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PREM CHAND

v.

UNION OF INDIA AND ORS.

November 11, 1980

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[V. R. KRISHNA IYER, R. S. PATHAK & O. CHINNAPPA REDDY, JJ.]

Delhi Police Act, 1978—Sections 47 and 50—Scope of—Allegations made in externment order vague—Order if valid—Order should be passed only when there is clear and present danger based on credible material.

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Exercising power under sections 47 and 50 of the Delhi Police Act, 1978 (which clothe the Commissioner of Police with externment powers for keeping the capital city free of crime) the Deputy Commissioner of Police Delhi directed the appellant to show cause why he should not be externed from the Union Territory of Delhi. The allegations against him were that his activities in the area of police station Connaught Place and the areas adjoining the police station were causing and were calculated to cause harm, alarm and danger to the residents of the said localities and areas that he kept a knife with him for unlawful purposes and threatened residents of that area with dire consequences and deterred them from reporting to the police and that he had engaged himself in the commission of offences against persons and property with force and violence.

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In his petition under Article 32 of the Constitution challenging the vires of the externment proceedings as arbitrary and unreasonable restrictions on his freedom of movement, the petitioner stated that over the past 25 years with the indulgence of the local police he used to park his mobile refrigerated water-carts on the road side in front of a cinema theatre in Delhi and that in return for the indulgence shown to him by the police and to keep them in good humour he yielded to their pressure and gave false testimony in as many as 3000 cases. Even though Courts had dubbed him as a stock witness and passed severe strictures and disbelieved his testimony, the police did not give him up; that he had to continue to act as a tool in their hands for the survival of his business and that lately when he declined to oblige them because he felt that his wealthy station in life and the character-building stage of his children warranted giving up the profession of stock-witness, the police avenged themselves by threatening externment which would inflict mortal economic injury to him if the threat was carried out.

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The Assistant Commissioner of Police in reply had stated that before the externment order was passed witnesses had been examined in camera in support and in opposition of the allegations justifying externment and that on a consideration of the materials placed before the Deputy Commissioner of Police, including the education of his children and the assurance given by the petitioner, final order had been passed directing him to show good conduct for a period of 3 months.

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Allowing the petition,

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HELD : The Delhi Police Act permits externment provided the action is *bona fide*. All power, including police power, must be informed by fairness, if it is to survive judicial scrutiny. *Mala fides* is fatal if it is made out. [1164 D-E]

Sections 47 and 50 of the Act have to be read strictly; any police apprehension is not enough; some ground or other is not adequate; 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 fraught with violence. Like-wise there must be sufficient reason to believe that the person proceeded against is so dangerous that his mere presence in Delhi or any part thereof is hazardous to the community and its safety. A stringent test must be applied by Courts in order that this power is not abused to the detriment of the citizen. Natural justice must be fairly complied with and vague allegations such as those levelled against the petitioner and secret hearings are gross violations of Articles 14, 19 and 21. [1267 G-H]

ORIGINAL JURISDICTION : Writ Petition No. 3050 of 1980.

(Under Article 32 of the Constitution)

A. S. Sohal and *M. C. Dhingra* for the Petitioner.

M. M. Abdul Khader, *N. Nettar* and *M. N. Shroff* for the Respondents.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—Who will police the police? Is freedom of movement unreasonably fettered if policemen are given power of externment for public peace? These twin problems of disturbing import, thrown up by this bizarre case, deserve serious examination. The former is as important as the latter, especially when we view it in the strange police setting painted by the petitioner. The constitutional question, which we will state presently and discuss briefly, has become largely otiose so far as the present petitioner is concerned because counsel for the State has assured the court that they will drop police surveillance or any action by way of externment as proposed earlier. The police methodology, with sinister potential to human liberty described by the petitioner, if true, deserves strong disapproval and constitutional counter-action by this Court. But before committing ourselves to any course, we must set out the factual matrix from which the present case springs.

The statutory starting point of the criminal saga of Shri Prem Chand Paniwala, the petitioner, now threatened with externment proceedings, is the Delhi Police Act 1978. Sections 47 and 50 of the said Act clothe the Commissioner of Police with externment powers necessary for keeping the capital city crime-free. One such power relates to the removal of persons about to commit offences.

The procedural prescriptions and substantive directions, in this behalf, are laid down in the above provisions. The Deputy Commissioner of Police (the DCP for short) in exercise of the said power,

A initiated proceedings against the petitioner and directed him to show cause why he should not be externed from the Union Territory of Delhi. Paniwala who, from humble beginning as vendor of aerated water near a cinema theatre, had spiralled up into a prosperous dealer in Vasant Vihar, when confronted by this Police notice, decided upon a constitutional show-down and came to this Court

B challenging the vires of the externment proceedings as arbitrary and unreasonable restrictions of his freedom of movement and, therefore, contrary to Arts. 14 and 19 and 21 of the Constitution.

C The validity of the action, assuming the vires of the Act, involves also a consideration of the *mala fides* imputed by the petitioner to the DCP. The blow of deportation may fall heavy on his fundamental rights admits of no doubt. A flourishing businessman, happy with his wife and children, and settled in a comfortable locality in Delhi, if transported traumatically outside the Union Territory would surely suffer not merely financial mayhem, but also social, domestic and physical deprivation virtually amounting to economic

D harakiri an psychic distress. Nevertheless, the Act permits externment, provided the action is *bona fide*. All power, including police power, must be informed by fairness if it is to survive judicial scrutiny. Cases are legion which leave one in no doubt that *mala fides* is fatal, if it is made out. From this angle, Prem Chand Paniwala has turned the focus on police mal-practices *vis-a-vis* his own

E career; and even if a fragment of what he has said be true, the higher officers of the Delhi Police will need to look into the goings on at the lower level. Here comes the relevance of autobiographical revelations made by the petitioner in more than one affidavit.

F Certain facts emerge as fairly probable from the affidavits of both sides. Prem Chand made a living as a *paniwala* or vendor of soft drinks near Delite Cinema even as a teenager, which shows that he had very poor beginnings. How did he fall into the thralldom of the local police? He explains it in his affidavit :

G "He had a few mobile carts which were used for refrigerating water. These carts used to be parked by the petitioner on the road side due to the indulgence of the police. He was in his teens when he started his avocation and continued for a very long time. Thus, he acquired an alias i.e. Prem Chand Paniwala.

H Due to close association with Police and their connivance and indulgence, the petitioner thrived. In this process, the petitioner became a prey and pawn in the hands of the police. He was persuaded to be their perpetual stooge and stock witness.

The Petitioner in the year 1965, when he was 25 years old was involved in a gambling case by the police and to mould him a permanent stock witness and lest he should be militant to defy them. Despite his hesitation and unwillingness he was forced to become a permanent pawn of the police. This is how, the petitioner landed himself in the web of the police; he had no alternative than to be like that as his livelihood was dependent upon the mercy and indulgence of the police".

The version of the petitioner is that once he yielded to the pressure of the Police to give false testimony disclosing a rubberised conscience and unvarnished readiness to forswear himself, there was escalation of demands upon him and he became a regular pedlar of perjury "on police service". Indeed, counsel for the petitioner argued that his client was a 'stock witness' because he had to keep the Police in good humour and obliged them with tailored testimony in around 3,000 cases because the alternative was police wrath. We were flabbergasted at this bizarre confession but to lend credence to his assertion counsel produced a few hundred summonses where the petitioner was cited as a witness. Were he not omnipresent how could he testify in so many cases save by a versatile genius for loyal unvarnishedness? For sure, the consternation of the community at this flood of perjury will shake its faith in the veracity of Police investigation and the validity of the judicial verdict. We have no doubt that the petitioner, who has given particulars of a large number of cases where he had been cited as witness, is speaking the truth even assuming that 3,000 cases may be an exaggeration. In Justice, Justices and Justicing and likewise in the Police and Policing, the peril to the judicial process is best left to imagination if professional perjurers like the self-confessed Paniwala are kept captive by the Police, to be pressed into service for proving "cases". Courts, trusting the Police may act on apparently unvarnished testimony and sentence people into prison. The community, satisfied with such convictions, may well believe that all is well with law and order. We condemn, in the strongest terms, the systematic pollution of the judicial process and the consequent threat to human rights of innocent persons. We hope that the higher authorities in the Department who, apparently, are not aware of the nefarious goings-on at the lesser levels will immediately take measures to stamp out this unscrupulous menace.

The reason why the petitioner has divulged his role as professional perjurer for the Police is simple and credible, at this price, the favours of the Police who allowed him to carry on his soft drinks business on the public street near a cinema house, not otherwise

A permissible under the law. The Police blinked at the breach, the petitioner made good profits and by this mutual benefit pact, the prosecution got readymade evidence and Paniwala joined the *nouveau riche*. He became respectable when he became rich and when he became respectable he became reluctant to play 'stock witness'. For "the more things a man is ashamed of the more respectable he is" (Bernard Shaw). Whenever he resisted the demand for giving false evidence the Police implicated him in some case or other and when he yielded, the case was allowed to lapse. Indeed, it is surprising that the petitioner himself admits that he was "dubbed as a stock-witness and often disbelieved by the courts. Despite severe strictures passed by the courts, the Police did not give him up." Various details are furnished by the petitioner about his deposing on prosecutions for the survival of his business. In the bargain, the petitioner acquired two houses in important localities and built up a lucrative fruit juice business. There are more uncomplimentary revelations made in the petition but we do not think it necessary to set them out. However, the crisis came when he declined to oblige with perjury since he felt his wealthy station in life and the character-building stage of his children warranted giving up the profession of stock-witness. The Police avenged themselves by initiating externment which would inflict mortal economic injury, if carried out. This version of the petitioner has been, in a way, denied. It is also true that the Assistant Commissioner, in his affidavit in reply, has indicated that witnesses have been examined in support and in opposition of the allegations justifying externment and a final order has been made by the DCP directing the petitioner "to show good conduct for a period of three months only". It is also stated that the witnesses were examined in camera, that the DCP had consideration for the materials placed before him "including education of his children etc. and the assurance given by him". An intelligent reading of the affidavit of the Assistant Commissioner, along with the vagueness in his denials regarding material particulars in the petitioner's affidavits, leave us in grave doubt about the validity of the Police proceedings.

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H It is significant to notice that among the allegations against the petitioner are such vague statements as your activities in the area of Police Station Connaught Place and other area adjoining to the Police Station Connaught Place are causing and are calculated to cause harm, alarm and danger to the residents of the said localities and areas. While we do not delve into details, it is useful to mention that the Police allegations are again vague in respect of the remaining imputations namely:

"That you keep knife with you for unlawful purpose and threaten the persons residing in the area with dire consequences and further deter them from making report to police.

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That you have engaged yourself in commission of offences against person and property attended with force and violence for which the following cases were registered against you by the Police.....".

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The petitioner's reply affidavit makes startling disclosures about the police methods of implicating innocent people. However, the version of the petitioner can hardly be swallowed since he is a self-confessed perjurer. Nevertheless, it is not too much to ask Government to take effective measures to prevent Police methods straying into vice. We hopefully remind the State about what Justice Brandeis once observed :⁽¹⁾

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"Crime is contagious. If the government becomes a law breaker, it breeds contempt for law." "To declare that in the administration of the criminal law the end justifies the means — to declare that the government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution. Against that pernicious doctrine this court must resolutely set its face."

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In the same American decision we have just mentioned Justice Holmes observed; "We have to choose, and for my part I think it a less evil that some criminals should escape than that the Government should play an ignoble part."

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The provisions of the statute ostensibly have a benign purpose and in the context of escalation of crime, may be restrictions which, in normal times might appear unreasonable, may have to be clamped down on individuals. We are conscious of the difficulties of detection and proof and the strain on the police in tracking down criminals. But fundamental rights are fundamental and personal liberty cannot be put at the mercy of the Police. Therefore, Ss. 47 and 50 have to be read strictly. Any police apprehension is not enough. Some ground or other is not adequate. 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 fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in Delhi or any part thereof is hazardous to the community and its safety. We are clear that the easy possibility

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(1) *Olmstead v. U. S.* 277 US 438 [1928].

A of abuse of this power to the detriment of the fundamental freedoms of the citizen persuades us to insist that a stringent test must be applied. We are further clear that natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Art. 14, 19 and 21 of the Constitution as expounded by this Court in *Maneka Gandhi*⁽¹⁾. We do not go deep into this question for two reasons: there is another petition where the constitutionality of these identical provisions is in issue. Secondly, the counsel for the State has fairly conceded that no action will now be taken even by way of surveillance against the petitioner. In an age when electronic surveillance and mid-night rappings at the door of ordinary citizens remind us of despotic omens, we have to look at the problem as fraught with peril to constitutional values and not with lexical laxity or literal liberality.

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Having made these observations, we leave the question of *vires* open for final investigation, if necessary, in other cases pending before this Court. We think counsel for the State was right in representing that no further action would be taken against the petitioner. We dispose of the petition as calling no longer for directions but emphasise the need of the State to issue clear orders to the Police Department to free the processes of investigation and prosecution from the contamination of concoction through the expediency of stockpiling of stock-witnesses. To police persons who get rich quick by methods not easily or licitly understandable, is perhaps a social service. Among the list of wanted persons must be not only the poor suspects but the dubious rich. To keep an eye on their activities without close shadowing and surveillance may, perhaps, lead to criminal discoveries, if they are not too influential for the police. By this judgment what we mean is not to tell the Police to fold up their hands and remain inactive when anti-social elements suddenly grow in wealth but to be activist and intelligent enough to track down those who hold the nation's health, wealth, peace and security in jeopardy. The only insistence is that the means must also be as good as the ends.

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P.B.R.

Petition allowed.

(1) *Maneka Gandhi v. Union of India* [1978] 1 SCC 248.