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

+ **W.P.(CRL) 3648/2024 & CrI.M.A.34997/2024**

**GAGAN**

.....Petitioner

Through: **Mr. Vijay Chandra Jha and Mr.  
Tushant, Advocates**

versus

**STATE GOVT OF NCT OF DELHI AND ANR. ....Respondents**

Through: **Ms. Rupali Bandhopadhyaya, ASC for  
State with Mr. Abhijeet Kumar,  
Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

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**26.11.2024**

1. The instant petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") (earlier Section 482 of the Code of Criminal Procedure, 1973) has been filed by the petitioner praying for the following reliefs:

*"a. Set aside the Externment Order dated 28.10.2024 passed by Sh. Vishnu Kumar, Additional Deputy Commissioner of Police-I, Shahdara District, Delhi (Respondent No.2) by exercising power under sections 47/50 and Section 8 of the D.P. Act, 1978  
b. Pass any such order(s) or direction(s) as the Hon'ble court may deem fit and proper in the facts and circumstances of the case."*

2. By way of the instant petition, the petitioner has challenged the externment order dated 28<sup>th</sup> October, 2024 (hereinafter as the "impugned order") passed by Additional Deputy Commissioner of Police-I, Shahdara



District, Delhi, i.e. respondent no.2 herein, whereby, the petitioner has been directed to remove himself beyond the limits of National Capital Territory of Delhi for a period of one year within seven days from the date of passing of the aforesaid externment order.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order has been passed by the respondent no. 2 without considering the facts and circumstances of the case and without application of judicial mind.

4. It is further submitted that the petitioner has been falsely implicated in the instant case by the concerned police officials and the impugned order has been passed without providing any cogent reasoning and considering the material on record. Further, it is submitted that the police officials, in collusion with other people, have implicated the petitioner in false and frivolous cases.

5. It is submitted that the petitioner is suffering from a brain disease and has been receiving treatment for the same at Institute of Human Behaviour and Allied Sciences, Delhi. Therefore, the petitioner, being mentally unstable, cannot fend for himself and is dependent on his old mother and hence, the impugned order has been passed erroneously by the respondent no. 2..

6. It is submitted that the respondent no. 2 has falsely stated that the petitioner has four pending cases registered against him and that the witnesses are not willing to come forward and make statements due to apprehension towards their safety. However, it is submitted that the witnesses have been examined and cross-examined, and the petitioner has already been acquitted in one of the cases.



7. It is submitted that as per the impugned order, the petitioner has been categorised as a Bad Character of Bundel-A of Police Station - Vivek Vihar, Delhi, without citing any incident with respect to the said status. Therefore, the impugned order passed by the respondent no. 2 is without consideration of the material placed on record.

8. Learned counsel for the petitioner placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of ***Deepak s/o Laxman Dongre vs. The State of Maharashtra & Ors.*** dated 28<sup>th</sup> January, 2022 in **S.L.P.(Crl.) No.9032/2021**.

9. Therefore, in view of the foregoing submissions, it is prayed that the impugned order may be set aside and instant petition may be allowed.

10. *Per contra*, learned ASC for the State appearing on advance notice has vehemently opposed the instant petition submitting to the effect that the impugned order passed by the respondent no. 2 is in consonance with the material placed on record and therefore, the impugned order is passed without any irregularity or illegality.

11. It is further submitted that if the petitioner is aggrieved by the impugned order passed by the concerned authority, he could avail the alternate remedy of appeal available under Section 51 of the Delhi Police Act, 1978 (hereinafter "DP Act") before the concerned appellate authority, however, the petitioner has approached this Court without exhausting the said remedy. Therefore, the instant petition is not-maintainable under Article 226 of the Constitution of India since the petitioner has directly approached this Court without exhausting the alternative efficacious remedy and the same may be dismissed.

12. Heard learned counsel for the parties and perused the record.



13. At this juncture, it is apposite to note that the powers envisaged under Article 226 of the Constitution of India are limited and can be invoked only when there is a violation of fundamental rights or for any other purpose. Furthermore, the powers conferred on the Court under Section 528 of the BNSS (Section 482 of the Code) must be exercised sparingly, carefully and in exigent cases. Therefore, with more power, more due care and caution needs to be exercised while invoking these powers.

14. Bearing the same in mind and adverting to the instant case, the limited contention and preliminary objection raised by the learned ASC for the State is that the petitioner has an alternate remedy of filing an appeal before the appropriate appellate court under Section 51 of the DP Act and it has been contended that since the petitioner has failed to exhaust the alternative remedy, the instant petition is liable to be dismissed being not-maintainable.

15. Here, it is pertinent to reproduce Section 51 of the DP Act, which reads as under :

***“51. Appeal against orders under section 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.”*

16. Upon perusal of the aforesaid provision, it is clear that Section 51 of the DP Act is applicable only to orders passed under Sections 46, 47, and 48 of the DP Act and upon perusal of the impugned order, it is observed that the said externment order is passed under Section 47 of the DP Act, thereby, making the alternate remedy provided under Section 51 of the DP Act available for the petitioner to seek an appeal against the impugned order.

17. Therefore, it is clarified that the petitioner has an alternate remedy before the appropriate appellate forum under Section 51 of the DP Act, however, the question before this Court, at this juncture, is whether the instant petition can be entertained under Article 226 of the Constitution, despite having an efficacious alternate remedy which remains not exhausted.

18. The powers under Article 226 of the Constitution can be exercised to enforce fundamental as well as legal rights. However, one of the primary limitations on the High Courts under Article 226 of the Constitution of India is when there is an effective alternate remedy available for the aggrieved party which is required to be exhausted first. The said principle has been reiterated by the Hon'ble Supreme Court as well as the High Courts time and again and therefore, it is pertinent to mention the case of **Radha**



***Krishan Industries v. State of H.P., (2021) 6 SCC 771***, wherein, the Hon'ble Supreme Court observed as follows –

*“27. The principles of law which emerge are that:*

*27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

*27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*

*27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

*27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*

*27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*

*27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.*

*28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad, (2003) 5 SCC 399] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai*



*Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions.”*

19. A similar case has been dealt with by a Co-ordinate Bench of this Court in the case of ***Dhiraj v. State (NCT of Delhi)*, 2023 SCC OnLine Del 6911**, wherein, it was observed that since the externment order was passed under Section 47 of the DP Act and that the statutory remedy for the same is available under Section 51 of the DP Act, a writ petition under Article 226 of the Constitution cannot be sought bypassing the statutory alternate remedy, which is efficacious in nature.

20. Therefore, taking the foregoing discussions into consideration, alongwith the law laid down by the Hon’ble Supreme Court, this Court is of the considered view that the statutory alternate remedy is available under Section 51 of the DP Act and the petitioner has the liberty to opt for the same before invoking Article 226 of the Constitution of India. Therefore, the primary rule is to exhaust the alternate remedy conferred by the requisite statute, which the petitioner herein has failed to utilise despite having an efficacious remedy to appeal the impugned order under Section 51 of the DP Act.

21. Taking into consideration the entirety of the matter, this Court does not find any error in the impugned order passed by the respondent no. 2 pertaining to the externment of petitioner under Section 47 of the DP Act and this Court is of the view that the instant case is not a fit case to exercise its powers under Article 226 of the Constitution of India or Section 528 of the BNSS (Section 482 of the Code) and in view of the same, this Court does not find any the instant petition maintainable.



22. Accordingly, the instant petition is dismissed along with pending applications, if any.

23. It is made clear that this Court has not made any observations on the merits of the case and the petitioner is at liberty to approach the appropriate forum in accordance with the law.

**CHANDRA DHARI SINGH, J**

**NOVEMBER 26, 2024**

Rt/mk

*[Click here to check corrigendum, if any](#)*