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

Decided on: 8th May, 2017

+ **W.P. (CRL.) 207/2017 and Crl.M.A.1288/2017**

NEERAJ @ CHINTI Petitioner
Through: Mr. Sanjeev Panda, Advocate

versus

THE STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Rajesh Mahajan, ASC for the
State with Mr. Lokesh Chandra, Adv.
SI B.K. Bharti, PS Jaffarpur Kalan

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By the writ petition at hand preferred under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) challenge is brought to the validity of the order dated 30.11.2016 passed by the Administrator of the National Capital Territory of Delhi (Lieutenant Governor), dismissing the appeal of the petitioner under Section 51 of Delhi Police Act, 1978 as also the order dated 28.06.2011 of the Deputy Commissioner of Police, South West District passed under Section 47 read with Section 51 of the Delhi Police Act, 1978 thereby confirmed.

2. The effect of the order of Additional Deputy Commissioner of Police, as confirmed in appeal by the Administrator, essentially is that the petitioner stands directed to remove himself beyond the limits of National Capital Territory of Delhi for a period of two years *w.e.f.* 05.07.2016 with inhibition against entry or return to the said area without written permission of the competent authority, though with exception to the effect that he may come to Delhi to attend the hearing in the courts whenever such situation arises.

3. A notice on the writ petition was issued by order dated 23.01.2017 and a counter affidavit was directed to be filed. No counter affidavit has been submitted in response. The petition is resisted on the basis of available record.

4. The learned counsel for the petitioner and learned Additional Standing Counsel for the respondent/State have been heard at length and the record has been perused.

5. Having heard arguments and upon perusal, this court finds that the proceedings leading to the order dated 28.06.2016 of the Additional Deputy Commissioner of Police are vitiated on account of total non application of mind. It is for this short reason that the petition at hand must be allowed and the impugned orders quashed/set aside. The reasons are set out hereinafter.

6. The notice for show cause as to why the order of externment be not passed against him under Section 47 of the Delhi Police Act, 1978 was issued to the petitioner on 13.03.2013. In the said notice reference

was made to three criminal cases they being, FIR No.245/2011, dated 27.08.2011, under Section 379 IPC; FIR No.266/2011 dated 21.09.2011, under Sections 392/394 IPC and 25 of Arms Act; and FIR No. 361/2011 dated 30.09.2011, under Sections 398/401 IPC and 25 Arms Act, all of Police Station Manesar Gurgaon. It appears that, subsequently, during pendency of such proceedings, it came to light that petitioner was also involved in three other crimes, they being case FIR No.333/2011 dated 06.09.2011 under Section 379 IPC of Police Station Palam Viah, Gurgaon; FIR No.159/2011, dated 09.06.2011, under Section 379 IPC of Police Station Manesar Gurgaon and FIR No.61/2012 dated 23.05.2012, under Section 379 IPC of Police Station J.P. Kalan. In this view another show cause notice was issued to the petitioner in continuation of the first one.

7. The proceedings of the Additional Deputy Commissioner of Police indicate that the petitioner did not participate in spite of due notice and, thus, was set *ex parte*. This, however, would not mean the proceedings were to be conducted without proper application of mind. The fact that the proceedings were being conducted *ex parte* cast even greater responsibility on the competent authority. The non application of mind vitiating the order that was eventually passed on the available material is reflected by the following reasons at the second page:-

“...The record suggests that the respondent is a criminal of such a desperate nature, who was involved in 03 criminal cases of IPC and Arms Act. Even during the course of proceedings the respondent was found involved in 03 more cases of IPC leads to a total of 06 cases which means that even the proceeding has not detened

(sic) him in involving in illegal activities. He has even committed the crime during the pendency of externment proceedings, which indicates that he does not intend to mend his ways... ”

8. Clearly, the Additional Deputy Commissioner of Police having mentioned six cases referred to above, three indicated in the first show cause notice issued on 13.03.2013 and the other three mentioned in the supplementary notice issued on 22.07.2015, did not remember that the applicant's name had figured in not just three but in six cases, all of each pertain to the period prior to the initiation of the externment proceedings. It was wrongly observed that three of the said cases pertain to the period “*during the course of the proceedings*”. Since the Additional Deputy Commissioner of Police proceeded to conclude that the involvement of the petitioner in illegal activities was indicative of he not being deterred by the possible externment or that he did not intend to mend his ways, on the erroneous impression that the three out of six cases pertain to post show cause notice period, his conclusions are vitiated, they suffering from non application of mind.

9. Pertinent to note that in the proceedings which concluded on 28.06.2016 before the Additional Deputy Commissioner of Police, and in the proceedings arising out of appeal before the administrator which culminated on 13.11.2016, there was no material produced indicating any involvement of the petitioner in any criminal case after the last case registered involving his name, it being of 23.05.2012 (FIR No.61/2012 of Police Station J.P. Kalan). This shows the subjective

satisfaction recorded by the competent authority in even more poor light.

10. In above view, the impugned orders cannot be sustained. Thus, the order dated 28.06.2016 of Additional Deputy Commissioner of Police, South-West District, New Delhi directing externment of the petitioner from the area of National Capital Territory of Delhi for a period of two years w.e.f. 05.07.2016 and the order dated 30.11.2016 of the Administrator of the Govt. of NCT of Delhi dismissing the appeal under Section 51 of the Delhi Police Act, 1978 are hereby set aside and vacated.

11. The petition stands disposed of in above terms.

R.K.GAUBA, J.

MAY 08, 2017

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