

Sujit Kumar Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-09-2013

Appellant : Sujit Kumar

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Ashish Tiwari

Judgement :

1 sujit kumar versus state of m.p.W.P.No.14990/2012 9.1.2013: Shri Ashish Tiwari, learned counsel for the petitioner.

Shri Sanjeev Kumar Singh, learned Panel Lawyer for the respondents.

Challenging the order dated 5.6.2012 passed by the District Magistrate directing externment of the petitioner from District Chhindwara and the order Annexure P/1 dated 21.8.2012 passed by the appellate authority rejecting the appeal of the petitioner, this writ petition has been filed.

A show cause notice Annexure P/2 dated 28.5.2011 was issued to the petitioner by the District Magistrate concerned, exercising his powers under Section 6 of the M.P.Rajya Suraksha Adhiniyam, 1990 and asking the petitioner to show cause as to why he should not be removed from the district in question.

Matter was considered and thereafter vide order dated 5.6.2012 Annexure P/4 petitioner was directed to be removed from the District of Chhindwara.

Appeal having been filed, petitioner has filed this writ petition.

Learned counsel for the petitioner submitted a two fold contention.

His first contention was that in the show cause notice issued to the petitioner and the grounds for externment indicated therein which forms the basis for taking the impugned action, 11 cases were indicated.

The cases pertain to period prior to 2.7.2008 and therefore, in the absence of any material to show that the criminal activities of the petitioner just before the impugned action was detrimental to public interest.

It is stated that on the basis of stale and old 2 Sujit Kumar versus State of M.P. cases of more than four years action impugned taken.

That apart, it is pointed out by learned counsel that out of 11 cases as indicated in the show cause notice and the table in para 2 of the appellate order Annexure P/1, petitioner has been acquitted of all the cases which appears at Srl.

No.1 to 4, 6, 8, 9 and 11.

As far as case at Srl.

No.1 and 4 are concerned, they have been closed on the basis of compromise entered into and in other cases he has been acquitted.

On the date of issuance of show cause notice only one criminal case under Section 39 of Electricity Act was pending against the petitioner and therefore, it is emphasized that on the aforesaid ground action impugned is unsustainable.

Even though Shri Sanjeev Kumar Singh, learned counsel for the State has tried to emphasize that order has been properly passed and after proper opportunity of hearing was granted but having heard learned counsel for the parties and on considering the material that are available which forms the basis of externment of the petitioner from the District in question, I am of the considered view that material are not sufficient enough for removal of the petitioner from the district.

The impugned action is taken against the petitioner on the basis of show cause notice issued on 28.5.2011 and the order passed by the District Magistrate in this regard on 5.6.2012.

The last offence registered against the petitioner is an offence under Section 324 of IPC and it was registered on 27.2.2008 and record indicates that petitioner has already been acquitted of the charges leveled in this criminal case.

It is therefore, clear that for a period of more than 4 years between 27.2.2008 till initiation of action 3 sujit kumar versus state of m.p.on 28.5.2011, there is no criminal activity of the petitioner which seems to be detrimental to the public interest.

It is well settled principle of law that an order of externment can be passed only if activities of the petitioner is found to be detrimental to public interest and public safety so that removal of a person from the area is in the public interest.

In the present case for a period of more than 4 years there is no material to show that petitioner was indulge in criminal activities not is there any material to show that four years prior to taking of impugned action, petitioner's activities were creating public disorder or law and order problem.

In the absence of material to show that activities of the petitioner was such that it was detrimental to the interest of the public at large and public safety and peace was at stake which warranted taking of the action, the impugned action under the M.P.Rajya Suraksha Adhiniyam cannot be taken on the basis of stale and old cases.

That apart, out of 11 cases in more than 10 cases petitioner has been acquitted and the only criminal case pending against the petitioner on the date when the action was taken is a case under Section 39 of the Electricity Act.

I am of the considered view that the material available on record or the material which formed the basis for taking action under Section 5 and 6 of Rajya Surksha Adhiniyam are not so serious based on which a order for externment of the petitioner can be taken.

Exemption of a person has the effect of curtailing the fundamental rights of the person under Article 21 of the Constitution, and therefore, it has to be taken as sound consideration which show justification for 4 sujit kumar versus state of m.p.the action.

A decision taken arbitrarily without any cogent material is unsustainable.

Accordingly, this petition is allowed.

Orders impugned Annexure P/1 and P/4 passed by the appellate authority and District Magistrate are quashed.

Petition stands allowed and disposed of.

c.c.as per rules.

(Rajendra Menon) Judge mrs.mishra

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