

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

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Reserved on: 26.05.2017

Delivered on: 31.05.2017

**+ W.P(CRL) 3245/2016**

**VIMLA**

..... Petitioner

versus

**STATE (GOVT. OF NCT OF DELHI)**

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr.Aditya Aggarwal with Ms.Samia Malik.

For the Respondent : Mr.Rajesh Mahajan, ASC with Mr.Lokesh Chandra.

**CORAM:-**

**HON'BLE MR JUSTICE ASHUTOSH KUMAR**

**JUDGMENT**

**ASHUTOSH KUMAR, J**

1. Vimla, the petitioner, has impugned orders dated 19.05.2016 and 10.08.2016 passed by the Additional Deputy Commissioner of Police, East District: Delhi, passed in File No.11/2015 and the Lieutenant Governor in Case No.81/2016, respectively whereby she has been externed from the limits of NCT of Delhi for a period of two years and which order passed by the Additional Deputy Commissioner of Police has been affirmed and upheld by the Lieutenant Governor of Delhi.

2. An externment proposal under Section 47 of the Delhi Police Act, 1978 was forwarded against the petitioner, listing 32 cases lodged against her. The table of cases is being reproduced below:

| <b>S. No.</b> | <b>FIR No.</b> | <b>Date</b> | <b>Under Section</b> | <b>Police Station</b> | <b>Present Position</b> |
|---------------|----------------|-------------|----------------------|-----------------------|-------------------------|
| 1.            | 247            | 16.09.1993  | 61/1/14 Excise Act   | Anand Vihar           | Conviction              |
| 2.            | 376            | 05.10.1999  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 3.            | 463            | 14.12.1999  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 4.            | 196            | 22.06.2000  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 5.            | 07             | 04.01.2001  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 6.            | 366            | 16.10.2001  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 7.            | 83             | 03.04.2002  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 8.            | 127            | 29.04.2002  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 9.            | 175            | 25.06.2002  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 10.           | 387            | 02.12.2002  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 11.           | 173            | 13.05.2003  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 12.           | 334            | 28.08.2003  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 13.           | 77             | 29.02.2004  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 14.           | 166            | 21.04.2004  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 15.           | 584            | 26.10.2004  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 16.           | 603            | 02.11.2004  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 17.           | 607            | 03.11.2004  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |
| 18.           | 665            | 29.11.2004  | 61/1/14 Excise Act   | Anand Vihar           | Acquittal               |

|     |     |            |                    |             |               |
|-----|-----|------------|--------------------|-------------|---------------|
| 19. | 457 | 15.08.2005 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 20. | 562 | 19.10.2005 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 21. | 590 | 04.11.2005 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 22. | 141 | 11.03.2006 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 23. | 172 | 23.03.2006 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 24. | 529 | 08.10.2006 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 25. | 114 | 03.03.2007 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 26. | 202 | 15.04.2007 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 27. | 602 | 28.11.2008 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 28. | 78  | 23.02.2009 | 61/1/14 Excise Act | Anand Vihar | Acquittal     |
| 29. | 124 | 21.03.2009 | 61/1/14 Excise Act | Anand Vihar | Pending Trial |
| 30. | 28  | 09.01.2014 | 61/1/14 Excise Act | Farsh Bazar | Pending Trial |
| 31. | 333 | 25.04.2014 | 61/1/14 Excise Act | Farsh Bazar | Pending Trial |
| 32. | 72  | 26.01.2015 | 61/1/14 Excise Act | Farsh Bazar | Pending Trial |

3. The Additional Deputy Commissioner of Police, on perusal of the proposal and the materials on record, initiated the externment proceedings against the petitioner as the materials disclosed that the movements and acts of the petitioner were calculated to cause alarm, danger and harm to persons and property and her presence in Delhi or in part thereof would be hazardous to the community. It was also found that the witnesses are

not willing to give evidence in public against the petitioner due to apprehension of backlash.

4. The petitioner in response to the notice, which was explained to her, denied the allegations and submitted that in almost all the cases listed in the proposal, she has been acquitted. It was further indicated by the petitioner that majority of the cases, which have been listed in the present proposal, were used as evidence of her criminal propensity for seeking her externment twice earlier. The petitioner is stated to be 60 years of age and suffering from various diseases. It was further submitted that she maintained her children by running a small grocery shop and all the cases which were lodged against her in the past were at the behest of her neighbour, one Kamaljeet who had attempted to molest her daughter for which she has filed a case. Even the sons of her neighbour, are now harassing her.

5. Inspector Harish, SHO, Farsh Bazar, Delhi was examined as prosecution witness who deposed that he had sent the externment proposal against the petitioner on his satisfaction that her movements were dangerous to the society.

6. Smt. Urmila and Shri Jagdish Chander were examined on behalf of the petitioner, both of whom, spoke about the good conduct of the petitioner. They have stated that the petitioner runs a small grocery shop and has not been indulging in any unlawful activity.

7. However, during the pendency of the externment proceedings, the petitioner was found to be involved in two other cases, namely, FIR No.326/2015 instituted for offences under Sections 186, 353, 332, 308

and 34 of the IPC and another being FIR No.635/2015 instituted for offence under Section 135 of the Indian Electricity Act (Amend), 2003.

8. With respect to the aforesaid two cases, a supplementary notice was served upon the petitioner which also was replied by her saying that the case under Section 308 is not in her knowledge whereas Indian Electricity Act case has been compromised/settled on 04.11.2015.

9. In camera evidence of witnesses which were recorded by the earlier Additional Deputy Commissioner of Police was also perused before the impugned order was passed. The Additional Deputy Commissioner of Police thereafter vide order dated 19.05.2016, directed the petitioner to remove herself from the limits of NCT of Delhi for a period of two years within 7 days from the date of the order. The petitioner was only permitted to come to Delhi for attending court cases.

10. The aforesaid order was, as has been stated earlier, upheld in appeal vide order dated 10.08.2016.

11. It has been argued on behalf of the petitioner that both the orders impugned reflect complete non application of mind. All the cases lodged against the petitioner and which have been cited in the externment proposal have ended in acquittal. Both the orders do not reflect that the defence of the petitioner was taken and appreciated in right perspective. The nature and quality of accusation in all such cases did not clearly make out that the petitioner is a habitual offender and that the provisions of the Delhi Police Act, 1978 could have been invoked for externing the petitioner. The other grounds of challenge are that there is no evidence to suggest that witnesses are not forthcoming to depose in public against the petitioner for the fear of reprisal; same set of cases were used by the

authorities to extern the petitioner earlier and that the petitioner was not given the deposition of witnesses recorded 'in camera' for her to effectively rebut the charges levelled by them and that the orders are in gross violation of the rights of the petitioner under Articles 14, 19 and 21 of the Constitution of India.

12. Mr. Mahajan, learned Additional Standing Counsel, in response to the aforesaid contention, submitted that Section 47 of the Delhi Police Act requires satisfaction of the authority that movements/acts of any person are causing danger and alarm or that there are reasonable grounds for believing that such person is or is about to be engaged in the commission of an offence involving force or violence for an offence punishable under various chapters of the Indian Penal Code or if a person is so desperate and dangerous and has been found habitually intimidating others or committing affray or passing any indecent remarks on women. The explanation attached to Section 47, it has been argued, which explains that a habitual offender is the one who is found for not less than three occasions to have committed such offence immediately preceding the commencement of the proceedings under the Delhi Police Act, is not applicable in general as the requirements are in the alternative and cannot be read to be in conjunction. The submission, in short, therefore is, even if one of the clauses from (a) to (c) under Section 47 of the Delhi Police Act is attracted, the order of externment cannot be termed as invalid or illegal. The other submissions on behalf of the State are that there ought to be some finality to such proceedings and that the cases which have been taken into account are only for references regarding the criminal propensity of the petitioner. It has been submitted that the authorities

were aware of the fact that some of the cases cited against the petitioner were used in earlier externment proceedings. Mr. Mahajan submits that the satisfaction of the competent authority is subjective in nature and there is very limited scope of judicial review in such matters. It has been argued that the cases in which acquittal has been recorded can also be taken into consideration as orders of acquittal might have been passed because of insufficient evidence but facing prosecution in many cases would itself be an evidence of the mindset of an accused.

13. By virtue of decisions rendered in, *Shailender Kaur v. Lt. Governor & Ors.: 91 (2001) DLT 243 (DB)* and *Dheeraj v. State: 2001 (V) (AD) Delhi 672*, it has been submitted that a person indulging in commission of offences punishable under the Excise Act would also be dangerous and harmful to the society and public in general. The involvement in cases under the Excise Act, by its very nature, cannot be confined to one or few but such activities affect large section of public.

14. With respect to the petitioner not having been made available the deposition of the witnesses who were examined 'in camera', it has been submitted that it would not be expedient to give such evidence to a proceedee as the very purpose of the proceedings would be frustrated. Collecting of evidence 'in camera' has been held to be permissible and within parameters of such matters and the courts have been consistent in ruling that such material can only be made known to a proceedee but details need not be given, the reason being that it might spark off another round of tyranny against the witnesses.

15. In order to appreciate the contentions of the parties, it would be necessary to refer to the provisions of Sections 47, 48, 50 and 52 of the Delhi Police Act, 1978.

*“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 48 - Removal of persons convicted of certain offences.- If a person has been convicted--*

- (a) of an offence under Chapter XII, Chapter XVI or Chapter XVII of the Indian Penal Code or (45 of 1860 );*
- (b) of an offence under section 3 or section 4 of the Delhi Public Gambling Act, 1955 (Delhi Act 9 of 1955 ), or under section 12 of that Act in so far as it relates to satta gambling or on two or more occasions under any other provision of that Act (including section 12 of that Act in so far as it does not relate to satta gambling); or*
- (c) of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956 ); or*
- (d) of any offence under section 25, section 26, section 27, section 28 or section 29 of the Arms Act, 1959 (54 of 1959); or*
- (e) of any offence under section 135 of the Customs Act, 1962 or (52 of 1962 );*
- (f) of any offence under section 61, section 63 or section 66 of the Punjab Excise Act, 1955 (Punjab Act No. 1 of 1955), as in force in Delhi; or*
- (g) on two or more occasions of an offence under-*
  - (i) the Opium Act, 1878 (1 of 1878 ); or*

- (ii) *the Dangerous Drugs Act, 1930 (2 of 1930 ); or*  
(iii) *the Drugs and Cosmetics Act, 1940 (23 of 1940 );*  
*or*  
(iv) *section 11 of the Bombay Prevention of Begging Act, As 1959 (Bombay Act No. 10 of 1960 ), in force in Delhi; or*
- (h) *on three or more occasions of an offence under section 105 or section 107 of this Act, the Commissioner of Police may, if he has reason to believe that such person is likely again to engage himself in the commission of any of the offences referred to in this section, by order in writing, direct such person remove himself beyond the limits of 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 any part thereof, as the case may be, from which he was directed to remove himself.”*

*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 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.”*

16. 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.

17. 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.

18. 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.

19. It is noticeable from the orders impugned that the authorities were conscious of the fact that most of the cases, which were cited in the externment proposal, were used as evidence against the petitioner in two earlier externment proceedings in the year 2004 and 2005. The impugned order passed by the Additional Deputy Commissioner of Police further indicates that with respect to cases from Sl. No.1 to 14 and 16 to 29, the petitioner was directed to furnish a bond for maintaining good behaviour for one year vide order dated 26.04.2011.

20. From record it further appears that after the year 2009, only two cases were lodged in the year 2014 and one in the year 2015. During the pendency of the externment proceedings, two more cases were brought to the notice of the authority both of which were lodged in 2015 in the

months of April and August respectively. One of such case lodged in the month of August, 2015 pertains to Indian Electricity Act which stands compounded. The petitioner is completely unaware about the existence of FIR No.326/2015 which is lodged for various offences under Indian Penal Code including Section 308.

21. No doubt it is true that cases in which judgment of acquittal has been recorded, can also be taken into account while conducting proceedings under the Delhi Police Act, to establish the criminal proclivity of a proceedee but what has to be seen is whether such a proceeding is necessary for controlling law and order. What meets the eye is that almost all the cases against the petitioner are of Excise Act and in none of them except one which was lodged in the year 1993, conviction was recorded. The petitioner has explained that in 1993, she was wrongly advised to admit her guilt and therefore she was convicted and asked to pay Rs.1000/- as fine. It has been submitted on behalf of the petitioner that she did not ever go to jail in any one of the cases. The orders impugned do not reflect that acquittal in almost all the cases was because of the witnesses were not forthcoming to depose against the petitioner. That ought to have been taken into consideration while dealing with the issue of externment of proceedee. If the trial ended in acquittal because of charges not being established, that would, at least, prima facie show that the implication of the proceedee was false. There is no denying of the fact that large number of cases indicate the criminal bent of mind of a person but equally true would be the assumption that if none of the cases out of such large number, ends in conviction, such person has been falsely implicated in cases or is being hounded at the

instance of others who have some axe to grind. The orders impugned also do not take note of the defence of the petitioner that she has been running a grocery shop to maintain her children and that she is a senior citizen. After 2011, when the petitioner was directed to furnish a bond of good behaviour, for good many years, no case was reported till about 2014. Thereafter, two cases in the year 2014 were lodged against her and out of the aforesaid two cases; one was under the Excise Act. In the year 2015, three cases are reported against the petitioner out of which one is under the Indian Electricity Act, the other is not known to the petitioner and the third one is pending trial. It also does not appear from the order as to why the petitioner has not ever been arrested in any one of the cases upto now.

22. The position of law with respect to judicial interference in matters of administrative decisions has been well crystallized by now. Though, there is limited scope of judicial review of such an administrative order but the decision in this regard in *Associated Provincial Picture Houses Ltd vs. Wednesbury Corporation, (1947) 2 All E.R 680*, 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.

23. 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.

24. 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. But such a decision has to be an informed decision.

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 her 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. acquittal in almost all cases,
- ii. lack of frequency of the cases in a particular year,
- iii. consideration of the fact whether the petitioner has improved herself,
- iv. the urgency of externing the petitioner in 2015,
- v. requirement of the petitioner to be in Delhi to attend to cases which are pending trial,
- vi. the financial burden on the proceedee in coming from outside Delhi to Delhi Courts,

- vii. 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,
  - viii. The social status of the petitioner, namely her being an elderly divorced lady who has to maintain a number of children by running her grocery shop,
  - ix. The evidence of two of the neighbours who have spoken about the good conduct of the petitioner.
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 petition stands disposed of accordingly.
- CRL.M.A.17604/2016**
- 1. In view of the main petition having been allowed, this application becomes infructuous.
  - 2. This application is disposed of accordingly.

**ASHUTOSH KUMAR, J**

**MAY 31, 2017/ns**