

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

+ **W.P(CRL) 2165/2015**

% Reserved on: 10.12.2015
Date of Decision: 18.12.2015

GHAN SHYAM KAPOOR @ DHANU Petitioner
Through: Mr.Ajayinder Sangwan and
Mr.S.N.Sharma, Advocates.

Versus

LT.GOVERNOR OF DELHI & ANR. Respondents
Through: Mr.Rajesh Mahajan, ASC and
Mr.Avi. Singh, ASC.
SI Sunil Kumar, P.S.Geeta Colony

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

1. The petitioner has challenged the order dated 23.06.2015 passed by the Additional Deputy Commissioner of Police-I, East District, Delhi in connection with File No.33/2013 whereby he has been externed from the limits of NCT of Delhi for a period of two years.

2. By the aforesaid order the petitioner has been directed not to enter or return to the area of NCT of Delhi within the said period without written permission of the competent authority. He, however, by the aforesaid order, has been permitted to attend the Court at Delhi on all dates of hearing with the condition that he would immediately remove

himself after attending to the Court case. The aforesaid relaxation is only for the date of hearing in Courts for coming and going out of the limits of NCT of Delhi.

3. The petitioner has also challenged the order dated 29.07.2015 passed by the Lieutenant Governor in Crl. Appeal No.111/2015-CA whereby an order passed by the Additional Deputy Commissioner of Police-I, District East, Delhi regarding externment of the petitioner has been affirmed and upheld.

4. An externment proposal under Section 47 of the Delhi Police Act, 1978 was sent by the SHO, Geeta Colony through ACP, Gandhi Nagar. The proposal lists seven cases against the petitioner. The details of such cases are as hereunder:-

S. No.	FIR No.	Date	Section of Law	Police Station	Present Status
1	270	10.12.2002	307/34 IPC	Geeta Colony	Acquittal
2	341	17.09.2007	308/34 IPC	Geeta Colony	Quashed
3	377	21.10.2007	3/4/8/9/55 Gambling Act	Geeta Colony	Pending Trial
4	328	16.09.2010	302/34 IPC	Jagat Puri	Acquittal
5	347	17.10.2012	323/341/34 IPC	Geeta Colony	Pending Trial

6	395	08.12.2012	3/4/9/55 Gambling Act	Geeta Colony	Pending Trial
7	20	16.01.2013	325/341/336/50 6/34 IPC & 27/54/59 Arms Act	Geeta Colony	Pending Trial

5. From the list of cases it would appear that in the year 2013 when the externment proposal was sent, the petitioner was accused in only one case namely FIR No.20 dated 16.01.2013, registered for the offences under Sections 325/341/336/506/34 IPC read with Sections 27/54 and 59 of the Arms Act. The aforesaid case is pending adjudication before a Court of law. Apart from the abovenoted case in 2013, the petitioner was found to be involved in two cases which were registered in the year 2012, one case in 2010 and two cases in the year 2007. The petitioner was found to be involved in a case of attempt to murder in the year 2002 (reference FIR No.270/2002). Out of the aforesaid cases, the earliest case in which the petitioner was made accused ended in acquittal whereas the case instituted in the year 2007 stood quashed. In the solitary case instituted against the petitioner in the year 2010, he has been acquitted. Thus four cases are pending trial, one of the year 2013, two of the year 2012 and one of the year 2007. The aforesaid cases are under different sections. The case of the year 2007 relates to Gambling Act whereas out of the two cases registered in the year 2012, one is under the Gambling Act and the other is for minor offences namely 323/341 & 34 of the IPC.

The case which was last registered against the petitioner is for minor offences of IPC but read with Arms Act.

6. Learned counsel for the petitioner submitted that his externment is an illustrious case of abuse of power by the police authorities and absolute lack of application of mind by the Appellate authority. It has further been argued that by no stretch of imagination, assuming such involvement of the petitioner in different cases to be correct, can he be said to be a habitual offender. It is submitted that there is no material on record to justify the presumption of the Additional Deputy Commissioner of Police that because of his becoming a dangerous person, witnesses are not willing to depose against him openly in accordance with law.

7. Learned counsel for the petitioner has strenuously argued that the seven cases, out of which the petitioner has been acquitted in two and one such case has been quashed, is interspersed over a period of more than 10 years. The fact that there is only one case of the year 2013 is an evidence of the fact that the petitioner is on a reformatory path and his externment from the local limits of Delhi is without any valid cause.

8. Learned counsel for the petitioner has, by inference, submitted that the essential facts which ought to have been considered by the police authorities and the Appellate Court have been totally ignored. Both the orders, therefore, suffer from the vice of absolute non application of mind.

9. In order to appreciate the contention of the petitioner, it is necessary to have a look at the provisions of the Delhi Police Act, 1978 which deal with externment of a person.

*“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.

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 51 - Appeal against orders under sections 46, 47 or 48

- (1) Any person aggrieved by an order made under section 46, section 47 or section 48 may appeal to the Administrator within thirty days from the date of the service of such order on him.*
- (2) An appeal under this section shall be preferred in duplicate in the form of a memorandum, setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by that order or a certified copy thereof.*
- (3) On receipt of such appeal, the Administrator may, after giving a reasonable opportunity to the appellant to be heard either personally or by a counsel and after such further inquiry, if any, as he may deem necessary, confirm, vary or set aside the order appealed against:*

Provided that the order appealed against shall remain in force pending the disposal of the appeal, unless the Administrator otherwise directs.

- (4) The Administrator shall make every endeavour to dispose of an appeal under this section within a period of three months from the date of receipt of such appeal.*
- (5) In calculating the period of thirty days provided for an appeal under this section, the time taken for obtaining a certified copy of the order appealed against, shall be excluded.*

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.”*

10. Section 47 of the Act refers to the situation under which a person could be removed from the territory of Delhi. The situation enumerated are that if the movement of such person causes alarm, danger or harm or the proceedee is or about the commit offences under various sections of the Indian Penal Code or that such person is so desperate and dangerous so as to render his roaming at large in Delhi would be hazardous to the community or has been habitually intimidating persons or causing affray or passing indecent remarks on women and girls. If, in conjunction with any one of the grounds or all the grounds, the competent authority frames his opinion that out of fear nobody is coming forward to depose against

such person, he could either be directed to behave or to remove himself outside Delhi or to remove himself from any specified part of Delhi for a fixed duration/tenure.

11. The explanation appended to the section defines habitual offender. If a person has involved himself in cases on three occasions or more within one year immediately preceding the commencement of the action, he is a habitual offender.

12. Section 47 of the Act, therefore, 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. Thereafter, the Commissioner of Police is required to formulate his opinion that witnesses are unwilling to come in open to depose against such person for the fear of their lives. Then only a person/offender/proceedee could either be directed to behave himself or remove himself outside any part of Delhi or remove himself completely outside Delhi.

13. From the records of the case it appears that two witnesses were called on behalf of the petitioner namely Ashok Kapoor and Rajesh Sharma. Both of them have stated that the petitioner has been behaving well in the locality for last several years. The petitioner is stated to be

earning his livelihood peacefully through a job of property dealing as well as house construction. He runs his office from his own house.

14. The analysis of the nature of cases in which the petitioner is said to be involved makes it very clear that the offences are interspersed over a number of years. The proceeding for externment was initiated in the year 2013 as is evident from the notice to the petitioner. There is no justification of holding the petitioner a habitual offender.

15. The implication of the petitioner in cases which have been listed in the externment proposal do not make out a case for externment of the petitioner and that too for two years.

16. Mr.Mahajan, learned Additional Standing Counsel, while defending the orders submitted that the Additional DCP was satisfied about the criminal proclivity of the petitioner. It is only the subjective satisfaction of authorities based on materials available on record that the externment order has been passed. It is further submitted by him that the sufficiency of the material on which the externment order was passed cannot be gone into. What is required to be seen is the existence of materials and not the sufficiency of materials. If the materials available on record, satisfies the competent authority to arrive at such conclusion, the same ought not be interfered with.

17. The scope of judicial review of the administrative order, it has been argued, is limited to the legality of the decision making process and not the legality of the order per se and no judicial interference is required

in the event of the possibility of any plausible view with regard to the petitioner being dangerous and hazardous to the society.

18. The position of law with respect to judicial interference in matters of administrative decisions has been well crystallized by now. The oft quoted and referred decision in this regard is in *Associated Provincial Picture Houses Ltd vs. Wednesbury Corporation, (1947) 2 All E.R 680*. The principle enunciated in the aforesaid case is popularly known as Wednesbury principles. The aforesaid decision takes note of the fact that in order to test the “reasonableness” of the order, the Court has to find out whether relevant factors have been taken into account for coming to any conclusion. What is important to see is whether the action of the executive is within the parameters of law and that the decision passes the test of reasonableness. 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 and/or suffers from the procedural irregularities, the same can definitely be reviewed and corrected.

19. True it is that the sufficiency of the material for the police authority to come to the conclusion about the petitioner being dangerous cannot be gone into; nonetheless such executive order cannot be sustained if it is based on distorted/illogical grounds.

20. The relevant provisions of the Delhi Police Act have been enacted for the purpose of preventing crime and making society worth living. Keeping this object in mind, even before the threshold of the commission

of crime by any person, considering his criminal dispensation and proclivity, he could be removed from the confines of Delhi.

21. Nonetheless, there can be no dispute that an externment order brings in societal and personal deprivation and is a great blow on the finances of the externee. An order of externment makes an inroad into the cherished and valuable right of a person to have his domicile at the place of his choice.

22. This Court is mindful of the fact that unless such stringent measures are taken against such law breakers, it would be difficult for police authorities to maintain an even tempo of the society. At the same time the rights and liberties of a person cannot be lightly interfered with and has to be guarded with utmost zeal.

23. The provisions of Section 47 and 50 therefore, have to be read strictly. Considering the strain that it puts on an externee, the considerations for externing a person ought to be in consonance with the requirements of law and the satisfaction arrived at by the executive authorities must pass the test of reasonableness. Any executive order which is not informed with fairness cannot be sustained on any account.

24. There must be a clear and present danger in allowing the petitioner to remain at large in jail for countenancing the order of externment.

25. From the perusal of the externment order as also the appellate order, this Court is of the opinion that there was no sufficient reason to

believe that the petitioner was so desperate and dangerous that his presence in NCT or any part thereof would be hazardous to the community and its safety. Both the orders referred to above, suffer from vice of non application of mind with respect to relevant considerations namely

- i. the frequency of the cases in a particular year,
- ii. consideration of the fact whether the petitioner has improved himself,
- iii. the urgency of externing the petitioner in 2015,
- iv. requirement of the petitioner to be in Delhi to attend to cases which are pending trial,
- v. the financial burden on the proceedee in coming from outside Delhi to Delhi Courts,
- vi. the possibility of delay in disposal of cases and, therefore, delay in vindication of the assertion of either i.e. the petitioner or the prosecuting agency,

26. There does not appear to be any material so as to justify the assessment that witnesses are not daring to come in open to depose against the petitioner.

27. Tested on the touchstone of aforementioned facts and principles, the externment and the appellate orders cannot be sustained in the eyes of law.

28. The externment order dated 23.06.2015 passed by the Additional DCP and the appellate order dated 29.07.2015 passed by the LG, Delhi are, therefore, quashed.

29. The petition stands disposed of accordingly.

Crl. M.A. No.14225/2015

1. In view of the main petition having been allowed, this application becomes infructuous.

2. This application is disposed of accordingly.

ASHUTOSH KUMAR, J

DECEMBER 18, 2015

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