

Mukesh Vs. State of Madhya Pradesh and Others

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Court : Madhya Pradesh

Decided On : May-11-2011

Judge : M. Naik, J.

Acts : Madhya Pradesh Rajya Suraksha Adhiniyam, 1990. - Section 8(2); Public Gambling Act - Section 4A, 8(2)

Appeal No. : Writ Appeal No.179/2011

Appellant : Mukesh

Respondent : State of Madhya Pradesh and Others

Judgement :

1. This writ appeal has been preferred against the order dated 28.2.2011, passed by the learned Single Judge of this Court in WP No. 12707 of 2010, upholding thereby the order of externment against the petitioner/appellant.

2. Briefly stated relevant facts are that District Magistrate, Ratlam, vide notice No. 745/2009, dated 7.12.2009, issued show cause notice to the petitioner/appellant calling upon him to show cause as to why he should not be externed. On being served, the petitioner/appellant entered into his defence by filing written statement. Simultaneously, he submitted an application under Section 8(2) of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990. The grievance of the petitioner/appellant is that without providing reasonable opportunity of being heard and without allowing him to cross-examine the witnesses of the State and further

without supplying copy of the documents, upon which, opinion was² formed, the District Magistrate, Ratlam, vide his order dated 7.6.2010 passed in Criminal Case No. 27/Zilabadar/2009, ordered for externment of the petitioner/appellant from the revenue limits of District of Ratlam and contiguous area of Dhar, Jhabua, Ujjain, Shajapur, Neemuch and Mandsaur for a period of one year. Copy of said order is on record as Annexure P-1. Aggrieved by, an appeal was preferred, which was dismissed by the Court of Commissioner, Ujjain Division, vide order dated 11.10.2010. Thereafter, WP No. 12707 of 2010 was preferred, which having been dismissed by the impugned order, the present writ appeal has been submitted.

3. Shri G.K. Patidar, learned Advocate for the petitioner/appellant and Shri Vivek Patwa, learned Dy. Government Advocate for the respondents made their respective submissions.

4 Main contentions on behalf of the appellant are that proper opportunity of hearing was not granted. Application of the appellant under Section 8(2) of Madhya Pradesh Rajya Suraksha Adhiniyam was illegally rejected and the opportunity of cross-examination was not provided. It is contended that the order of learned Single Judge in writ petition, having been passed ignoring the legal provisions and judicial pronouncements, is liable to be set aside. Reliance has been placed on the decision in the cases of Manish @ Dal Vishwakarma and another v. State of M.P. & others (2009(2) MPLJ 658); Ashok Kumar Patel v. State of M.P. & others (2009(4) MPHT 263); and Dharmendra Singh v. State of M.P. and others (2007(1) JLJ 274).

5. In Ashok Kumar Patel's case (supra), the order of externment was passed under Section 5(b) of the Act, whereas in the present case, the order of externment is based on ground under Section 6(c) of the Act. Relevant portion of Section 6 is reproduced as under:

“6. Removal of persons convicted of³ certain offences.-If a person has been convicted-

(a).....

(b).....

(c) thrice, of an offence within a period of three years under [Section 3 or 4 or 4- A] of the Public Gambling Act, 1867 (3 of 1967), in its application to the State of Madhya Pradesh; the District Magistrate may, if he has reason to believe that such person is likely against to engage himself in the commission of an offence similar to that for which he was convicted direct such person by an order to remove himself outside the district or part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route and within such time as the District Magistrate may order and not to enter or return to the District or part thereof or such area and such contiguous district or part thereof, as the case may be, from which he was directed to remove himself. Explanation:- For the purpose of this Section, the expression, "an offence similar to that for which he was convicted" means:-

(i) in the case of a person convicted of an offence mentioned in clause (a), an offence falling under any of the Chapters or Sections of the Indian Penal Code, 1860 (45 of 1860), mentioned in that clause or an offence falling under the provisions of the Act mentioned in sub-clause (ii) of that clause; and (ii) in the case of a person convicted of an offence mentioned in clauses (b) and (c), an offence falling under the provisions of the Acts mentioned respectively in the said clauses."

Show cause notice was issued to the appellant on 7.12.2009, which contains list of cases. The appellant was convicted of an offence under Section 4-A of the Public Gambling Act. He is found convicted on 20.2.2007, 29.7.2009 and 9.8.2009 under Section 4-A of the Public Gambling Act, 1867. Thus, he is found to have been convicted thrice of an offence within a period of three years under Section 4-A of the Public Gambling Act, which is the requirement of Section 6(c) of Madhya Pradesh Rajya Suraksha Adhiniyam, 1990. He replied to the aforesaid show cause notice. Factum of conviction was not denied in specific. This being so, the appellant does not get benefit from the decision in Manish @ Dal Vishwakarma's case (supra). Case of Dharmendra Singh (supra) is distinguishable on facts and the same cannot be invoked by the appellant.

6. We will now take up the grievance of the appellant about illegal rejection of his application under Section 8(2) of the Act. At this juncture, we feel it proper to reproduce Section 8 of the Act: “8. Hearing to be given before order under Section 3, 4, 5 or 6 is passed.-(1) Before an order under Section 3, 4, 5 or 6 is passed against any person, the District Magistrate shall inform the person in writing 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 produced by him, the District Magistrate shall grant such application and examine such witnesses unless for reason to be recorded in writing, the District Magistrate is of opinion that such application is made for the purpose of vexation or delay.

(3) Any written statement put in by such person shall be filed with the record of the case and such person shall be entitled to appear before the District Magistrate by any legal practitioner for the purpose of tendering his explanation and examining the witnesses produced by him.

(4) The District Magistrate proceeding under sub-section (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under Section 3,4,5 or 6 require such person to appear before him and to execute a security bond with or without sureties for such attendance during the inquiry.

(5) If the person fails to execute the security bond as required or fails to appeal before the District Magistrate during the inquiry, it shall be lawful for the District Magistrate to proceed with⁵ the enquiry ex parte and thereupon such order, as was proposed to be passed against him, may be passed.” Sub-section (1) of Section 8 makes it obligatory to the District Magistrate to inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them before passing any order under Section 3,4,5 or 6. In the instant case, show cause notice was issued to the appellant along with enclosed police report, which ran in 20 pages. Thus, the general nature of the material allegations was provided to the appellant and the reply submitted by him was received and considered in due

manner. This being so, subsection (1) of Section 8 of the Adhiniyam, is found to have been complied with.

7. Sub-section(2) (supra) enabled the petitioner to make an application for examination of any witness produced by him. We perused the application under Section 8(2) of the Act submitted by the appellant, which contains a prayer that the concerning police officer who registered the cases against the appellant be examined with an opportunity of cross-examination to the appellant. Such a prayer was beyond the ambit of sub-section(2) of Section 8 of the Act. Admittedly, the appellant did not produce any witness and further did not make prayer for examination of any witness on his behalf, after having been produced. Sub-section (2) did not enable the petitioner to summon police officer or to cross-examine him. The Legislature, while providing an opportunity of evidence, expected that a person to whom notice is issued shall produce a witness and makes an application for his examination. In case if a witness is produced and application is made for his examination, the District Magistrate has no option than to grant such application for the examination of such witness except for the reasons to be recorded in writing that such application is made for the purpose of vexation or delay. Thus, grant of leave to examine a witness produced by the person is a Rule and refusal would be exception, which is confined to the ground of vexation or delay.

8 In the present case, there was no application of the petitioner/appellant within the meaning of Section 8(2) of the Act and the learned District Magistrate has not committed any error in dismissing the petitioner's application, which was beyond the ambit of the said provision. Reliance on the order dated 18.1.2011 of the Single Bench of this court in WP No. 13180 of 2010 is also of no avail to the appellant, being distinguishable on facts.

In the result, there is no force in the appeal. The same is hereby dismissed, however, with no order as to costs. C.c. as per rules.

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