

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

%

Reserved on: 14.07.2017

Delivered on: 04.08.2017

+ W.P(CRL) 538/2017

SUNNY

..... Petitioner

versus

LIEUTENANT GOVERNOR OF DELHI & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Harshvardhan Pandey.

For the Respondents : Mr. Sanjay Lao, ASC.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. Sunny, the petitioner, has challenged the order dated 29.11.2016 passed by the Addl. Deputy Commissioner of Police, South East District, New Delhi in File No.02/2015 whereby he has been externed from the limits of NCT of Delhi for a period of two years as well as the order dated 01.02.2017 passed in Case No.7/2017, in appeal, by the Hon'ble LG of Delhi whereby the order of externment by the learned Deputy Commissioner of Police has been affirmed and upheld.
2. A proposal for externment of the petitioner was forwarded by the SHO, Ambedkar Nagar P.S indicating that the petitioner had been engaging himself in commission of illegal acts and criminal activities which has caused alarm and danger in the society. The details of the cases on which the proposal has been made are as under:-

S. No.	FIR No.	Under Section	Police Station	P. Position
1.	80/02	332/353 IPC	Amb. Nagar	Acquitted
2.	40/05	341/324/34 IPC	Amb. Nagar	Compounded
3.	566/05	452/324/34 IPC	Amb. Nagar	Compounded
4.	599/06	323/452/506/34 IPC	Amb. Nagar	Compounded
5.	371/08	356/379 IPC	Amb. Nagar	Compounded
6.	96/10	323/365/367/506/34 IPC	Amb. Nagar	Acquitted
7.	97/10	325/34 IPC	Amb. Nagar	Acquitted
8.	03/11	324/341/506 IPC	Amb. Nagar	Acquitted
9.	65/11	25/54/59 Arms Act	Amb. Nagar	Acquitted
10.	244/12	307/34 IPC	Amb. Nagar	PT
11.	268/13	307 IPC	Amb. Nagar	PT
12.	260/14	307/148 IPC	Amb. Nagar	PT
13.	316/14	25/54/59 Arms Act	Amb. Nagar	PT

3. The petitioner was thereafter noticed under the Delhi Police Act, 1978 pursuant to which he appeared and filed his written reply.

4. In the proceeding which commenced thereafter, Inspector Ajab Singh, SHO, Ambedkar Nagar P.S examined himself as PW-1 whereas one Deshpal Singh, MHC (R), P.S.Ambedkar Nagar got himself examined as PW-2. The aforesaid two witnesses have testified

to the fact that the petitioner bears a criminal character and nobody of the locality dares to depose anything against him.

5. Two witnesses were brought on behalf of the petitioner viz. Kailash and Lakhmi Chand.

6. During the pendency of the proceeding, another case vide FIR No.551/2016 instituted for the offences under Sections 323/341 and 34 of the IPC was also brought to the notice of the learned Addl.Deputy Commissioner of Police, South-East District, New Delhi.

7. From the order passed by the Addl.Deputy Commissioner of Police, it appears that the petitioner did not participate in the proceedings and per force the proceedings had to be conducted ex-parte.

8. The learned Additional Deputy Commissioner of Police, South-East District, on perusing the materials on record came to the conclusion that the petitioner was not amenable to any improvement till stringent measures are taken against him. Consequently, he was asked to remove himself from the limits of NCT of Delhi for two years within a period of seven days of the passing of the order, with the condition not to return to the area within the said period without the written permission of the competent authority except on such dates when he would be required to present himself in Courts of law and after such presentation before any Court of law, he shall again remove himself from the limits of NCT of Delhi.

9. The aforesaid order dated 29.11.2016, as referred to earlier, was affirmed and upheld by the Hon'ble LG, Delhi on 01.02.2017.

10. From a perusal of the proposal for externment, it appears that in the year 2014, there were only two cases against the petitioner: one under Section 307/148 IPC and the other under the Arms Act. A year before i.e. in 2013, the petitioner's involvement was found in one case only under Section 307 IPC. Similarly, in the year 2012 also, the petitioner was found to be involved in only one case. Likewise two cases each in the years 2010 and 2011 have been shown to the credit of the petitioner. This Court is not going into the references of the cases of years prior to 2010.

11. Learned counsel appearing for the petitioner has submitted that the petitioner was wrongly dubbed as a "habitual offender" and that there was no material on record to suggest that the petitioner had made himself liable for being externed and there is no scope of improvement in him unless such a stringent measure is taken against him. It was also pointed out that several of the cases shown in the proposal ended in compounding of offences and that the sporadic involvement of the petitioner in criminal cases was only because of the petitioner not being in good books of the local police.

12. Mr.Sanjay Lao, learned Additional Standing Counsel on the other hand, submitted that the involvement of the petitioner in various cases had caused alarm in the society and his continuance of criminal activities had the impact of putting witnesses in fear of reprisal and because of such a fear, no witness is ready to depose against him in open. The petitioner, it has been argued is a repeat offender and, therefore, his acquittal or compounding of offences should be of no

avail to him and it remains without doubt that without stringent measures against him, he would not improve.

13. In order to appreciate the contention of the parties, 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.”*

14. From the records of the case it appears that only a vague statement has been made regarding the criminal character of the petitioner. Externment is a serious decision and has to be resorted to only under certain pressing circumstances. The petitioner does not appear to be a habitual offender because the offences reported against him are interspersed over a number of years. The nature of cases also do not reflect that there was any serious danger in allowing the petitioner to remain domiciled within the limits of NCT of Delhi.

15. No doubt, this Court is conscious of the fact that an administrative decision of this kind ought not to be interfered with lightly, nonetheless, if prima facie the orders appear to be unreasonable, there is no way in which a Court of law can take a back seat. Sufficiency of material for the externment is not being looked into in the present case. What has caught the attention of this Court is the nature of accusation, infrequent involvement over a period of years and complete absence of any material for the Addl. Deputy Commissioner of Police to come to the conclusion that there is no

scope of improvement. This Court also does not find any clear and present danger in allowing the petitioner to remain at large.

16. The learned Addl.Deputy Commissioner of Police as well as the appellate authority have not addressed themselves to the less number of cases in each year and have not cared to find out as to why has it been doubted that there is no scope of improvement of the petitioner. The urgency of externing the petitioner now also does not appear to be understandable.

17. The authorities did not seem to have taken into account the fact that there would be great financial burden on the proceedee in coming from outside Delhi to Delhi Courts. This would also delay the disposal of cases.

18. Taking into account the fact that the materials collected against the petitioner do not justify his being called a habitual offender and there being no emergent necessity of externing him, the externment order dated 29.11.2016 passed by the Addl.Deputy Commissioner of Police and the appellate order dated 01.02.2017 passed by the LG, Delhi are, therefore, quashed.

19. The petition stands disposed of accordingly.

Crl.M.A. No.2932/2017 (Stay)

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

2. Application is disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 04, 2017/k