

Kaushalya Vs. State

Kaushalya Vs. State

SooperKanoon Citation : sooperkanoon.com/689946

Court : Delhi

Decided On : Aug-04-1987

Reported in : 1988CriLJ1870; 33(1987)DLT119; 1987RLR505

Judge : R.N. Aggarwal and; Jagdish Chandra, JJ.

Acts : [Delhi Police Act, 1978](#) - Sections 47

Appeal No. : Criminal Writ Appeal No. 332 of 1987

Appellant : Kaushalya

Respondent : State

Advocate for Pet/Ap. : B.S.C. Singh and; R.P. Lao, Advs

Judgement :

Aggarwal, J.

(1) Rule D.B

(2) BY. means of this writ petition under Article 226 of of the Constitution of India, the petitioner Kaushalya has challenged the legality of the order dated 25th June, 1987 passed by the Deputy Commissioner of Police, South District, New Delhi, externing her under section 47 of the Delhi Police Act (hereinafter for the. sake of brevity called 'the Act') from the Union Territory of Delhi for a period of two years.

(3) The relevant facts are that on 11th September, 1985 the Station House Officer, Delhi Cantt. sent a proposal to the Deputy Commissioner of Police, South District for externment of the petitioner under section 48(f) of the Act. It was stated in the proposal that the petitioner who is a resident of RZ-326, Brahampuri Pankha Road, New Delhi, is a known bootlegger and is a habitual seller of illicit liquor, charas, heroin, etc. and that she had been twice convicted for offences under section 61(1) 14 of the Punjab Excise Act and is involved in a number of cases as per the details given therein. It was further stated that the petitioner is a bad character of the police station and is a history sheeter and her name is borne in bundle A. It is further stated that the activities of the proposed externnee are alarming and there is immediate need to restrict her activities in the Union Territories of Delhi Cantt. and that action be taken for her externment from the Union Territory of Delhi for at least one year. The particulars of the cases in which the petitioner was alleged to be involved are as follows :

Sl. No.	Fir No./Date	U/s	P.S.	Remarks
1.	141 dt. 15-4-76	61-1-14	15-4-76	61-1-14
Delhi Centt.	Acquitted	2.	339 dt. 5-8-76	-do---- -do- -do-
3.	37.8 dt. 18-6-77	-do-	-do-	-do-
4.	444 dt. 3-6-78	-de-	-do-	-do-
5.	143 dt. 13-3-79	-do-	-do-	-do-
6.	71 dt. 10-2-79	-do-	-do-	-do-
7.	276 dt. 2-6-79	-do-	-do-	Convicted
8.	489 dt. 29-9-79	-do-	-do-	Acquitted
9.	90 dt. 8-2-80	-do-	-do-	-do-
10.	262 dt. 8-5-80	-do-	-do-	-do-
11.	539dt. 30-10-80	-do-	-do-	-do-
12.	1 dt. 1-1-84	-do-	-do-	P.T.
13.	276 dt. 4-7-85	-do-	-do-	P.T.

(4) After the receipt of the above proposal, the Deputy Commissioner of Police issued a notice under section 47/50 of the Act to the petitioner to show cause as to why she be not externed from the Union Territory of Delhi for a period of two years. The petitioner did not produce any evidence in support of her defense but she submitted her arguments in writing. The Deputy Commissioner of Police after a consideration of the material placed before him came to the conclusion that it was a fit case to take action under section 47 of the Act and passed an order for the externment of the petitioner from the limits of the Union Territory of Delhi for a period of two years.

(5) We may mention here that section 51 of the Act provides for an appeal to the Administrator against orders passed under sections 46, 47 and 48 of the Act. The petitioner has approached this court by means of this petition under Article 226 of the Constitution of India without exhausting the statutory remedy of appeal. We at the very threshold of the hearing of the petition put to Bawa Gurcharan Singh, Learned counsel for the petitioner, as to why the petition be entertained without the petitioner first availing of the statutory remedy of appeal. Bawa Gurcharan Singh contended that the Deputy Commissioner of Police, South District, was competent only to exercise jurisdiction within the local limits of his jurisdiction and that he could not have passed the externment order from the whole of the Union Territory of Delhi. Since the above contention of Bawa Gurcharan Singh went to the very root of the jurisdiction of the Deputy Commissioner of Police for initiating action for the externment of the petitioner from the whole of the Union Territory of Delhi we issued notice to the State for showing cause why the petition be not admitted.

(6) The Delhi Administration through Shri R. P. Lao, additional standing counsel, has assailed the validity of the above contention and contended that under section 8(2) of the Act Shri J. N. Chaturvedi, Commissioner of Police, by his orders dated 6th October, 1978 and 28th February, 1979 had conferred on the Deputy Commissioners of Police and Additional Deputy Commissioners of Police all the powers (except the power to make regulation) and perform the duties of the Commissioner of Police in the whole of the Union Territory of Delhi and by virtue of the powers conferred under the said two orders the Deputy Commissioner of Police, South District, was competent to initiate action against the petitioner under section 47 of the Act and pass, an order for her externment from the whole of the Union Territory of Delhi. We would like to reproduce here the two orders mentioned above and they read as follows :

'In partial modification of the order, noted in the margin and in exercise of the powers conferred 1. No. 14331560/spl Cell dated 7-7-1978, 2. No. 2786-2816/Spl. Cell dated 7-8-1978, 3. No. 4476-4525/Spl. Cell dated 29-9-1978 by section 8(2) of the Delhi Police Act. 1978, Commissioner of Police, Delhi, hereby direct that the Deputy Commissioners of Police and Addl. Deputy Commrs. of Police posted in the Districts, mentioned therein. shall exercise the powers (except the power to

make regulations) and perform the duties of the Commissioner of Police in the whole of Union Territory of Delhi and the Assistant Commissioner of Police posted to Sub-Division in their respective Districts, Provided that the exercise of the powers and the performance of the duties by these officers by virtue, of this order shall be subject to any further order or directions which may hereafter from time to time, be issued orally or in writing by the undersigned. sd/- (J. N. Chaturvedi) Commissioner of Police, Delhi 6-10-78'

"IN continuation of my order No. 4643-4708/Spl. Cell dated 6-10-1978 and in exercise of the powers conferred by Section 8(2) of the [Delhi Police Act, 1978](#), I, J.N. Chaturvedi, Commissioner of Police, Delhi, hereby direct that the Deputy Commissioners of Police, and Additional Deputy Commissioners of Police posted in the Districts, Deputy Commissioner of Police, Crime Prevention and Deputy Commissioner of Police, Crime and Railways, shall exercise the powers and perform the duties of the Commissioner of Police, to be exercised or performed by him, in the Union Territory of Delhi, u/s. 50 of the [Delhi Police Act, 1978](#), provided (hat the exercise of the powers and the performance of the duties by those officers, by virtue of this order, shall be subject to any further order or directions which may hereafter, from time to time, be issued orally or in writing by the undersigned. sd/- (J.N. Chaturvedi) Commissioner of Police, Delhi 28-2-79'

(7) SUB-SECTION (2) of section 8 of the Act gives power to the Commissioner of Police to authorise the Deputy Commissioners of Police or the Additional Deputy Commissioners of Police or Assistant Commissioners of Police to exercise such of the powers (except the power to make regulations) and perform such of the duties of the Commissioner of Police and within such local limits as may be specified in such orders.

(8) The above provision would show that the Commissioner of Police is competent to delegate to the police officers mentioned in the sub-section the powers and the duties which the Commissioner of Police has to perform under the Act and it is for the Commissioner of Police to specify in the order the local limits within which the said police officers shall exercise the powers generated to him. The orders by which the Commissioner of Police had delegated the powers to the Deputy

Commissioner of Police and which we have reproduced in extenso above clearly show that the Deputy Commissioner of Police had been authorised to exercise the powers and perform the duties of the Commissioner of Police in the whole of the Union Territory of Delhi and those powers are not restricted to any specified area.

(9) Bawa Gurcharan Singh referred us to the case Hari Ram v. Commissioner of Delhi Police, Delhi 1979 C C C 38 in support of his contention that the impugned order is without jurisdiction. A reading of paras 45 and 46 of the said authority will show that it is distinguishable on facts. In the said case the powers delegated to the Deputy Commissioner of Police were confined to the local jurisdiction of the Deputy Commissioner of Police concerned therein. Another infirmity found in the said case was that the authority therein had not been delegated the powers under section 50 of the Act. The said authority has clearly no applicability.

(10) We for the reasons stated above hold that the Deputy Commissioner of Police, South District, had the jurisdiction to pass an externment order from the whole of the Union Territory of Delhi.

(11) Bawa Gurcharan Singh next contended that to order an externment on the ground that the movements or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property it must be shown that the alleged alarm, danger or harm is to the public generally and not to one or two individuals in the public. The contention of Bawa Gurcharan Singh is that there is no evidence or finding that the acts of the petitioner were causing or are calculated to cause alarm, danger or harm to the person or property of the public generally and, therefore, the order of externment is not legal and valid. We are unable to agree with this contention of the learned counsel. The allegations against the petitioner are that since 1976 she had been indulging repeatedly in the commission of offences punishable under the Excise Act. There could be no doubt that if a person indulges in the commission of offences under the Excise Act this would be dangerous and harmful to person and property of the public generally. The court can take judicial notice of the fact that from time to time there have been number of deaths because of the sale of illicit liquor. The kind of activities in which the petitioner is alleged to be indulging from their very nature could never be

confined to a few individuals and such activities always affect a very large section of the public. The second contention of Bawa Gurcharan Singh has no force.

(12) Bawa Gurcharan Singh next contended that the allegations made in the notice show that the alleged dangerous and harmful activities of the petitioner were confined to the area within the jurisdiction of the police station Delhi Cantonment and the authority was not legally justified to order an externment from the whole of the Union Territory of Delhi and that the purpose and object of externment could be achieved by ordering the externment from the area within the jurisdiction of police station. Delhi Cantt. The counsel contended that the order externing the petitioner from the whole of the Union Territory of Delhi comes into conflict with the fundamental rights guaranteed by Article 19(l)(d)&(e) of the Constitution of India. The counsel in support of his contention relied on *Balu Shivling Dembe v. The Divisional Magistrate, Pandharpur and another*, : AIR1969 Bom351 , and *Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay and another*, : 1956 CriLJ1104 .

(13) We have carefully read the authorities cited above, but we are of the view that they are distinguishable on facts. It was for the authority to decide on the material placed before it whether the alleged objectionable activities are confined to a particular area and the purpose and object of externment would be achieved by ordering externment from that particular area or that the circumstances required an externment from the whole of the Territory of Delhi. The illegal activities attributed to the petitioner are of such a nature that normally they are not confined to any particular area or zone and these activities are spread out and their victims can be from anywhere in Delhi. The bootleggers work in groups and they maintain great secrecy and it is very difficult to detect their areas of operation. We are of the view that the impugned order cannot be said to be violative of the fundamental rights of a citizen guaranteed in Article 19 of the Constitution of India.

(14) Bawa Gurcharan Singh next contended that the impugned order has been passed on the basis of cases in most of which the petitioner had been acquitted and that the authority could not have taken into consideration cases in which the petitioner had been acquitted in passing the order under section 47 of the Act. The

counsel in support of his contention relied on Swaran Lal alias Swarana Pandit vs. State and another (1981) DLT 257(4), and Ravi Kumar vs. Deputy Commissioner of Police, West District, Delhi, : 25(1984)DLT285 . In the first case, which is the judgment by one of us (R.N. Aggarwal, J.) it is true that it was held that the case in which a person was tried and acquitted cannot form the basis for an action for externment under section 47 of the Delhi Police Act. In the second case, as well, there is an observation by one of us (R. N. Aggarwal, J.) that in cases in which the petitioner was tried and acquitted cannot form the basis for an action for externment under section 47 of the Act. We are doubtful if the above view is sound in law. Action under section 47 can be taken if it appears to the commissioner of Police that the movements or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property or that there are reasonable grounds for believing that such person is engaged or is about to engage in the commission of an offence involving force or violence. There are other grounds also mentioned in the said section which enable the authority to initiate and take action under section 47 of the Act. The satisfaction for taking action under section 47 has to be formed by the authority on the basis of the material placed before it. It is not disputed that the petitioner was an accused in all the cases (13 in number) mentioned in the notice. It is also not disputed that the petitioner is a bad character and history sheeter and her name is born in bundle 'A'.

(15) The acquittal in the cases could be because of the reason that there may not be sufficient evidence to bring the charge home to the accused. The witnesses may not be available or willing to depose in open court against the accused. A judicial notice can be taken of the fact that in cases where the accused is a bad character the witnesses are terrified and they are not willing to become witnesses to the crime and even if they become witnesses they are not willing to testify against the accused in the open court. Our experience is that in a case where a bad character is involved even if the witnesses come they on material facts do not support the prosecution case.

(16) This very question arose for consideration in Hari Khemu Gawali (supra) and Mr. Justice Sinha, speaking for the majority, in para 11 observed as under : 'It now remains to consider the legality of the order itself. The bona fide of the order have

not been questioned. What has been urged against the legality of the order impugned is that it is based on previous orders of discharge or acquittal. It is said that those orders were passed because there was not sufficient evidence to bring the charge home to the accused. The insufficiency of the evidence itself may have been due to witnesses not being available to depose in open court or they may have been overawed and their testimony tampered with. These are all matters which cannot be examined by this Court in an objective way, when the legislature has provided for the subjective satisfaction of the authorities or officers who have been entrusted with the duty of enforcing those special provisions of the Act. It cannot be laid down as a general proposition of law that a previous order of discharge or acquittal cannot be taken into account by those authorities when dealing with persons under any one of the provision', we have been examining in this case. It is not for us to examine afresh the materials and to be satisfied that the order impugned is correct. But the materials placed on the record of this case in the affidavit shown to by the officer who was responsible for the order impugned show at least one thing, namely, that the petitioner has not been a victim of an arbitrary order.

(17) For the foregoing reason, we are of the view that the mere fact that in some of the cases mentioned in the notice the petitioner was acquitted would not be enough to hold that those cases cannot be taken into consideration in passing the order under section 47 of the Act.

(18) Bawa Gurcharan Singh next contended that in the notice under section 50 the authority has not mentioned in which cases the witnesses were not coming forward to depose against the petitioner in public for fear of personal safety and, therefore, the notice and the subsequent order of externment based on that notice are without jurisdiction. The counsel further contended that the recording of the statements of such witnesses by the authority in Camera is also illegal. The counsel in support of his contention relied on *Karan Singh vs. Deputy Commissioner of Police*, 1987 (2) Cri 25

(19) We have earlier observed that in cases where bad characters are involved firstly no one is willing to come forward to become a witness to the crime and even

if a person becomes a witness he is not willing to testify against the accused because of the apprehension on his part as regards the safety of his person. We have seen that even where the witnesses choose to come to the court, out of fear, they do not support the prosecution case on material facts.

(20) The impugned order shows that the statements of the witnesses who were not willing to testify in the open court against the petitioner, out of fear, were recorded in camera and the Deputy Commissioner of Police before passing the impugned order was satisfied that the witnesses, out of fear and safety to their person, were not willing to give evidence in public against the petitioner. It would not be safe at all to mention the names of those witnesses in the notice. If that is done then where is the secrecy left. The witnesses could be threatened and overawed. It is because of this that the statements of such witnesses are recorded in camera.

(21) We have carefully perused the authority Karan Singh (supra) and we find that this is essentially a decision on the facts of that case. In the said case the order of externment was passed on the basis of five cases, out of those five cases two cases were compromised and as regards the remaining three cases a notice for externment earlier had been given on the basis of those cases and an externment order was passed which was set aside by the Lt. Governor. Rightly, the court held that those cases could not be made the basis for passing a fresh order of externment. The said authority, in our view, is not applicable to the case in hand.

(22) No other point was urged at the Bar.

(23) We see no reason to interfere with the impugned order. We are not going into the merits of the material placed before the authority and also with regard to the sufficiency or insufficiency of the material for passing the order of externment. We have in the opening part of our order observed that under section 51 of the Act an appeal lies to the Administrator against an order made under section 46, section 47 and section 48. The petitioner has come to this court without exhausting the statutory remedy of appeal. It would be open to the petitioner to file an appeal to the administrator. With this observation the petition is dismissed.

