

**Dharmender Vs. State and Another**

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**Court :** Delhi

**Decided On :** Nov-02-2015

**Judge :** Ashutosh Kumar

**Appeal No. :** Crl.Rev.P. No. 612 of 2015

**Appellant :** Dharmender

**Respondent :** State and Another

**Judgement :**

Oral:

1. The petitioner assails the judgment and order dated 21.03.2014 passed by the learned Metropolitan Magistrate, North-West, Rohini Courts, Delhi, in DD No.63B whereby the petitioner was convicted under Sections 53/116 of the Delhi Police Act, 1978, and was sentenced to undergo RI for 2 years, a fine of Rs.10,000/- and in default of payment of fine, SI for a period of 2 months by order on sentence dated 31.03.2014.

2. The petitioner is also aggrieved with the Appellate order dated 31.08.2015 passed by the learned Additional Sessions Judge, Special Judge, CBI-01, North-West, Rohini Courts, Delhi, in Criminal Appeal No.3/2014 whereby the judgment of conviction by the Trial Court was upheld but the sentence imposed upon the petitioner was reduced from 2 years to 6 months.

3. The petitioner was externed from the territory of Delhi by order dated 24.03.2009 passed by the competent authority. By the aforesaid order, the petitioner was directed to remove himself from the territorial limits of NCT of Delhi for a period of 6 months within 7 days from the date of receipt of the aforesaid order.

4. Within a fortnight of the passing of the aforesaid order, the petitioner was found roaming in the territorial limits of NCT of Delhi on 07.04.2009 at about 10 p.m. He was apprehended by HC Narender Singh (PW.2) and HC Ajit Pal (PW.1) who had been patrolling on the relevant date and time when the petitioner was found to have violated the externment order.

5. The petitioner was spotted to be coming from Britannia Chowk and proceeding towards Railway Line, Lawrence Road. He was alleged to be carrying a bag on his shoulder which contained 76 small bottles of illicit liquor.

6. A kalendra was lodged against the petitioner for offences punishable under Sections 53/116 of the Delhi Police Act.

7. At the Trial, the petitioner raised a plea that he had no knowledge about the externment order dated 24.03.2009 and in the alternative, he took the plea that he was not arrested by the police on 07.04.2009; rather he was deliberately called from Agra through the agency of his wife and was arrested illegally.

8. The plea of the petitioner of his not being aware of the externment order was neither accepted by the Trial Court nor the Appellate Court on the ground that the externment order (Ex.A1) reflected that a notice under Section 50 of the Delhi Police Act, 1978, was issued to the petitioner on 04.11.2008 and the petitioner had appeared before the competent authority on 11.11.2008 and had taken time to file reply to the notice. The petitioner had also adduced evidence in his defence.

9. Both the Courts below, therefore, rightly rejected the plea of the petitioner about his being unaware of the externment order dated 24.03.2009. According to the prosecution version, the petitioner was arrested from an area which fell under the territorial jurisdiction of Keshav Puram police station.

10. HC Ajit Pal (PW.1) deposed before the Trial Court that he along with HC Naresh Pal, were patrolling in the area of Lawrence Road, Industrial Area, on 07.04.2009 when the petitioner was spotted coming from the side of Britannia Chowk. From his possession, illicit liquor was recovered. The petitioner was therefore arrested. Arrest and search memos have been exhibited as Ex.PW1/A and Ex.PW1/B respectively.

11. HC Narendra Singh (PW.2) has supported the version of PW.1 and has stated that the Kalandra (Ex.PW.2/A) against the petitioner was prepared by him.

12. The petitioner has examined Smt.Nirmala Singh (DW.1), his sister, who deposed before the Trial Court that the petitioner had visited her house on 02.04.2009 and had stayed with her till 06.04.2009. On 06.04.2009, wife of the petitioner had called and thereafter the petitioner left for Delhi.

13. While cross-examining PW.1, a suggestion was given to him that the wife of the petitioner was illegally detained in the police station and was made to call the petitioner. The petitioner had to visit the police station for securing the release of his wife. However, such a suggestion was categorically denied by PW.1.

14. Significantly, the petitioner did not consider it expedient to examine his wife on the aforesaid issue.

15. Thus, from the evidence of PW.1, PW.2 and DW.1, it stands established that the petitioner entered into the territorial limits of NCT of Delhi despite externment order and that also without seeking any permission from the competent authority. In the absence of the examination of the wife of the petitioner, the suggestion given to PW.1 is merely in the nature of a bald statement having no legs to stand. Ex.PW.1/A is the arrest memo which clearly spells out that the petitioner was arrested on 07.04.2009 from Lawrence Road near fire station. The petitioner was produced before the Additional Chief Metropolitan Magistrate on 08.04.2009 when he was admitted to bail.

16. The Trial Court as well as the Appellate Court has taken note of the fact that no plea was taken by the petitioner that he was not arrested from Delhi or that he

was called from Agra and was illegally arrested in the police station.

17. The petitioner has assailed both the judgments as also the sentence on the grounds that there was practically no cross examination of the two PWs, the police personnel; the externment order dated 24.03.2009 was not proved either by PW.1 or PW.2; Ex.PW.1/A, the arrest memo of the petitioner, disclosed that the petitioner was arrested from near the fire station Lawrence Road which is far away from Britannia Chowk; there being no specific statement about the recovery of illicit liquor which was being carried by the petitioner and non-joining of any public witness in the proceedings.

18. From the materials on record as also the deposition of the two prosecution witnesses what transpires is that the petitioner was arrested from the area falling under the territorial jurisdiction of Keshav Puram police station. The externment order (Ex.A1) has not been disputed by the petitioner. The petitioner raised a plea that the externment order could not have been looked into as it had only been marked but not proved by either of the prosecution witnesses.

19. The Trial Court as well as the Appellate Court have taken note of the fact that despite opportunity having been afforded to the petitioner for cross examination of the prosecution witnesses, no cross examination was done by the petitioner. Only a bald suggestion was given to PW.2 that he was not on patrolling duty on the day when the petitioner is said to have been arrested.

20. Section 47 of the Delhi Police Act 1978 (hereinafter called the Act') provides powers to the police to direct a person, under certain circumstances, to remove himself from Delhi or any part thereof.

21. Section 48 of the Act lists the offences in which if a person has been convicted or there are reasons to believe that he is likely to again engage himself in the commission of anyone of such offences then he could be externed for a specified period. In case of failure of a person to leave the area or entering in the area without permission after his externment, that person becomes liable to be arrested or removed in police custody to such place outside Delhi or any part thereof as would be specified by the competent authority (Section 53 of the Delhi Police Act,

1978). Section 54 of the aforesaid Act provides for a temporary permission to such person to return to Delhi.

22. The petitioner, even on being externed, was found to be within the territorial limits of NCT of Delhi, and that also without any permission.

23. Section 116 of the Delhi Police Act, 1978 reads as follows:

116. Penalty for entering without permission area from which a person is directed to remove himself or overstaying when permitted to return temporarily.- Without prejudice to the power to arrest and remove a person in the circumstances, and in the manner provided in section 53, any person who-

(a) in contravention of a direction issued to him under section 46, section 47 or section 48 enters or returns without permission to Delhi, or any part thereof, as the case may be, from which he was directed to remove himself; or

(b) enters or returns to Delhi or any part thereof with permission granted under sub-section (1) of section 54, but fails, contrary to the provisions thereof, to remove himself outside such area at the expiry of the temporary period for which he was permitted to enter or return or on the earlier revocation of such permission, or having removed himself at the expiry of such temporary period or on revocation of the permission, enters or returns thereafter, without fresh permission, shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to two years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months. ?

24. From the perusal of the Section 116 of the Act, it would appear that the minimum sentence provided for violating the provisions of Sections 46, 47 and 48 is six months, extendable upto 2 years and the violator is also liable to be fined. The minimum quantum of sentence fixed could further be reduced by any court provided adequate and special reasons are recorded for imposing a sentence for a term which is less than six months.

25. The petitioner has, in the alternative, prayed for reduction of the sentence on the following grounds:

a. that he has not committed any offence from 2009 till date;

b. that he is the sole bread earner of his family;

c. that he has to fend for two minor school going children aged 14 and 12 years respectively and a young wife; and

d. that the violation of the externment order is of the year 2009 i.e. about 6 years ago.

26. On a careful consideration of the mitigating circumstances listed by the petitioner, this Court is of the opinion that sentencing the petitioner for six months, especially in view of the aforesaid circumstances would be rather harsh.

27. There can be no dispute over the proposition that the sentence has to be in proportion to the crime and the circumstances in which it is committed. What any court of law has to be careful of, while sentencing a wrongdoer, is that the sentence imposed ought not to be the antithesis of the reformatory approach of any penal legislation. The sentencing process has to be, and justifiably so, tempered with social/human considerations. The principle of just punishment is the bed rock of sentencing in respect of a criminal offence. The punishment should not be disproportionately excessive.

28. The judicial precedents in this regard suggest that relevant consideration for sentencing would be the facts and circumstances in each case; the nature of crime; the manner in which it was committed; the conduct of the accused post commission of offence and all other attending circumstances. All the above factors individually and collectively need form part of the consideration of a court while sentencing.

29. That the externment order was violated about 6 years ago and that the petitioner completed his externment period coupled with the fact that he has not been involved in any case thereafter, definitely constituted sufficient mitigating

circumstances for the Appellate Court to reduce the sentence imposed upon the petitioner by the Trial Court, though the Appellate Court has imposed the minimum sentence of 6 months.

30. The petitioner is said to be in custody since 31.08.2015.

31. On a consideration of the aforesaid facts, this Court is of the opinion that the interests of justice would be subserved if the petitioner is sentenced to the period of custody which he has already undergone.

32. No good ground has been made out by the petitioner to differ with the Trial Court as well as Appellate Court on the question of conviction.

33. Thus while maintaining the conviction, the sentence of the petitioner is reduced to the period which he is already undergone in custody.

34. The revision petition is partially allowed with the modification in the sentence.

35. The petitioner is directed to be released from jail forthwith if not wanted in any other case.

36. The petition is disposed of accordingly.

Crl.M.B. No. 7805/2015

1. In view of the petition having been partly allowed, no orders are required to be passed in the instant application.

2. Dismissed as infructuous.

A copy of this order be sent to the Superintendent of the concerned jail for information, compliance and record.

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