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Vaghari Dhanabhai Bhalabhai Vs. State

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Court : Gujarat

Decided On : Sep-05-1984

Reported in : (1985)1GLR194

Judge : P.S. Poti, C.J. and; R.C. Mankad, J.

Appellant : Vaghari Dhanabhai Bhalabhai

Respondent : State

Judgement :

P.S. Poti, C.J.

1. A Full Bench of this Court in Sarjubhaiya Mathurbhaiya Kahar v. Dy. Commissioner of Police Vadodara and Anr. reported in 25 (1) GLR 538 had occasion to consider the validity of Sections 56, 59 and 60 of the Bombay Police Act, 1951. There was no occasion in that case to consider the validity of Section 57 of that Act which provision also enables externment orders to be passed. But, whatever has been said by the Full Bench as to the circumspection under which alone the power of externment could be exercised is equally valid in the case of exercise of power under Section 57 of the Act. It is the basic right of a citizen to be free. That is infringed by the action taken for externment, whether it be under Section 56 or under Section 57 of the Bombay Police Act. There is no freedom which is on such a high pedestal as that of the right of a citizen to move about freely. If such freedom is taken away, not as a result of a trial for any offence but

by executive satisfaction that would operate as a serious inroad into the fundamental right of the citizen, but nevertheless under certain circumstances such action may be called for. Courts have held that those who come within the purview of Section 56 or Section 57 form a class by themselves and therefore, in their case, more than normally reasonable restraint may be justifiable. Even so, it cannot be assumed that every person against whom the executive initiates action under Section 56 or Section 57 is presumed to have conducted himself in a highly objectionable manner.

2. We preface this judgment with these observations because it may appear, on a plain reading of Section 57 of the Bombay Police Act, that the satisfaction required on the part of the concerned authority to justify an order under Section 57 is, on the one hand, of the fact of conviction for an offence under certain provisions of the Indian Penal Code or twice for certain offences under certain provisions of the Bombay Prohibition Act, 1949, within a period of three years, or other specified Acts mentioned in Section 57(b) or conviction under Section 65 or Section 68 of the Bombay Prohibition Act, 1949, within a period of three years, and other specified Acts as mentioned in Clause (c) of Section 57 and on the other hand the satisfaction that 'such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted', Section 65 of the Bombay Prohibition Act, 1949, deals with illegal import or export, manufacture, bottling, sale or purchase, etc. of any intoxicant and using or keeping or having in possession any materials, still, utensils, implements or apparatus for the purpose of manufacturing any intoxicant. Section 68 makes it an offence to keep open and keep or use any place as a common drinking house or having the care, management or control of such a drinking house. There are also other provisions of the Bombay Prohibition Act, the contravention of which would be offences inviting the application of Section 57 of the Bombay Police Act.

3. The sale of liquor by a person or illicit manufacture or consumption of liquor may not by itself be objectionable to such a degree as to invite the extreme measure of externing a person from an area for a fairly long time. Such externment would be justified only if there is absolute need for imposing such severe restraint on the freedom of a person. That will depend upon justification of such imposition or

restraint. May be a person has turned out to be a nuisance of such a degree that he can no longer be allowed to move about freely in the area in which he normally operates without serious harm to the public in some manner or other. Mere commission of an offence under the Bombay Prohibition Act may not necessarily have any impact on public order or may not injure public interest, as for instance, in the case of a person consuming liquor in a prohibited area within the precincts of his own home without giving any cause for alarm or concern to any one, even the members of his family. May; be he commits an offence but that does not mean that the offence committed by him has any impact upon the public of a degree which justifies his removal from his usual abode to a place outside his District as a 'preventive measure'. 'Preventive action' would not be called for in such a case though 'punitive action' may be justified.

4. Section 57(a), (b) and (c) of the Bombay Police Act has to be read and understood not as enabling a mechanical invocation of the power to extern, but reasonably and consistent with the fundamental rights of citizens. Otherwise the provision itself would be bad as it would enable the exercise of the externment power merely because a person has committed an offence earlier. Such an approach would be abhorrent to all civilised notions and would be contrary to all the values that we hold sacred. This would necessarily mean that the provision in Section 57(a), (b) or (c) is not to be invoked in any and every case of conviction for offences mentioned in the sub-sections, but only where, regard being had to the totality of circumstances, the externing authority has reason to feel that there is likelihood of repetition of the offence and the degree of harm or danger by such act would be so material as to be injurious, to peace and social order and would justify the extreme step of externing the person concerned from his home district and in appropriate cases even the contiguous districts. The degree of seriousness of the harm to the public must be such as to justify the application of the provision in Section 57(a), (b) or (c). That there is a case for externment could therefore be established only by reference to the conduct of the person against whom the externment order is proposed to be passed and an objective approach to materials in order to be satisfied that in the background of such conduct the preventive action contemplated by Section 57(a), (b) or (c) is called for. This aspect of the question has been adverted to by this Court more than once. In Dana Nathu v.

Sub-Div. Mag., Rajkot 14 G.L.R. 209 delivered in 172, the limitation on the exercise of power of the externing authority invoking Section 57(a), (b) and (c) had been highlighted. This was repeated in Suresh C. Luhana v. D.K. Dhagal and Anr. 23 (2) GLR 535, a recent case decided by a Division Bench of Chief Justice Thakkarand Justice R.J. Shah. It is surprising that in spite of these pronouncements of this Court, the concerned authorities seem to persist in their stand that merely because of earlier commission of offences referred to in Sub-sections (a), (b) and (c) of Section 57, the externment order could be passed. We alert the concerned authorities to the need to respect the views expressed by this Court on the earlier occasions, lest, even in cases where, if the facts had been properly presented, the externment order could be upheld, the Court may be called upon to quash the order for reason of non-application of the mind. We expect the Government to look into this matter and advise the concerned authorities accordingly. We are tempted to make these remarks because Chief Justice Thakkar on the earlier occasion had expressed himself strongly on the indifference of the concerned authorities in failing to pay, heed to the decision of this Court and on taking action indiscriminately under Section 57(c) of the Bombay Police Act, but that too seems to have had no effect. Suffice to say that whenever this approach is made, the power under the section may become ineffective in that the Court may be compelled to interfere in each and every case where there is challenge. Indeed it is a sad commentary on the state of affairs relating to communication of the views expressed by the High Court by the Government to the concerned authorities that the concerned authorities should, continue to indulge in what they were used to and without heed to the guiding principles enunciated by this Court more than once.

5. In the case before us there is nothing more than a mere ritualistic recital of the commission by the petitioner of offence under the Bombay Prohibition Act and livelihood of repeating it. Section 57 has been invoked without anything more. This would be sufficient to vitiate the action taken by the Sub-Divisional Magistrate, Mahuva Sub-Division, Mahuva. Annexure 'B' externment order as confirmed by the Government in appeal is quashed. Rule made absolute. A copy of this judgment will be sent to the Government of Gujarat for information so that they may issue appropriate instructions to the Executive Magistrates and the concerned

Police Authorities dealing with such matters so that the same mistake may not be committed again.

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