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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL.) 260/2019

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Judgment reserved on: 2nd April, 2019
Judgment pronounced on: 29th April, 2019

BHARAT SINGH

..... Petitioner

Through: Ms.Isha Khanna, Ms. Nidhi Raman,
Mr. Anam Ahmed and Mr. Rajan Lal
Advocates.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Rajesh Mahajan, ASC (CrI.) for
Ms. Nandita Rao, ASC (CrI.) with
SI Jitender Kumar, PS- Sonia Vihar

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

W.P.(CRL.) 260/2019

1. The petitioner has invoked the writ jurisdiction of this court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as “Cr.P.C.”) for setting aside the order dated 19.12.2018 passed by the Lt. Governor, Delhi and order dated 11.10.2018 passed by Additional Deputy Commissioner of Police, North-East District, Delhi.

2. Brief facts of the case are as under:

“(i) That the process of externment started when the petitioner received a notice dated 03.02.2017 under Section 50 of the Delhi Police Act, 1978 whereby the

petitioner was asked to tender his explanation regarding the allegations leveled in the said notice. As per the said notice, an externment proposal under Section 47 of the Delhi Police Act, 1978 was sent by the SHO/Sonia Vihar through ACP/Khajuri Khas for the externment of the petitioner as he was involved in the following cases:-

- 1) FIR No. 94/1992 under Section 452/34 IPC registered at Police Station Gokal Puri*
- 2) FIR No. 114/1992 under Section 354/506/34 IPC registered at PS Gokal Puri*
- 3) FIR No. 330/1999 under Section 3/4 D.P.P.Act registered at PS Khajuri Khas*
- 4) FIR No. 50/2001 under Section 420/379/506/34 IPC registered at PS Khajuri Khas*
- 5) FIR No. 53/2012 under Section 325/341/34IPC read with Section 27/54/59 Arms Act registered at PS Sonia Vihar*
- 6) FIR No. 242/2013 under Section 308/323/34 IPC registered at PS Sonia Vihar*
- 7) FIR No. 349/2016 under Section 323/341/506/34 IPC registered at PS Sonia Vihar*

(ii) It was proposed, that the petitioner be externed as he was found to be engaged in various offences and his movements were calculated to cause alarm, harm and danger to persons and property and his presence in Delhi or any part thereof would be hazardous to the community. It was also alleged that witnesses were not willing to come forward to give their evidence in public because of the apprehension of retaliation by the petitioner.

(iii) The petitioner appeared before Additional Deputy Commissioner of Police, North East District and submitted his reply on 23.05.2017, wherein he stated that he has been falsely implicated in the said case. On 10.10.2017 the SHO/Sonia Vihar was examined as Prosecution Witness and the petitioner was asked to produce defence witness in his defence. Accordingly on 21.11.2017 the petitioner produced one defence witness namely 'Maha Singh' whose statement was recorded and was kept on record. During the course of proceedings before the Court of Additional Deputy Commissioner of Police, North East District the petitioner was found to be involved in FIR No. 101/2018 U/s 308/354/323/341/506/34 IPC registered at Police Station Sonia Vihar. Subsequently a supplementary notice was issued on 04.10.2018 under Section 47 of the Delhi Police Act, 1978 directing the petitioner to explain as to why an order of externment should not be passed against him.

(iv) Subsequently, on 11.10.2018 an order was passed by the Additional Deputy Commissioner of Police, North East District externing the petitioner for a period of six months with effect from 18.10.2018, whereby the petitioner was directed to not enter or return to the area of National Capital Territory of Delhi within the said period without a written permission from the competent authority.

(v) Further on 15.10.2018 an appeal U/s 51 of Delhi Police Act was filed by the petitioner before the Lt. Governor, Delhi impugning the order dated 11.10.2018 of the Additional Deputy Commissioner of Police. The Lt. Governor, Delhi upheld the order of the Additional Deputy Commissioner of Police and noted that the 'appellant had been found involved in eight cases involving offences like molestation, causing grievous hurt, culpable homicide not amounted to murder, criminal trespass etc and under

the Preventive of Damage to Public Property Act & Arms Act, which adversely affects the normal life of the citizens, particularly women.’ By impugned order dated 15.10.2018, the Lt. Governor concurred with the findings of the Addl. DCP and held that even during the pendency of the externment proceedings, the petitioner has not desisted himself from indulging in unlawful activities which shows that he has not mended his ways.”

3. Ms. Isha Khanna learned counsel appearing for the petitioner contended that the petitioner cannot be termed as a ‘habitual offender’ because as per the explanation under Section 47 of the Delhi Police Act, habitual offender would be a person who has involved himself in cases on three occasions or more within one year immediately preceding the commencement of the offence.
4. Learned Counsel for the Petitioner further contended that the mere apprehension by the police that the petitioner might be involved in criminal activities is not enough because a clear and foreseen danger, based upon credible material which makes the movement and acts of the person in question dangerous must be seen in order to warrant an externment order under the Delhi Police Act. For supporting its contention learned counsel for the petitioner relied upon the case of ***Jugal Kishore Vs Lt. Governor, Delhi & Anr*** reported in **2017(2) JCC 1335**.
5. She further contended that the cases against the petitioner are inter-spread over a long span of time from 1992 to 2018 and that too, after long intervals, wherein both the authorities have failed to appreciate that out of total seven cases pending, the petitioner has been

acquitted in two cases, two cases have been compromised and two cases are pending for adjudication while in one case, he has been released on a meager fine of Rs.2000. Counsel for the petitioner has lastly urged that the impugned order being highly arbitrary has resulted in curtailing the life and liberty of the petitioner.

6. Per contra, the learned Additional Standing Counsel for the State while defending the orders submitted that the Additional DCP was satisfied about the criminal proclivity of the petitioner based upon the materials available on record; he further submitted that the petitioner is involved in various criminal activities which are unambiguous from the various First Information Reports registered against him.
7. He further submitted that the scope of judicial review of the administrative order is limited to the legality of the decision-making process and not to the legality of the order *per se*. Therefore, 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. Learned counsel for the state relied upon the case of *State of NCT Delhi & Anr vs Sanjeev Alia Bittoo* reported in **2005 5 SCC 181** and *Suresh Vs Lt. Governor, Delhi & Ors* reported in **2014 (4) JCC 2913**.
8. Learned Counsel for the State further contended that during the pendency of the externment proceedings before the Additional Deputy Commissioner of Police the petitioner was found to be involved in one more case for the offence punishable under Section 308/354/323/341/506/34 of the IPC, which shows that he

was a habitual offender and has no respect for law. He further contended that he is a land grabber and due to his fear, the prosecution failed to adduce any independent witness.

9. Counsel for the State lastly submitted that the impugned order was based on correct material available on record and the settled legal proposition and did not suffer from any impropriety or illegality and therefore does not warrant any interference.
10. I have given my anxious consideration to the submissions advanced on behalf of learned counsel for the parties and also perused the material available on record.
11. At the outset, before delving into merits of the submissions made by learned counsel for the parties, I find it appropriate to discuss the relevant provisions of the Delhi Police Act, 1978 involved in the instant case:-

“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.”

12. A bare perusal of the Section 47 of DP Act shows that it consists of three parts. The **First Part** relates to satisfaction of the Commissioner of Police that: -

- (i) the movements or acts of any person are causing or calculated to cause alarm or danger or harm to any person or property; **or**
- (ii) there are reasonable grounds to believe that such person is engaged or is about to be engaged in the commission of an offence under Chapter XII (related to coins/Government stamps) or Chapter XVI (offences affecting human body) or Chapter XVII (offences against property) or Chapter XXII (relating to criminal intimidation, insult and annoyance) or Section 290 or Section 489A to 489E of IPC or in abetment of any such offence, **or**
- (iii) such person: -
 - (a) is so desperate and dangerous so as to render his roaming at large in Delhi or in any part thereof would be hazardous to the community; **or**
 - (b) has been found **habitually** intimidating persons; **or**
 - (c) causing affray; or breach of peace or riot, or **habitually** makes forcible collection of subscription or threatened to be; **or**
 - (d) has been **habitually** passing indecent remarks on women and girls, or teasing;

13. **Second Part** of the section deals with forming further opinion and satisfaction by the Commissioner of Police in conjunction with any one of the grounds or all the grounds that out of fear witnesses are not willing to come forward to depose against such person. **Third Part** authorizes the Commissioner to Police to adopt any of three options (i) to behave, or (ii) to remove himself outside Delhi, or (iii) to remove himself from any part of Delhi.
14. Subsequently, the word 'habitually' mentioned in sub-clause (ii), (iii) & (iv) of sub-section (C) of Section 47 of DP Act is elaborated by the explanation which says that a person who within a period of one year immediately preceding the commencement of an action under Section 47 of DP Act is found in not less than three occasions to have committed or to have been involved in any of the acts referred in sub-clauses, shall be deemed to have been habitually committed that act.
15. 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, which must pass the test of reasonableness. Hence any executive order which is not executed with fairness cannot be sustained on any account.
16. Returning to the facts of the present case, admittedly the cases registered against the petitioner were inter-spread over a long span of time from 1992 to 2018 and that too, after long intervals, hence the petitioner fails to falls within the purview of explanation of Section 47 of DP Act and is not covered within the criteria of habitual

offender. It may be added that as per Section 50 of the DP Act the accused were to be provided legal assistance and were entitled to be represented through a pleader but in the present case, he was neither provided any legal assistance before the Additional Deputy Commissioner of Police nor before the Lt. Governor, Delhi.

17. On the issue of judicial review in administrative orders, it is important to see whether the action of the executive is within the parameters of law and that the order of externment passes the test of reasonableness. If the administrative order is irrational, or has been arrived at without taking into consideration the relevant factors which ought to have been taken into account or suffers from the procedural irregularities, then the same can definitely be reviewed. The relevant provisions of Delhi Police Act which have been referred are enacted for the purpose of preventing commission of crime by pathological law breakers. This Court is mindful of the fact that in many cases, for tracking down law breakers, stringent measures are required to be adopted and unless such stringent measures are not taken against such law breakers, it would be very difficult for the police authorities to maintain an even tempo of the society. At the same time an important fundamental right of every Indian Citizen namely personal liberty cannot be interfered and relegated to the background and be left entirely in the hands of the police.
18. Nonetheless, there can be no dispute to this fact, that an externment order brings societal and personal deprivation and is a great blow on the finances of the externee because 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. Accordingly, for enforcing such stringent measures there must be a clear and present danger on the ground that the presence of the petitioner would be alarming, dangerous and could lead to serious repercussions in the National Capital Territory of Delhi.

19. Hence, after analyzing the material available on record, this Court is of the opinion that, the impugned order dated 19.12.2018 passed by the Lt. Governor, Delhi and the externment order dated 11.10.2018 passed by Additional Deputy Commissioner of Police cannot be sustained in the eyes of law and are hereby set aside.
20. Accordingly, the petition stands disposed of.

Crl. M. A. No. 1765/2019 (for suspension of externment order)

1. In view of the order passed in the main petition, the present application is rendered infructuous.
2. Application stands disposed of.

SANGITA DHINGRA SEHGAL, J.

APRIL 29, 2019
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