



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: October 03, 2024***

+ W.P.(CRL) 1462/2024
MS. MONIKA

.....Petitioner

Through: Mr.Mir Akhtar Hussain & Ms.Sonia
Goswami, Advocates.

versus

STATE NCT OF DELHI AND ORS.Respondents

Through: Mr.Yasir Rauf Ansari, ASC with
Mr.Alok Sharma and Mr.Vasu
Agarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of petitioner for quashing of impugned order dated 27.02.2024 passed by respondent No.2-Additional Deputy Commissioner of Police-I, South West District whereby externment order was passed against the petitioner for a period of two years, and order dated 10.04.2024 passed by learned Appellate Authority, i.e. Hon'ble Lieutenant Governor, NCT of Delhi, whereby externment period was reduced from two years to one year.

2. In brief, externment proceedings against the petitioner were initiated by respondent No.2 by issuing of show-cause notice under Section 47 read with Section 50 of the Delhi Police Act, 1978 (*hereinafter, referred to as the 'D.P. Act'*) on 20.10.2020, on the basis of her involvement in three FIRs



under Delhi Excise Act as under:

S. No.	FIR No.	Date	Section of law	Police Station	Present Status
1	58/18	16.03.2018	33 Delhi Excise Act	Sagarpur	Pending trial
2	74/19	24.01.2019	33 Delhi Excise Act	Sagarpur	Pending trial
3	152/20	20.03.2020	33 Delhi Excise Act	Sagarpur	Pending trial

The activities of the petitioner were further stated to be menace and hazardous to the community.

3. In reply to the show-cause notice, petitioner submitted that all the three cases under the Delhi Excise Act had been falsely planted upon her and do not warrant the initiation of externment proceedings. It was further stated that in terms of Section 47 of the D.P. Act, at least three cases should be registered against the petitioner in a preceding year, and the said condition does not stand fulfilled in the case of petitioner, since all the three FIRs were registered in the consecutive years 2018, 2019 and 2020 respectively. She pointed out that the petitioner is not involved in any offence involving physical harm or injury to any person or offence involving moral turpitude.

4. During pendency of proceedings before respondent No.2/Additional Deputy Commissioner of Police, a supplementary notice was issued to petitioner on 14.07.2023 since she was found to be involved in three additional FIRs under Delhi Excise Act during the years 2021, 2022 & 2023 as under:

S. No.	FIR No.	Date	Section of law	Police Station	Present Status
1	126/21	12.03.2021	33 Delhi Excise Act	Sagarpur	Pending trial
2	153/22	05.03.2022	33 Delhi Excise Act	Sagarpur	Pending trial
3	278/23	25.05.2023	33 Delhi Excise Act	Sagarpur	Pending trial

5. In response thereof, neither any reply, nor any defence evidence was



led on behalf of petitioner. The matter was finally considered by the Competent Authority/respondent No.2 on appearance of petitioner in person alongwith counsel and vide order dated 27.02.2024, petitioner was externed for a period of two years for the reasons recorded as under:

*“..... Before deciding the case, I have perused the statements of witnesses recorded in camera by the then Addl. Deputy Commissioner of Police-1, South West District, Delhi. I am fully satisfied that the witnesses are not willing to come forward to make statements in public against her due to apprehension with regard to the safety of their person and property but they have deposed so in camera. I have also carefully gone through the record and other relevant material available on file. The record suggested that the **Respondent is involved in 06 cases of Excise Act.** A close scrutiny of the record clearly indicates that there are sufficient grounds to conclude that she is actively involved in these cases. **Besides, the respondent is a Bad Character (B.C.) of Bundle-A of P.S. Sagarpur, Delhi and during the course of proceedings, she was found involved in more criminal cases.** Due to her continuous and persistent activities, the Respondent is hazardous to the society. The subsequent conduct of the Respondent during Externment proceedings reflects that she is a habitual criminal. **Hon'ble Supreme Court in the case of Amanulla Khan Kudeatalla Khan Pathan Vs State of Gujarat and Ors. reported in (1999) 5 Supreme Court Cases (613) opined that a person can be called dangerous person If she is a habitual offender. "Habitually" would obviously mean repeatedly or persistently.** The habitual character of the Respondent is very much evident from the fact that even during the course of proceedings, Respondent was found engaged in commission of offences. Due to her continuous and persistent activities, the Respondent can be called a dangerous person. The subsequent conduct of the Respondent during Extemment proceedings reflects her habitual nature for committing crime.*

I am of the view that her presence in the community is hazardous to the society. The witnesses are unwilling to depose in public against her because of the apprehension on their part as regards the safety of their person & property at the hands of the Respondent and her conduct definitely requires stringent view.

Keeping in view the evidence brought on file i.e. notice, reply of the notice, statement of Prosecution Witness and other evidence adduced during the course of proceedings, I come to the conclusion that she is not likely to improve till stringent measures are taken against her. Her activities in the area of N.C.T. of Delhi are causing and are calculated to cause alarm, danger and harm to the respectable



citizens. Her continuous presence in the area is leading to alarm and danger in the minds of law-abiding citizens of the area who have a right to lead peaceful life. I am of the view that her case is well within the scope of section 47 of Delhi Police Act, 1978 and she is a fit person to be externed from the limits of N.C.T. of Delhi.

Now, therefore, in exercise of the powers vested upon me under section 47/50 of D.P. Act, 1978 and conferred upon me by the order of Commissioner of Police, Delhi under section 8(ii) of the said Act, I, Kushal Pal Singh, Addl. Deputy Commissioner of Police-I, South West District, Delhi, hereby direct Monika W/o Sandeep @ Golu R/o RZ-20A, Gali No. 25A, Indra Park, Sagarpur, New Delhi to remove herself beyond the limits of N.C.T. of Delhi for a period of two years within seven days from the date of this order. The Respondent is further directed not to enter or return to the area of N.C.T. of Delhi within the said period without written permission of the competent authority. She is however, permitted to attend the Court at Delhi/New Delhi on all the dates of hearing and shall immediately thereafter remove herself outside the limits of N.C.T. of Delhi and shall not visit any place other than the court premises. This relaxation is only for the date of hearing in the court for coming and going out of the limits of N.C.T. of Delhi. The contents of the order have been explained to her in "Hindi" language in the open Court and a copy of the order has been delivered to her against her proper receipt. Order announced in the open Court in the presence of the Respondent. The Respondent is also informed of her right to appeal against this order u/s 51 of Delhi Police Act, 1978 to the Administrator (Hon'ble Lieutenant Governor of Delhi) within thirty days from the date of the service of such order on her."

6. The impugned order dated 27.02.2024 was assailed by the petitioner before the Appellate Authority (i.e. the Hon'ble Lieutenant Governor, Govt. of NCT of Delhi), whereby the period of externment was reduced from two years to one year.

SUBMISSIONS ON BEHALF OF PETITIONER

7. (i) Learned counsel for the petitioner points out that proceedings against the petitioner initiated on 20.10.2020 by issuing of notice under Section 47 read with Section 50 of the D.P. Act are remote in time and much before the final passing of the impugned order dated 27.02.2024, by the



Competent Authority, based upon three FIRs relating to the period 2018, 2019 and 2020 under Section 33 of Delhi Excise Act. He emphasizes that to invoke the provisions under Section 47 of the D.P. Act, 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 are fraught with violence as held in *Prem Chand v. Union of India*, AIR 1981 SC 613.

(ii) Learned counsel for petitioner further submits that petitioner was not given adequate opportunity for cross-examination of witnesses and her involvement in FIRs registered in March, 2021, March, 2022 and May, 2023 under Delhi Excise Act has not been proved, in accordance with law. Petitioner is further stated to have been denied an opportunity to produce defence witnesses and represent her case through a lawyer.

(iii) He further submits that reliance placed by respondent No.2 upon *Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat & Ors.*, (1999) 5 SCC 613 is misplaced as the case against the petitioner is governed by the provisions of D.P. Act. Reference is also made to Explanation to Section 47 of D.P. Act which provides that a person shall be deemed to have 'habitually' committed the act, if during the period within one year, immediately preceding the commencement of an action, under this section, he/she is on not less than three occasions, involved in the acts. It is pointed out that the petitioner was involved only in a single FIR, in the each respective year, and as such cannot be deemed to be a habitual offender.

He further emphasizes that there is no material to infer that petitioner is 'habitual and dangerous' or if her activities were calculated to cause alarm, danger and harm to the citizens. Reliance is further placed upon



Premchand (Paniwala) v. Union of India & Ors, AIR 1981 SC 613; *Ravi Kumar v. Deputy Commissioner of Police*, 25 (1984) DLT 285; *Mohd. Aslam v. Delhi Administration & Ors.*, 29 (1986) DLT 437; *Nawab Khan Abbaskhan v. State of Gujarat*, (1974) 2 SCC 121; *Kalyani Baskar (Mrs.) v. Ms.Sampoornam (Mrs.)*, 2007 (2) SCC 258; AIR 2006 SC 1376; PC 253 (1); *Tata Chemicals Ltd. v. Commissioner of Customs (Preventive) Jamanagar*, (2015) 11 SCC 628; and JT 2022 (7) SC 428.

(iv) Apart from above, prayer is made for quashing of the externment orders on compassionate grounds, since petitioner has two children to be looked after and her husband is suffering from medical ailments.

SUBMISSIONS ON BEHALF OF ASC FOR RESPONDENTS

8. (i) On the other hand, learned ASC for State supports the impugned order of externment upheld in appeal and submits that due opportunity had been granted to the petitioner to engage a counsel through legal aid, but she evaded to appear in the proceedings though a reply was filed in response to show-cause notice. It is pointed out that Competent Authority was constrained to issue bailable warrants against the petitioner and statement of witnesses was recorded in presence of the petitioner. Further, the petitioner intentionally chose to not to avail the opportunity to cross-examine the witnesses and since she was found to be involved in three more FIRs, during pendency of proceedings, a supplementary notice was issued to her. He emphasizes that since the petitioner, neither preferred to file any response/reply to the supplementary notice, nor led any defence evidence, matter was finally heard and orders were passed on 27.02.2024 by the Competent Authority.

(ii) Learned ASC for State further submits that externment order is based



on account of continuous involvement of the petitioner in criminal activities, which cause danger to the society, and is a valid ground for externment. He points out that supplementary notice was issued to petitioner, since she was found to be further involved in FIR Nos.126/2021, 153/2022 and 278/2023, under Section 33 of Delhi Excise Act during pendency of proceedings. Petitioner is further stated to be a Bad Character (B.C.) of Bundle-A of P.S. Sagarpur and witnesses are unwilling to depose against her. In support of the contentions, reliance is also placed upon *Shailender Kaur v. Lt. Governor of Delhi*, 2001 SCC OnLine Del 464; *Kaushalya v. State*, 1987 SCC OnLine Del 265; *State of NCT of Delhi v. Sanjeev @ Bittoo*, (2005) 5 SCC 181 and *Mohd. Shariqui Khaan v. State & Anr.*, 2017 SCC OnLine Delhi 12724.

(iii) Learned ASC further points out that case of petitioner falls within Clauses (a) and (b) of Section 47 of D.P. Act, and reliance by the petitioner on Explanation to Section 47 of D.P. Act, without referring to other Clauses is misplaced. Reference is made to *Rakesh Kumar v. State of NCT of Delhi*, 2022 SCC OnLine Del 3887.

(iv) He further emphasizes that the scope of judicial review, as provided under Section 52 of D.P. Act is limited as held in *Governor, NCT of Delhi & Ors. v. Vedi Prakash*, (2006) 5 SCC 228 and *Khalid v. Addl. Dy. Commissioner of Police & Ors.*, 2004 SCC OnLine Del 1109.

ANALYSIS & FINDINGS

9. An order of externment can be passed under clause (a), (b) or (c) of Section 47 of D.P. Act, if it appears to the Competent Authority:

“(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) is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community; or

(ii) has been found habitually intimidating other persons by acts of violence or by show of force; or

(iii) 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

(iv) 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 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.”

10. Externment proceeding is not a prosecution for offences in a strict sense but is a measure to prevent the repeated commission of offences by the proposed externee and to break the nexus. The same is resorted to in the discerning few cases where the witnesses are not forthcoming to depose



against a desperate criminal on account of apprehension to their safety. The section itself reflects that the provision is to be used under extraordinary circumstances to curb lawless elements in the society.

11. Also, it is well settled that a mere apprehension may not be sufficient enough for reaching the satisfaction by the Competent Authority and there must be a clear and present danger, based upon credible evidence, which makes the movements or acts of the proposed externee calculated to cause alarm, danger or harm to any person or property. Further there should be sufficient reasons to believe that the person proceeded against is so desperate and dangerous that his/her mere presence in the territory is hazardous to the community and its safety, as observed in *Prem Chand v. Union of India and Others*, AIR 01981 SC 613.

12. In *Gazi Saddudin v. State of Maharashtra (2003) 7 SCC 330*, it was observed that the satisfaction of the authority should not be interfered with only because another view can possibly be taken. However, the satisfaction of the authority can be interfered with if the satisfaction recorded is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of the materials on record, been satisfied of the expediency/necessity of passing an order of externment.

Hon'ble Apex Court in *State of NCT of Delhi and Another v. Sanjeev alias Bittoo*, Criminal Appeal No.498/2005 decided on 04.04.2005, in the context of judicial review of cases pertaining to externment further held that Court should be slow to interfere in such matters relating to externment of administrative functions unless the decision is illegal, irrational or suffers from procedural impropriety.



13. In the aforesaid context, the scope and ambit of Section 56 to 59 of the Maharashtra Police Act, 1954 which are *pari material* with provisions of D.P. Act was considered in ***Pandharinath Shridhar Rangnekar v. State, (1973) 1 SCC 372*** and the observations therein may be beneficially noticed:

“8. Section 56 of the Act provides, to the extent material, that whenever it shall appear in Greater Bombay to the Commissioner: (a) that the movements of 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, XVI or XVII of the Penal Code, 1860, and when in the opinion of such officer witnesses are not willing to come forward 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 said officer may by order in writing direct such person to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts or any part thereof contiguous thereto, within such time as the said officer may prescribe and not to enter or return to the said area from which he was directed to remove himself. Under Section 58, an order of externment passed under Section 56 can in no case exceed a period of two years from the date on which it was made. The relevant part of Section 59(1) provides that before an order under Section 56 is passed against any person, the officer shall inform that person in writing “of the general nature of the material allegations against him” and give him a reasonable opportunity of tendering an explanation regarding those allegations. The proposed externnee is entitled to lead evidence unless the authority takes the view that the application for examination of witnesses is made for the purpose of vexation or delay. Section 59 also confers on the person concerned a right to file a written statement and to appear through an advocate or attorney.

9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under clause (a) or (b) of Section 56, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externnee by reason of apprehension on their part as regards the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an



externment proceeding. If the show-cause notice were to furnish to the proposed externee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee “of the general nature of the material allegations against him”. That obligation fixes the limits of the co-relative right of the proposed externee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.

- 10. xxxxxx xxxxxx xxxxxx
- 11. xxxxxx xxxxxx xxxxxx
- 12. xxxxxx xxxxxx xxxxxx
- 13. xxxxxx xxxxxx xxxxxx
- 14. xxxxxx xxxxxx xxxxxx

15. As regards the last point, it is primarily for the externing authority to decide how best the externment order can be made effective, so as to subserve its real purpose. How long, within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 56 it should extend, are matters which must depend for their decision on the nature of the data which the authority is able to collect in the externment proceedings. There are cases and cases and therefore no general formulation can be made that the order of externment must always be restricted to the area to which the illegal activities of the externee extend. A larger area may conceivably have to be comprised within the externment order so as to isolate the externee from his moorings.

*16. An excessive order can undoubtedly be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case.
.....”*

- 14. The facts in the case in hand, patently reflect that the externment



order was passed by the Competent Authority on account of repeated involvement of the petitioner in the cases of bootlegging in FIRs registered in the years 2018, 2019 & 2020 followed with further involvement in FIRs under Section 33 of the Delhi Excise Act in March 2021, March, 2022 and May, 2023. Accordingly, a supplementary notice was issued to the petitioner during the pendency of proceedings with reference to FIRs registered in 2021, 2022 & 2023. The same reflect the propensity of the petitioner to unabatedly continue to indulge in the criminal offences. Petitioner also happens to be classified as a Bad Character of Bundle-A of PS: Sagarpur and as such the witnesses are not forthcoming in open to depose against her. Merely because the aforesaid cases under the Delhi Excise Act are pending trial or may be based largely on evidence of police officials, is not legitimate ground to interfere in the subjective satisfaction recorded by the Competent Authority. The acts of repeatedly indulging in bootlegging and illegal sale of liquor, on face of record, cause alarm or danger to the society at large and reflect that the petitioner is of desperate and dangerous character. In view of above, petitioner being at large in NCT of Delhi or in any part thereof, is apparently hazardous to the community.

15. Thus, the subjective satisfaction of the Competent Authority that the acts of the proposed externee fall within ambit of Section 47 of D.P. Act, does not call for any interference.

16. The contention raised by the learned counsel for the petitioner that the proceedings under Section 47 of D.P. Act could not have been initiated since the FIRs relied by the Competent Authority do not fall within a year, immediately preceding the commencement of action against the petitioner,



appears to be misplaced as the explanation merely clarifies the term 'habitually used' in clause (c) of Section 47 of D.P. Act. The same does not lay down that the order could not have been passed if the acts of the petitioner fell within other clauses of Section 47 of D.P. Act.

It cannot be ignored that bootlegging and illegal sale of liquor, contrary to the provisions of Delhi Excise Act is a big menace to the society and needs to be curbed with a heavy hand.

On perusal of record, this Court is of the considered opinion that there does not appear to be violation of principles of natural justice, as due notice was given to the petitioner and opportunity was granted to cross-examine the witnesses. The authorities cited by learned counsel for the petitioner are distinguishable. A compassionate view has already been taken by the Appellate Authority (i.e. Hon'ble Lieutenant Governor of NCT of Delhi) by reducing the period of externment from two years to one year, and same does not call for further interference by this Court.

For the foregoing reasons, the petition is without any merits and is accordingly dismissed. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

OCTOBER 03, 2024/v/sd