by the Trial Court that Head Constable Satish Kumar (PW-5) clearly deposed that he had received credible secret information that the petitioner, who was an externee, was roaming within the limits of Delhi and based on that information, the petitioner was arrested. The Trial Court also did not agree that the contradictions and variance in the deposition of witnesses inter-se were of the nature which could discredit the prosecution version. The broad features of the prosecution case, the probabilities and other factors were taken into account by the Trial Court in convicting the petitioner and sentencing him as aforesaid.

7. The Trial Court has rightly held that every discrepancy occurring in the prosecution evidence does not merit consideration for the purposes of throwing out the case.

8. ASI Mahesh Chand (PW-2) has proved the externment order against the petitioner.

9. Mohd.Rafiq (DW-1) was not held to be reliable as he resided in the same locality as that of the petitioner and, therefore, was considered to be an interested witness. The date given by DW-1 when the petitioner was taken away by the police, as claimed by the defence, was 29.03.2005. However, when questioned, he could not even remember the date of his own marriage. DW-1 was disbelieved for another reason namely that if at all he had seen the occurrence, he ought to have made a complaint before superior authorities.

10. The Trial Court rightly held that it is not a universal rule that in case of non joining of private witnesses, the case becomes doubtful. The Trial Court also reiterated the settled legal view that no infirmity attaches to the testimony of police officials merely because they belong to police force and that there is no rule of evidence which lays down that conviction cannot be based on the evidence of police officials, if found reliable. The rule of evidence only requires a greater scrutiny of their evidence, which has been done in the present case.

11. On the same set of reasons, the Appellate Court affirmed and upheld the findings of the Trial Court and dismissed the appeal of the petitioner.

12. Thus, from the evidence of the five prosecution witnesses, it stands established that the petitioner was found in the territorial limits of NCT of Delhi despite externment order and that too without seeking any permission from the competent authority.

13. No fault, therefore, could be found with the finding of guilt by both the Courts below.

14. However, in the circumstances of the case, especially when the occurrence has taken place in the year 2005, the sentence imposed upon the petitioner requires to be reviewed.

15. Section 47 of the Delhi Police Act 1978 (hereinafter called the ‘Act’) provides powers to the police to direct a person, under certain circumstances, to remove himself from Delhi or any part thereof.

16. Section 48 of the Act lists the offences in which if a person has been convicted or there are reasons to believe that he is likely to again engage himself in the commission of anyone of such offences then he could be externed for a specified period. In case of failure of a person to leave the area or entering in the area without permission after his externment, that person becomes liable to be arrested or removed in police custody to such place outside Delhi or any part thereof as would be specified by the competent authority (Section 53 of the Delhi Police Act, 1978). Section 54 of the aforesaid Act provides for a temporary permission to such person to return to Delhi.

17. Section 116 of the Delhi Police Act, 1978 reads as follows:

“116. Penalty for entering without permission area from which a person is directed to remove himself or overstaying when permitted to return temporarily.- Without prejudice to the power to arrest and remove a person in the circumstances, and in the manner provided in section 53, any person who-

*(a) in contravention of a direction issued to him under section 46, section 47 or section 48 enters or returns without permission to Delhi, or any part thereof, as the case may be, from which he was directed to remove himself; or
(b) enters or returns to Delhi or any part thereof with permission granted under sub- section (1) of section 54, but fails, contrary to the provisions thereof, to remove himself outside such area at the expiry of the temporary period for which he was permitted to enter or return or on the earlier revocation of such permission, or having removed himself at the expiry of such temporary period or on revocation of the permission, enters or returns thereafter, without fresh permission, shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to two years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.”*

18. From the perusal of the Section 116 of the Act, it would appear that the minimum sentence provided for violating the provisions of Sections 46, 47 and 48 is six months, extendable upto 2 years and the violator is also liable to be fined. The minimum quantum of sentence fixed could further be reduced by any court provided adequate and special reasons are recorded for imposing a sentence for a term which is less than six months.

19. The petitioner has, prayed for reduction of the sentence on the following grounds:

a. that he has not committed any offence from 2005 till date;

- b. that he is the sole bread earner of his family;
- c. that he has faced the agony the agony for almost 10 years;
- d. that he has served the period of externment long time back;
and
- e. that the petitioner has already remained in custody for more than a month after the dismissal of the appeal by him against the Trial Court judgment.

20. On a careful consideration of the mitigating circumstances listed by the petitioner, this Court is of the opinion that sentencing the petitioner for six months, especially in view of the aforesaid circumstances, would be rather harsh.

21. There can be no dispute over the proposition that the sentence has to be in proportion to the crime and the circumstances in which it is committed. What any court of law has to be careful of, while sentencing a wrongdoer, is that the sentence imposed ought not to be the antithesis of the reformatory approach of any penal legislation. The sentencing process has to be, and justifiably so, tempered with social/human considerations. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. The punishment should not be disproportionately excessive.

22. The judicial precedents in this regard suggest that relevant consideration for sentencing would be the facts and circumstances in each case; the nature of crime; the manner in which it was committed; the conduct of the accused post commission of offence and all other attending circumstances. All the above factors individually and

collectively need form part of the consideration of a court while sentencing.

23. That the externment order was violated about 10 years ago and that the petitioner completed his externment period coupled with the fact that he has not been involved in any case thereafter, definitely constitute sufficient mitigating circumstances to reduce the sentence imposed upon him.

24. On consideration of the aforesaid facts, this Court is of the opinion that the interests of justice would be subserved if the petitioner is sentenced to the period of custody which he has already undergone.

25. No good ground has been made out by the petitioner to differ with the Trial Court as well as Appellate Court on the question of conviction.

26. Thus, while maintaining the conviction, the sentence of the petitioner is reduced to the period which he is already undergone in custody.

27. The revision petition is partially allowed with the modification in the sentence.

28. The petitioner is directed to be released from jail forthwith if not wanted in any other case.

29. The petition is disposed of accordingly.

Crl.M.B. No. 7776/2015

1. In view of the petition having been partly allowed, no orders are required to be passed in the instant application.
2. Dismissed as infructuous.

A copy of this order be sent to the Superintendent of the concerned jail for information, compliance and record.

DECEMBER 16, 2015
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ASHUTOSH KUMAR, J