Hussainmiya Alias Jago Razakmiya Qadri Vs State of Gujarat

Court: Gujarat High Court

Date of Decision: Feb. 9, 1999

Acts Referred: Bombay Police Act, 1951 â€" Section 56A, 56B, 59
Constitution of India, 1950 â€" Article 226
Penal Code, 1860 (IPC) â€" Section 147, 427, 506(2)

Citation: (1999) CriLJ 2401

Hon'ble Judges: D.C. Srivastava, J

Bench: Single Bench

Advocate: Zubin F. Bharda, for the Appellant; A.B. Vyas, APP, for the Respondent

Final Decision: Allowed

Judgement

D.C. Srivastava, J.
In this writ petition under Article 226 of Constitution of India, prayer is made to issue a writ of certiorari for quashing

the show cause notice Annexure.B, Externment Order Annexure.A and order of the Appellate Authority Annexure. C to the writ petition. Brief

facts giving rise to the present writ petition are as under:

A show cause notice Annexure-B u/s 59 of the Bombay Police Act was issued to the petitioner by the Assistant Commissioner of Police(Eastern

Division),Rajkot City, Rajkot to show cause as to why he should not be externed for a period of two years in view of his anti social activities

reflected in two cases registered under various sections of the IPC and one under the Prohibition Act and further as shown by three witnesses who

narrated about the activities of the petitioner in their confidential statement. The petitioner appeared, filed reply to the show cause notice and also

examined witnesses in his defence. The externing authority, the Deputy Commissioner of Police, Rajkot City, passed the externment order

externing the petitioner from Rajkot city,Rajkot(Rural) and also from the adjoining district Surendranagar . Against the externment order an appeal

was preferred which was dismissed by the Appellate Authority, hence this writ petition.

2. The learned advocate for the petitioner has challenged the show cause notice, order of externment and the order of the Appellate Authority on

four grounds. The learned Assistant Government Pleader has contended that the order of externment and the order of the Appellate Authority are

perfectly legal and there is no defect in the show cause notice, hence the writ petition should be dismissed.

3. Having heard the arguments of both the sides, it is very difficult to accept the contention that the show cause notice and the two impugned

orders are in accordance with law. Several infirmities are found in the show notice, in the impugned order of externment and the impugned order of

the Appellate Authority.

4. An order for externment has the necessary consequence of restricting the movement of a citizen. This restriction can be imposed only by

proceeding in accordance with law. The law on the subject is that prior to the passing of an order of externment show cause notice should be

issued disclosing specific grounds on which an order for externment is proposed to be passed. If vague grounds are given in the show cause notice,

it will certainly prejudice the petitioner in effectively raising his defence. The next stage is that if , after the receipt of the show cause notice, the

cause is shown and the defence is tendered by the proposed externee, the same is bound to be considered objectively by the externing authority as

well as by the Appellate Authority. No doubt, these authorities are not exercising functions of judicial authorities while passing these orders but

they are certainly acting as quasi judicial auithorities, hence, these orders should not be purely subjective,rather objectivity should be reflected in

these orders. In case evidence is adduced by the two sides it should be objectively considered and reasons should be given why evidence of one

side is believed and the evidence of the other side is not believed. If the orders are passed after complying with these formalities, then certainly it

can be said that procedural safeguards were observed by the two authorities. In all events, violation of these safeguards will certainly render the

impugned orders invalid.

5. Coming to the first stage, if the show cause notice is examined and the externment order is perused, it prima-facie appears that the show cause

notice was issued by the Assistant Commissioner of Police (Eastern Division) Rajkot City; whereas the impugned order was passed by the Deputy

Commissioner of Police, Rajkot City, Rajkot. It thus appears from the record that the impugned order was not passed by the authority who issued

the show cause notice after entertaining subjective satisfaction that it was necessary to extern the petitioner from the three districts. No affidavit has

been filed explaining that the externing authority was actually the successor of the authority who issued the show cause notice. There is no material

on record to infer that the authority who issued the show cause notice was transferred and thereafter no other officer was posted to succeed him

and his business was allocated to the externing authority in addition to his work. Thus from the material on record as it exists today, it can be said

that subjective satisfaction before issuing the show cause notice was entertained by one authority; whereas the externment order was passed by

another authority.

6. It has been argued that the entire proceedings were concluded before the authority issuing the show cause notice and no opportunity of hearing

was given before the externing authority which has prejudiced the petitioner in putting his cause and defence before the externing authority. It was

further argued that this is also violative of the principles of natural justice inasmuch as before passing the impugned order of externment, the

petitioner was not heard by the externing authority. It was also argued that hearing before the authority issuing the show cause notice in these

circumstances, is not sufficient compliance of law nor can be said to be strict observance of the principles of natural justice. The arguments are not

without substance. If the externment order is violative of non compliance of principles of natural justice, it cannot be sustained.

7. There is also apparent contradiction between the show cause notice and the externment order. In the show cause notice, it was shown that the

action is proposed to be taken u/s 56(A) of the Bombay Police Act; whereas the externment order shows that the power was exercised u/s 56(B)

of the Bombay Police Act. These contradictions, if taken at their face value can be said to have given raise to a situation of non application of mind

by the externing authority not only to the material on record viz. to the show cause notice but also to the provisions of Section 56-A and Section

56-B of the Bombay Police Act. Non application of mind to the legal provisions and to the material on record will also render the order of

externment bad in law. If such an order was confirmed by the Appellate Authority in routine manner, the order of the Appellate Authority will also

be rendered illegal and bad in law.

8. There is yet another contradiction between the show cause notice and the order of externment. In the show cause notice the authority issuing the

same did not entertain subjective satisfaction that the activities of the petitioner were such that he was required to be externed from the contiguous

districts of Surendranagar, Rajkot(Rural) and Rajkot City. This necessity was felt by the externing authority while passing the externment order and

that too on mere presumption and surmises. There was no material that the externment of the petitioner from three contiguous district was a dire

necessity. This court had considered this aspect of the case in Saiyad Husain Saiyad Umar Vs. State of Gujarat and Another, . In this case it has

been observed that if the externment is proposed from the contiguous districts, it must be disclosed in the show cause notice why such externment

is proposed and the same should be repeated in the externment order. Further, if it is not disclosed in the show cause notice but is disclosed in the

final order, the final order would be rendered invalid. In this decision, earlier decisions of Vrajlal vs D.M.Rajkot (III) GLR 809. Lalji Kanji vs.

V.T.Shah (IV) GLR 668 and Momad Kala vs. State (14) GLR 384 were referred to and relied upon. There is no prohibition against the externing

authority to pass externment order against the externee to extern him from contiguous districts. But for that he has to give opportunity to the

externee to show cause why he should not be externed from the contiguous districts. This was evidently not done in the instant case, because

nothing is shown in the show cause notice that the petitioner was proposed to be externed from three districts. From the externment order also it is

not clear what was the material before the externing authority for passing such order externing the petitioner from the adjacent districts. If this has

not been done while passing the final order, the petitioner was certainly deprived of showing cause that he should not be externed from the

contiguous districts. A person who simply committed an offence under sections 506(2) IPC and/ sections 427 147 etc. IPC on two occasions

cannot be said to have become a dangerous person who should have been externed from the districts contiguous. Thus in the absence of any

material on the point, such an order was passed which has been rendered illegal. The externing authority did not apply its mind to this aspect of the

case and has passed the impugned order which was likewise confirmed by the appellate authority in a routine manner in an appeal. Therefore, the

order of the Appellate Authority also becomes illegal. The show cause notice is issued to the proposed externee to enable him to know what are

the allegations against him on which he is proposed to be externed from one or more than one districts. This can be done only when specific

allegations are disclosed to the proposed externee in the show cause notice. Three criminal cases, two under various sections of the IPC and one

under the Prohibition Act are disclosed in the show cause notice. This disclosure is only partly sufficient and from this disclosure the petitioner can

know what is in brief the allegations against him in these cases. However, the allegations preceding these three cases in the show cause notice are

totally general in nature and vague in character. It has not been disclosed during which period the alleged anti-social activities by the petitioner were

committed and where was the concerned area of operation. Likewise those anti-social activities were also not specified and on vague material

subjective satisfaction was arrived at that such activities were prejudicial for peace of the members of the public. The Division Bench of this Court

in Ranchhod Ramji Machi Vs. B.J. Gadhvi and Another, had an occasion to discuss similar situation and observed that the notice for externment

should contain the period during which the acts are said to have been committed as well as the area where they seem to have been committed.

Failure to mention in the notice the period during which such acts are said to have been committed will definitely vitiate such show cause notice

issued by the externing authority. The Division Bench of this Court followed the decision of the apex court in State of Gujarat vs. Mehbukhan AIR

1968 SC 1468 where the apex court while dealing with sections 56 and 59 of the Bombay Police Act and also considering the nature of

allegations held that the notice for externment should contain the period during which the acts are said to have been committed as well as the area

where they seem to have been committed. These discussion by the apex court and by the Division Bench of this Court have not been made only in

the nature of surmons but there is a practical purpose behind such observations. In the fitness of things, the proposed externee must know during

which period and at what place he was alleged to have committed anti-social activities. Unless such disclosure is made, the externee would

certainly be moving in dark and would not be in a position to submit effective defence and reply to the show cause notice.

9. Thus the first portion of the show cause notice contains vague allegation without specifying the period and the area of operation of the petitioner.

10. Coming to the statement of the three witnesses, the first witness has stated about some incident of January 1998 but he did not remember the

date, the place where the shop was situated and where the incident took place . These details are not mentioned in the show cause notice. The

names of the three associates of the petitioner present at the time of the incident are also not disclosed in the show cause notice.

11. The second incident is very vague. It proceeds to recite that before about one month in the evening the petitioner created such atmosphere.It is

very difficult to fix the exact or approximate date from which one month''s period prior to that incident is to be ascertained and calculated. Again

the place where the cabin was situated or where the motor cycle was standing have not been stated.

12. So far as the third incident is concerned, there is no description where the hotel was situated. Only a mention is made that one hotel area and

from such a vague recital no reasonable man could have offered plausible explanation in his defence.

13. For the reasons given above, the show cause notice is certainly vague as it did not disclose full particulars upon which the petitioner was

expected to furnish his reply. If the show cause notice is rendered invalid, the order of ex ternment and the order of the Appellate Authority which

are based upon such a notice will automatically be rendered invalid.

14. There is yet another vital defect in the externment order. As discussed earlier the externing authority exercises powers of quasi judicial authority

and as such he is bound to consider the defence evidence as well. After going through the order of the externing authority, I find that he has

considered only one sided evidence and even in a casual manner he has not recorded reasons for rejection of defence evidence. I find that the

externment order is silent regarding defence evidence. It is only the Appellate Authority who for the first time mentioned that three witnesses of

defence were examined and written statement of the appellant was taken into consideration. But beyond this, the reasons given by the Appellate

Authority for rejecting the defence evidence are far from satisfactory. The Appellate Authority writes that "" but statements of witnesses of defence

or statement of defence could not become helpful in dropping charges against the appellant"" This is the only reason for rejecting defence evidence

which is totally incorrect approach for appreciating and rejecting the defence evidence. Reasoned order should have been passed by the Appellate

Authority. He could have justifiably rejected the defence evidence observing that the defence witnesses were interested with the petitioner. It could

then have been said that the Appellate Authority had applied its mind to the defence evidence. The result therefore, is that both the orders are

based upon non application of mind to the defence evidence which is yet another ground for quashing the two orders. For the reasons given above

I find that the show cause notice , the order of externment and the order of the Appellate Authority contained in Annexures B , A and C

respectively are liable to be quashed . The writ petition therefore succeeds and is allowed. The orders and show cause notice contained in

Annexures at Annexures A C and B are hereby quashed.