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

+ **W.P.(CRL) 1701/2016**

DINESH MEHNDIRATTA @ VICKY

..... Petitioner

Through: Mr. G.P. Thareja and Mr. Navjot
Kwatra, Advocates

versus

STATE N.C.T OF DELHI & ORS

..... Respondent

Through: Ms. Kamna Vohra, ASC with SI
Pradeep Kumar, PS Preet Vihar

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

02.11.2016

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1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek the setting aside of the externment order passed by the DCP (East) dated 08.03.2016 in Complaint Case No.109/2015 u/s 47 of the Delhi Police Act (the Act), PS Preet Vihar and the order dated 04.05.2016 passed by the Lt. Governor in Appeal No.36/2016 preferred by the petitioner, whereby the order passed by the DCP (East) was upheld.
2. The proceedings u/s 47 of the Delhi Police Act were initiated against the petitioner vide notice dated 06.08.2015 issued by the Additional Commissioner of Police-I (East), Delhi. The allegations contained in the said notice, insofar as they are relevant, read as follows:

“Allegations

That you are engaged in the commission of crime involving offences punishable under Chapter V-A, XVI, XVII, XVIII, XXII of IPC and Gambling Act as apparent from the following cases in which you were found involved:

<i>Sl. No.</i>	<i>FIR No.</i>	<i>Dated</i>	<i>Section of Law</i>	<i>Police Station</i>	<i>Present Status</i>
<i>1.</i>	<i>342</i>	<i>01.12.2011</i>	<i>323/324 IPC</i>	<i>Preet Vihar</i>	<i>Pending trial</i>
<i>2.</i>	<i>184</i>	<i>10.08.2012</i>	<i>385/448/420/ 467/468/471/120B/34 IPC</i>	<i>Preet Vihar</i>	<i>Pending inv.</i>
<i>3.</i>	<i>192</i>	<i>03.06.2013</i>	<i>308/506/34 IPC</i>	<i>Preet Vihar</i>	<i>Pending trial</i>
<i>4.</i>	<i>410</i>	<i>22.11.2013</i>	<i>3/4/9 Gambling Act</i>	<i>Preet Vihar</i>	<i>Pending trial</i>

That your movements and acts are causing and calculated to cause alarm, danger and harm to the person or property. There are reasonable grounds to believe that you engage in or is likely to engage in the commission of offences punishable under Chapter V-A, XVI, XVII, XVIII, XXII of IPC and Gambling Act. It is a fact that you were not involved in a single isolated incident but indulged in criminal activities since year 2011 and continued the same. Because of your persistent criminal activities, you are so desparate and dangerous so as to render you being at large in Delhi or in any part thereof hazardous to the community.

That the witnesses are not willing to come forward to give evidence in public against you by reason of apprehension on their part as regards the safety of their person or property. There are reasonable grounds to believe that you are likely to engage yourself in the commission of offences mentioned above”.

3. The petitioner sent his response on 08.09.2015 to the said show cause notice. He denied the allegations made against him. He claimed that he had been falsely implicated in the four cases aforesaid. He sought the withdrawal

of notice issued to him u/s 47 of the Act. The petitioner produced two witnesses in his support. After grant of hearing to the petitioner, the Dy. CP (E) passed the impugned order dated 08.03.2016. In his order, he stated that he had perused the statement of the witnesses recorded in camera and by the Addl. CP-I (East). He recorded satisfaction that the witnesses are not willing to make statement in public against the petitioner due to apprehension with regard to the safety of their person and property, but they have deposed so in camera. In exercise of powers conferred u/s 47/50 of the Act, he directed the petitioner to remove himself beyond the limits of NCT of Delhi for a period of one year within 7 days of date of the said order.

4. The petitioner then preferred a statutory appeal u/s 51 of the Act to assail the order dated 08.03.2016 before the Lt. Governor of Delhi, who after granting hearing to the petitioner through counsel, dismissed the said appeal vide the impugned order dated 04.05.2016. Hence, the present writ petition.

5. The submission of learned counsel for the petitioner is that in respect of case FIR 342/2011 u/s 323/324 IPC registered at PS Preet Vihar, the petitioner stands acquitted. He submits that this case arose out of a quarrel between the petitioner and his brother in law in the petitioner's house. So far as the second case enlisted in the aforesaid tabulation is concerned being case FIR 184/2012, even according to the respondents, the same is pending investigation and even the charge sheet has not been filed till date even though the case is of the year 2012. The third case being FIR 192/2013 u/s 308/506/34 IPC registered at PS Preet Vihar, the trial is pending. The fourth case being FIR 410/2013 is a case under the Gambling Act and not under the IPC and the trial is still pending.

6. Thus, learned counsel for the petitioner submits that, firstly, the petitioner has not been convicted in any of the aforesaid cases till date. Secondly, only two cases are pending; in one investigation is underway since 2012 and in the first case the petitioner stands acquitted.

7. Learned counsel for the petitioner submits that the notice was issued to the petitioner on 06.08.2015 and no case was registered in the preceding for 12 months. In fact, the last case was registered on 22.11.2013 under the Gambling Act and for nearly 2 years, no case had been registered against the petitioner before the issuance of the show cause notice in question.

8. Learned counsel for the petitioner has drawn the attention of the court to Explanation to section 47 of the Act to submit that it cannot be said that the petitioner is habitually committing offences of the kind which are relevant for the purpose of section 47 of the Act. He submits that mere recital of the language used in section 47 of the Act in the show cause notice and the order passed u/s 50 of the said Act would not be sufficient, and the order passed u/s 50 of the Act should be premised on relevant and germane material, which is absent in the present case.

9. Learned counsel for the petitioner has also referred to the judgment of this court in *Ghan Shyam Kapoor v. Lt. Governor of Delhi*, 2015 SCC Online Del 14180 and in particular para 25 thereof to submit that the relevant aspects have not been considered by the respondent while passing the order of externment against the petitioner. In para 25 of this decision, this court observed that the order under examination in the said case suffered from vice of non application of mind with respect to relevant considerations. The relevant considerations enumerated by the court were the following:

- 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,*

10. Learned counsel for the petitioner submits that the said considerations are relevant to the present case as well and they have not been considered by the respondents while passing the impugned orders.

11. On the other hand, Ms. Vohra submits that the impugned orders have been passed after recording the statement of witnesses in camera since they were not willing to give their statements in the open as they apprehend harm from the petitioner. The original record containing those statements has been produced and the statements which are lying in a sealed cover have been seen by the court after opening the sealed cover. The original record including the statement of the witnesses recorded in camera have been returned to the learned counsel.

12. Having heard learned counsels, I am of the view that the impugned order cannot be sustained since it suffers from non application of mind. It cannot be said from the facts of the present case that the impugned orders are founded upon relevant and germane material. It is clear to the court that so as to justify the passing of the order of externment u/s 50 of the Act, the language used in section 47 and 50 of the Act had been picked up as if it is sufficient to recite the same as a mantra. There is no relevant or germane

material produced on record to justify the passing of the impugned orders.

Section 47 and 50 of the Act reads as follows:

“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”.

“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 119 to 124 (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”.

13. The impugned order dated 08.03.2016 passed by the DCP (E) records that the “*movements and acts were calculated to cause alarm, danger and harm to person and property and his presence in Delhi or any part thereof hazardous to the community*”. These are the observations made in the said impugned order qua the petitioner. However, on what basis the said conclusions have been drawn is difficult to fathom. Though it is claimed that the witnesses are not willing to come forward to give evidence in public against the petitioner due to apprehension on their part as regards the safety of their person and property, it is seen that the two witnesses whose statements were recorded in camera did not claim to be witnesses to any of the three pending cases (one of them is under investigation). One of the so-called witnesses is from the adjoining locality. So far as the other witness is concerned, in his statement only his house number has been mentioned without even mentioning the locality to which he belongs. Their statements do not refer to any specific instance in relation to the acts and conduct of the petitioner and they are general in nature to the effect that the petitioner is a local goon and, therefore, nobody is willing to make a statement against him.

14. There is much to be said about the said statements. Both these statement appear in handwriting which do not appear to be those of the

persons to whom they are attributed. There is a lot of gap between the last line of statement and the signature attributed to the witnesses. The authenticity and genuineness of the said statement is, therefore, highly doubtful.

15. There is merit in the submission of counsel for the petitioner that in view of the explanation to section 47 of the Act, it cannot be said that the petitioner habitually commits the offences enumerated in section 47 (c)(2), (iii) or (iv), since the alleged offences in which the petitioner is stated to be involved are of the years 2011 to 2013, whereas the notice was issued only on 06.08.2015.

16. In the impugned order, the DCP has relied upon the statement of Insp. Rattan Pal, SHO PS Preet Vihar. He has merely narrated the position on record, namely, the involvement of the petitioner in four cases. Even from the statement, as recorded in the impugned order, it is not borne out as to on what basis he has formed the opinion that there is every likelihood of the petitioner indulging in such offences in future or that the presence of the petitioner in the area is leading to danger for the person and property and the law abiding citizens of the area.

17. There is also merit in the submission of the petitioner that the Commissioner of Police has not addressed the aspects taken note of by this court in ***Ghan Shyam Kapoor*** (supra). The last case in which the petitioner was involved is of 22.11.2013 and no other involvement of the petitioner was reported either in 2014 or even in 2015 till the time of issuance of the show cause notice. There is also no urgency disclosed in the show cause notice or the impugned order stating as to why he should be externed at this stage. The inconvenience to which the petitioner would be put in attending

to his cases pending trial as well as the financial burden that he would be subjected if externed also do not appear to have been factored in.

18. In light of the aforesaid discussion, in my view, the impugned orders are baseless and cannot be sustained and they are, accordingly, quashed. The parties are left to bear their respective costs.

VIPIN SANGHI, J

NOVEMBER 02, 2016

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