

Deepak @ Sonu vs.state & Ors.

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Court : Delhi

Decided On : May-31-2017

Appellant : Deepak @ Sonu

Respondent : State & Ors.

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI * % + W.P(CRL) 3634/2016
DEEPAK @ SONU STATE & ORS. versus Reserved on:

26. 05.2017 Delivered on:

31. 05.2017

... Petitioner

.....

... RESPONDENTS

Advocates who appeared in this case: For the

... Petitioner

For the Respondent CORAM:-

"HONBLE MR JUSTICE ASHUTOSH KUMAR : Mr. D.K. Pandey : Mr.Ashish Aggarwal, ASC. JUDGMENT ASHUTOSH KUMAR, J1 The petitioner has challenged the orders dated 07.10.2016 passed by the Additional Deputy

Commissioner of Police-1, North West District: Delhi in File No.D-01/2015 whereby he has been externed from the limits of NCT of Delhi for a period of one year as well as the order dated 30.11.2016 passed in Case No.175/2016 by the Lieutenant Governor of Delhi, affirming and upholding the order of externment.

2. An externment proposal was initiated against the petitioner, citing four cases against him in Bharat Nagar Police Station. The table of cases WP(CRL)3634/2016 Page 1 of 13 provided in the externment proposal is being extracted below: S.No.FIR No.Date Under Section Police Station Present Position

1.

2. 3.

4. 01 155 217 48 01.01.2013 33 Delhi Ex. Act Bharat Nagar 11.06.2013 33 Delhi
Ex. Act Bharat Nagar Bharat Nagar Bharat Nagar 21.04.2014 323/3
IPC2801.2015 323/341/5
IPC Pending Trial Pending Trial Pending Trial Pending Invest.

3. The Additional Deputy Commissioner of Police, North West District, on perusal of the proposal and materials on record took a preliminary decision of commencing with the externment proceedings. The petitioner was made known the charges against him and the petitioner responded by denying the allegations levelled against him.

4. In the externment proceedings, some independent witnesses of the area were examined in camera since they were not willing to come forward to give evidence, in public, against the petitioner for the fear of reprisal or backlash. The Officer-in-Charge, Bharat Nagar Police Station was also examined as a prosecution witness, who has stated that on being satisfied that the petitioner was a dangerous person, he had initiated the externment proposal. One defence witness on behalf of the petitioner, namely, Shri Hari Chand, was also examined who claimed to have known WP(CRL)3634/2016 Page 2 of 13 the petitioner as neighbour. He has stated that the petitioner has been vending vegetables in Sawan Park, Delhi and has good moral character. Taking into account the materials collected during the proceeding and the proposal of externment, the Additional Deputy Commissioner

of Police, vide order dated 07.10.2016 directed for externment of the petitioner for a period of one year. The petitioner was asked to remove himself from the limits of NCT of Delhi within 7 days from the passing of the order. However, the petitioner was given permission to attend the court on all dates of hearing but was directed to remove himself from the limits of NCT of Delhi immediately thereafter.

5. The aforesaid order of externment was upheld and affirmed by the appellate authority on 30.11.2016 in Case No.175/2016.

6. A perusal of the orders impugned depicts that two cases were lodged against the petitioner in the year 2013 and one case each in the years 2014 and 2015. It has been argued on behalf of the petitioner that the implication of the petitioner in such cases by one police official casts a serious doubt about the genuineness of the implication of the petitioner. It has also been argued that in the background of the nature of cases which have been cited against the petitioner, the petitioner cannot be WP(CRL)3634/2016 Page 3 of 13 termed as a habitual offender. Thus, the impugned orders have been challenged as being unsustainable as the externment proposal itself smacks of vindictive action on the part of the local police.

7. Mr. Ashish Aggarwal, learned Additional Standing Counsel, defended the orders impugned on the ground that the contents and accusation of the various cases listed against the petitioner clearly establish that the petitioner has criminal proclivity and no fault could be found either with the externment order or the appellate order. He has further submitted that the in- camera witnesses deposed against the activities of the petitioner but wanted their identity to be kept confidential.

8. The orders impugned are also defended on the ground that what is required to be seen is the existence of the materials against the proposed externee and not sufficiency of those materials. It is the subjective satisfaction of the authority, after going through the entire evidence against the proposed externee. The opinion of the competent authority being based on objective findings ought not to be interfered with. In support of his contentions, he has referred to the decisions rendered in State of NCT of Delhi vs. Sanjeev @ Bittoo 2005 SCC (Crl) 1025 and

9. In order to appreciate the contentions of the petitioner as well as the State, it would be necessary to refer to the provisions of Sections 47, 48, 50 & 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) ii) iii) iv) is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community; or has been found habitually intimidating other persons by acts of violence or by show of force; or 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 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 WP(CRL)3634/2016 Page 5 of 13 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.

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 WP(CRL)3634/2016 Page 6 of 13 (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, 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, to be recorded WP(CRL)3634/2016 Page 7 of 13 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 WP(CRL)3634/2016 Page 8 of 13 (b) (c) 51 shall not be called in question in any court except on the ground-- (a) the Commissioner of Police or there was no material before that 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 that the Commissioner of Police or the Administrator, as the case may be, upon which he could have based his order; or 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. 10. The Supreme Court in Lieutenant Governor, NCT and Ors vs. Ved Prakash alias Vedu, (2006) 5 SCC228 after going through several decisions, pointed out the law operating in the field as hereunder:-

"(i) In a proceeding under the Act all statutory and constitutional requirements must be fulfilled. (ii) An externment proceeding having regard to the purport and object thereof, cannot be equated with a preventive detention matter. (iii) Before an order of externment is passed, the proceedee is entitled to an opportunity of hearing. (iv) The test of procedural safeguards contained in the Act must be scrupulously complied with. (v) The satisfaction of the authority must be based on objective criteria. WP(CRL)3634/2016 Page 9 of 13 (vi) A proceeding under Section 47 of the Delhi Police Act stands on a different footing than the ordinary proceeding in the sense that whereas in the latter the details of the evidence are required to be disclosed and, thus, giving an opportunity to the proceedee to deal with them, in the former, general allegations would serve the purpose. 11. It is noticeable that the cases which have been cited against the petitioner and on the analysis of which cases, the competent authority came to the conclusion that the petitioner had become a dangerous person to be allowed to roam free within the territory of Delhi, have all been lodged for minor offences under the Delhi Excise Act and petty offences under the Indian Penal Code. The two cases are of the year 2013 whereas one case each is of the year 2014 and 2015 respectively.

12. From the status report filed by the State, it appears that in FIR No.1/2013, the petitioner was found to be in possession of 24 bottles of illicit liquor. Similar allegation was levelled in FIR No.155/2013. With respect to the case lodged in the year 2014 under Section 323/3

of the IPC, the petitioner is said to have assaulted the complainant and his associates. Similar allegation of assault by sticks and stones has been levelled against the petitioner in the case lodged in the year 2015. The nature of the accusation in cases against the petitioner and his implication in two other cases in two years i.e. 2014 and 2015 for minor offences WP(CRL)3634/2016 Page 10 of 13 under the Indian Penal Code, do not, under any circumstance warrant the externment of the petitioner. There is nothing on record to suggest that the movements and activities of the petitioner have rendered him so dangerous that it will be harmful for the society to allow the petitioner to roam freely.

13. The petitioner does not even appear to be a habitual offender and therefore the orders impugned cannot be sustained.

14. Section 47 of the Delhi Police Act, 1978 consists of two parts. The first part relates to the satisfaction of the competent authority for taking a decision regarding the petitioner having become a dangerous person and the second part requires the competent authority to come to a definite finding that witnesses are not willing to come forward to depose against the petitioner for the fear of reprisal. Though the subjective satisfaction of the competent authority has been attached with a finality in the Statute but such opinion of the competent authority has been held to be justiciable and subject to judicial scrutiny. Notwithstanding the provisions of Section 52 of the Delhi Police Act, which limits the scope of consideration by the Courts, judicial review of such administrative action cannot be shut out. Sufficiency of materials available before the WP(CRL)3634/2016 Page 11 of 13 competent authority may not be within the parameters of the scope of the judicial review of such administrative orders but then the whole object of judicial scrutiny of such administrative orders would become illusory if it is not seen whether the satisfaction of the authority is based on materials which are or not referable to or in consonance with the object for which such section has been enacted or that the satisfaction arrived at is demonstratively perverse and based on literally no evidence.

15. The materials justifying externment should show that but for such stringent measures, the society in general would be put in difficulty; there is no scope for improvement in the petitioner and that without the externment of the proceedee, evidence cannot be obtained against him in Courts of law.

16. The impugned orders do not indicate that all the factors were taken into account for coming to the conclusion that the petitioner is required to be externed.

17. After analyzing the entire materials available in the case records, this Court is of the opinion that the petitioner could very well be dealt with under the regular system of dealing with law breakers and the petitioner was not required to be given a blow of deportation. WP(CRL)3634/2016 Page 12 of 13 18. The relevant provisions of Delhi Police Act which have been referred to above are 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, but one of the most important fundamental rights of the citizen namely personal liberty cannot be relegated to the background and be left in the hands of the police entirely.

19. There does not appear to be any clear and present danger based upon any relevant material on which the competent authority has come to the conclusion that allowing the petitioner to remain Delhi would be alarming, dangerous and could lead to serious repercussions.

20. Thus for the aforestated reasons, the impugned orders cannot be sustained in the eyes of law and are set aside.

21. The petition is allowed. Crl.M.A. No.19863/2015 (Stay) 1. In view of the main petition having been allowed, the instant application has become infructuous.

2. Application is disposed of accordingly. MAY31 2017/ns ASHUTOSH KUMAR, J
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