

Ravi Kumar Vs. Deputy Commissioner of Police, West District, Delhi

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Court : Delhi

Decided On : Aug-05-1983

Reported in : 1983(2)Crimes442; 25(1984)DLT285

Judge : R.N. Aggarwal and; G.R. Luthra, JJ.

Acts : [Delhi Police Act, 1978](#) - Sections 47; [Constitution of India](#) - Article 226

Appeal No. : Criminal Writ Appeal No. 8 of 1983

Appellant : Ravi Kumar

Respondent : Deputy Commissioner of Police, West District, Delhi

Advocate for Pet/Ap. : Nand Kishore and; S.T. Singh, Advs

Judgement :

R.N. Aggarwal, J.

(1) Rule D.B.

(2) The Deputy Commissioner of Police District, New Delhi served the petitioner with a notice under section 50 of the [Delhi Police Act, 1978](#) calling upon him to show cause why he should not be externed from the union Territory of Delhi for a period of 2 years under section 47 of the Delhi Police Act,

(3) The relevant part of the notice is as follows :

'You are found to have been involved in the following cases committing offences punishable under Excise Act. Arms Act and committing offences of keeping/receiving stolen property, there are reasonable grounds for believing that you are engaged in the commission of offences punishable under Chapter Xvii of Indian Penal Code. Your movements and acts causing or are calculated to cause alarm danger and harm to the persons and property :-

FIR No. 874/69 u/s. 61/1/14 Ex. Act, Fir No. 357/70 u/s. -do- Fir No. 173/71 u/s. -do- Fir No. 378/72 u/s. -do- Fir No. 657/72 u/s. -do- Fir No. 554/73 u/s. -do- F'IR No. 622/74 u/s. -do- Fir No. 720/74 u/s. -do- Fir No. 856/74 u/s. -do- Fir No. 857/74 u/s. 25/54/59 A. Act. Fir No. 512/75 u/s. -do- Fir No. 102/78 u/s. -do- Fir No. 107/82 u/s. 411 1PC. Fir No. 108/82 u/s. 25/54/59 A. Act. P.S. Pahar Ganj, Delhi. P.S. Mandir Marg. P.S. Original Road. P.S. Sarai Rohilla. P.S. Delhi Cantt. P.S. Moti Nagar. P.S. Sarai Rohilla. P.S. Moti Nagar. P.S. Moti Nagar. P.S. -do- P.S. -do- P.S. Rajouri Garden. P.S. -do- All that has been mentioned above makes out a case under section 47(a)(b) D.P. Act, 1978 against you.'

(4) On 8th December, 1982 the Deputy Commissioner passed an order externing the petitioner for period of one year from the date of issuance of the order.

(5) The petitioner has by this petition under Article 226 of the [Constitution of India](#) challenged the legality and virus of the aforesaid orders.

(6) The petitioner has stated that out of the 14 cases mentioned in the show cause notice he was acquitted in 8 cases and in one case under section 411 Indian Penal Code he was discharged and that only one case under the Arms Act is pending against him. The petitioner has further stated that out of the 14 cases mentioned 12 cases relate to the period prior to 1975 and that there are only 2 cases of the year 1982 out of which in one case he has .been discharged and that the Deputy Commissioner of police has gravely erred in taking into consideration stale and irrelevant material.

(7) The Deputy Commissioner in the additional affidavit dated 2nd August 1983 has not disputed that out of 14 cases the petitioner was either acquitted or discharged in 9 cases. We may add that out of the 14 cases 9 cases are under the

Excise Act. 4 cases under the Arms Act and one case under section 411 of the Indian Penal Code. The petitioner was convicted in the cases under the Excise Act (FIR No. 874/69 and Fir No. 357/70) in the year 1969 and 1970 and in these two cases he was sentenced to a fine of Rs. 150.00 and Rs. 100.00 respectively. The other two convictions under the Excise Act were recorded in 1977 (FIR No. 657 of 1972) and Fir No. 857 of 1974). The petitioner in the said two cases was sentenced to imprisonment for 6 months and also to a fine.

(8) Shri Nand Kishore, Learned counsel for the petitioner, contended that for the application of section 47 of the Police Act besides the conditions mentioned in clauses (a), (b) and (e) the Commissioner has to be further satisfied that the witnesses are not willing to come forward to give evidence in public against such a person by reason of apprehension on their part as regards the safety of their person or property. The counsel points out that in the show cause notice no such satisfaction has been recorded and, thereforee the order of externment is not legal and valid. Shri Nand Kishore further contended that out of the 14 cases mentioned in the show cause notice the petitioner was acquitted discharged in 9 cases and that the Deputy Commissioner of Police was not justified in initiating the proceedings on the basis of cases in which the petitioner had been acquitted. He further contended that out of 14 cases, 12 cases relate to the period prior to 1975 and the Deputy Commissioner was not justified in taking into consideration old and stale material. Shri Kishore further contended that none of the cases mentioned in the show cause fall within the ambit of section 47(b) and also makes the order dated 8th December 1982 illegal.

(9) We are inclined to agree in the contentions urged by Mr. Nand Kishore. We are of the view that the cases in which the petitioner was tried and acquitted cannot form the basis for an action for externment under section 47. We also find that most of the cases taken into consideration by the Deputy Commissioner of Police pertain to period prior to 1975. There are only two cases of 1982 and in one of these cases the petitioner has already been discharged. thereforee the order is largely based on material too remote in time to the making of the impugned order.

(10) The record shows that out of the 14 cases, 9 cases are under the Excise Act, 4 cases under the Indian Arms Act and one case under section 411 of the Indian Penal Code. None of these cases come within the ambit of clause (b) of section 47. We are further of the view that the Deputy Commissioner could not have on the basis of the said case formed the belief that the petitioner is engaged or is about to engage in the commission of offence involving force or violence. The Deputy Commissioner while issuing the show cause notice had come to a tentative conclusion that a case under section 47(a) and (b) was made out and ultimately passed an order of externment under section 47. We are of the view that on the facts of this case section 47(b) may have no application.

(11) In *Prem Chand v. Union of India and others*, Xix (1981) Delhi Law Times, P. 18, the Supreme Court while considering section 47 and 50 of the Act observed as under :--

'SECTIONS 47 and 50 have to be read strictly. Any police apprehension is not enough for passing order of externment. Some ground or other is not adequate. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fought with violence. Likewise, there must be sufficient reason to believe that the person proceed against is so desperate and dangerous that his more presence in the locality or any part thereof is hazardous to the community and its safety. A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedoms. Natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Arts. 14, 19 and 21 of the Constitution. The Act permits externment, provided the action is bonafide. All power, including police power, must be informed by fairness if it is to survive judicial scrutiny.'

(12) On a consideration of the entire material placed before us we find that the order of externment is not valid and legal. We would allow the petition and quash the proceedings.

(13) Before we leave this case, we may point out that Mr. Teja Singh, learned counsel for the State, has pointed out that against the impugned order an appeal

lies to the Lieutenant Governor and the petitioner has not exhausted that remedy. In the view we have taken of the case, we do not feel it advisable to make the petitioner to undergo the ordeal of filing an appeal. We may add that the petitioner is in Jail for the last 8 months and a substantial period for which the petitioner has been externed has already run out.

(14) The petitioner be informed of the Order in jail.

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