

State of Gujarat and Another, Etc.

Vs

Mehboob Khan Usman Khan Etc.

Criminal Appeals Nos. 167 and 168 of 1965

(CJI M. Hidayatullah, C. A. Vaidialingam, A. N. Grover JJ)

11.04.1968

JUDGMENT

VAIDIALINGAM, J. -

In these criminal appeals, by special leave, the State of Gujarat and its officer, the Deputy Commissioner of Police, Traffic Branch, Ahmedabad City, challenge the orders, dated April 8, 1965, passed by the Gujarat High Court, in Special Criminal Applications Nos. 3 and 8 of 1965, quashing the orders of externment, passed against the respective respondents, under s. 56, of the Bombay Police Act, 1951 (Bom. Act XXII of 1951), (hereinafter referred to as the Act). Criminal Appeal No. 167 of 1965 is directed against the order in Special Criminal Application No. 3 of 1965, and Criminal Appeal No. 168 of 1965 is directed against the order in Special Criminal Application No. 8 of 1965.

The Deputy Commissioner of Police, Traffic Branch, Ahmedabad City, served a notice, dated August 13, 1964, on the respondent in Criminal Appeal No. 167 of 1965, under s. 59 read with s. 56, of the Act, in the following terms :

"Under Section 59 of the Bombay Police Act (Bombay XXII of 1951) you are hereby informed that the following allegations are made against you in a proceeding under Section 56 of the said Act, and it is proposed that you should be remove outside the District of Ahmedabad City and the contiguous District of - Ahmedabad Rural, Kaira and Mehsana and you should not enter or return to the said Districts for a period of two years from the date of order proposed to be passed against you under Section 56 of the Bombay Police Act, 1951. You are also informed that I have been empowered by the Dy. Commissioner of Police, Special Branch, Ahmedabad City under has No. 40 P.C.B. dated 12/8/1964 to proceed according to Section 59(1) of the said Act.

In order to give you an opportunity of tendering your explanation regarding the said allegations, I have appointed 11.00 hours on 21-8-1964 to receive your explanation and to hear you and your witnesses, if any, in regard to the said allegations and hence require you to appear before me at my office situated in Old Nurses Hostel, Patharkuva, Relief Road, Ahmedabad City on the said date and time for the said date and time for the said purpose and to pass a bond in the sum of Rs. 500 with one surety in like amount for your attendance during the enquiry of the said proceedings. In case you fail to appear on the due date an ex parte hearing and decision will be taken, that is, the inquiry will proceed against you in normal manner and decision will be taken in your absence.

TAKE NOTE :-

### Allegations

It is alleged against you that you are a dangerous and desperate person and indulge in acts involving force and violence. You terrorise the residents of the localities known as Rantiawadi Halimkhadki and round about areas under Karanj and Madhavpura Police Stations. Since the month of November 1963 till today you are engaged in the commission of the following offence in the above localities :-

1. You way-lay, rob and extort money from the persons at the point of knife and under threats of violence;
2. You demand money from the persons and on their refusal to pay you beat them;
3. You consume eatables from the place of public entertainment without payment and when legal dues are demanded you beat the person.

You are engaged in several acts as mentioned in paras (1), (2) and (3) above and that the witnesses to the above incidents are not willing to come forward to depose against you in public by reason of apprehension on their part as regards the safety of their person and property.

It is proposed to extern you for a period of two years. It is also proposed to extern you out of the contiguous Districts of Ahmedabad Rural, Kaira and Mehsana as you are likely to operate and indulge in your violent activities from the contiguous Districts also through your associates and agents if not so externed."

The said notice was served on the party on August 20, 1964. On the date, fixed for hearing, i.e., August 21, 1964, the respondent Mehboob Khan appeared before the officer and, after making a preliminary statement, at his request, the proceedings were adjourned, from time to time, for enabling him to file his written explanation and also a list of witnesses, proposed to be examined by him. Ultimately, on November 9, 1964, the Deputy Commissioner passed an order, directing the said Mehboob Khan Usman Khan to remove himself, within two days of the service of the order, outside the district of Ahmedabad City and the contiguous Districts of Ahmedabad Rural, Kaira and Mehsana. The order of externment contains recitals that, after considering the evidence before him, and the explanation, furnished by the respondent, the Deputy Commissioner of Police is satisfied that the respondent is a desperate and dangerous man, and is engaged in the commission of acts involving force or violence, and acts punishable under Chapters XVI and XVII, of the Indian Penal Code, within the localities known as Rantiawadi, Halimkhadki and round about areas, and that there are reliable materials to prove the allegations, contained in paragraphs (1), (2) and (3), of the said order. Those allegations, it may be stated, are identical with the three offences, referred to, in the notice, dated August 13, 1964. The Deputy Commissioner further states that, in his opinion, 'the witnesses to the above incidents are not willing to come forward to give evidence in public against him by reason of apprehension on their part as regards the safety of their person and property'. Finally, the order concludes by reciting that in exercise of the powers, vested in the Deputy Commissioner, under s. 56 of the Act, he directs the respondent to remove himself outside the District of Ahmedabad City and the contiguous Districts of Ahmedabad Rural, Kaira and Mehsana, within two days from the date of service of the order. The order also concludes, by saying that the

respondent should not return to or re-enter the places mentioned therein, for a period of two years from the date of the order, without obtaining the permission, in writing, of the competent authority.

The respondent in Criminal Appeal 167/65 filed Special Criminal Application No. 3 of 1965, in the Gujarat High Court, under Arts. 226 and 227, of the Constitution, for quashing this order of externment, passed against him. The main ground, on which the order was challenged, appears to be that the notice, dated August 13, 1964, on which the subsequent order of externment is based, was too vague and general, both with regard to the time and places of his alleged activities, and that the allegations made, therein, were so general that he could not offer, effectively, any explanation, or substantiate his defence. In short, it was the grievance of the respondent that, in the notice, issued under s. 59, the material allegations, had not been set out, and therefore, there had been no proper compliance with the provisions of that section, so as to enable the Deputy Commissioner, to take action, under s. 56 of the Act. The respondent raised certain other objections, to the validity and legality of the order, one of which was that the order of externment, had not been passed, by the competent officer.

In the counter-affidavits, filed before the High Court, the Deputy Commissioner has stated that though the notice, under s. 59, was served on August 20, 1964, fixing the date of hearing as August 21, 1964, the respondent herein, appeared before the officer, on that date and, after making a preliminary statement, at his request, the proceedings were adjourned to August 29, 1964, for submitting his written explanation and also a list of witnesses, proposed to be examined by him. On the said date also, at the request of the respondent, further adjournment was granted and, on September 14, 1964, the respondent submitted his written statement, traversing the averments made, in the notice, dated August 13, 1964. He further examined witnesses, in his defence. Therefore, according to the Deputy Commissioner, the respondent had reasonable opportunity of tendering his explanation, regarding the matters, mentioned in the notice. It is further stated that the witnesses, examined by the respondent, claimed no knowledge of the criminal activities, mentioned in the notice, and that the entire material, consisting of the evidence of the victims, who had suffered at the hands of the respondent, which were before the officer, was considered, and the officer was also satisfied that the respondent was indulging in offences, punishable under Chapters XVI and XVII, of the Indian Penal Code. The officer was further satisfied that those persons were not willing to depose against him, in public, by reason of apprehension, on their part, as regards the safety of their person and property. The Deputy Commissioner has further stated that, from the record and information available with him, the respondent was a well-known bully, terrorizing law-abiding citizens, in the areas, mentioned in the notice, and that it was, after following the procedure, indicated in s. 59, that an order was ultimately passed, under s. 56. It is further averred that the notice is explicit and contains the general nature of the material allegations, against the respondent, as is required, by s. 59 of the Act. The respondent, herein, it is further stated, has fully understood the nature of the allegations, made against him, as is clear from the nature of the defence, taken by him, and the evidence, adduced to support that plea. On these and other averments made, in the counter-affidavit, the Deputy Commissioner submitted that the order did not suffer from any infirmity, as alleged by the respondent.

The learned Judges of the Gujarat High Court, in the order under attack, have accepted the position that, under s. 59, the competent officer should inform the person, in writing, of the general nature of the material allegations against him. It is their view that the nature of the material allegations should not be so general, as to make it vague, and not precise, and that it must be of such a character as to give the person, concerned, a reasonable opportunity of tendering an explanation, regarding the material allegations. Having held that this is the principle to be applied, the learned Judges held that

ground No. 3, of the notice dated August 13, 1964, served on the respondent, was open to the objection of 'vagueness'. In this connection, the learned Judges refer to the definition of the expression 'place of public entertainment, as contained in s. 2(10), of the Act. They further hold that to allege against any individual that he consumed, without payment, eatables, i.e., articles of food, from a place of public entertainment', which will take in the various places, mentioned in s. 2(10), of the Act, would not afford sufficient opportunity to the respondent, as to what particular places of public entertainment, or what particular establishment he is supposed to have visited and consumed eatables, without payment, and had beaten persons, when legal dues were demanded. As a large number of establishments would fall within the definition of 'place of public entertainment', under s. 2(10), of the Act, it is further view of the learned Judges that it would be impossible for the party to find out as to which particular place or places of public entertainment, in the localities mentioned in the notice, he is supposed to have visited and consumed eatables, without payment, and beaten persons in charge of their management, when legal dues were demanded from him. In this view, the learned Judges, ultimately, held that ground No. 3 of the notice dated August 13, 1964, was vague, as it could not have afforded a reasonable opportunity to the respondent herein, of offering his explanation, or leading evidence in his defence. Inasmuch as this ground also, had been taken into account, by the Deputy Commissioner, for passing the order of externment, and as this ground was held to be vague, the learned Judges ultimately quashed the notice, issued under s. 59, dated August 13, 1964, as well as the order of externment, dated November 9, 1964, passed against the respondent. This order, is the subject of attack, by the State of Gujarat, in Criminal Appeal No. 167 of 1965.

Similarly, a notice, dated July 28, 1964, under s. 59 of the Act, was served on Ahmed Noor Mohammed, respondent in Criminal Appeal No. 168 of 1965, by the Deputy Commissioner, Ahmedabad City, stating that the said officer proposed to extern the respondent, for a period of two years, under s. 56 of the Act. In the allegations, contained in this notice, it was mentioned that the respondent was a desperate man, indulging in acts of violence and force, and that since September 1963, till the date of the notice, he was engaged in the commission of the three acts, mentioned therein, in the localities, known as Kazi-na-dhaba, Maruwas, Jamalpur and round about those places. It is enough only to refer to the first allegation, contained in this notice, which is substantially similar to the third allegation, mentioned in the notice, issued against Mahboob Khan Usman Khan; and that allegation was to the effect that the respondent visited places of public entertainment and refused to pay for the articles, consumed by him, under threats of violence. The notice further stated that the witnesses to the incident, mentioned therein, were not willing to come forward and depose against the respondent in public, by reason of apprehension, on their part, as regards the safety of their person and property. It was hence stated in the notice that it was proposed to extern the respondent, from the areas, mentioned therein, for a period of two years. The notice also intimated that 11 a.m., on August 6, 1964, was fixed for receiving the explanation of the respondent, as well as for hearing him and any of the witnesses that he might produce, with reference to the allegations, made in the notice. It is seen from the records that the respondent appeared before the officer and filed written statements, examined witnesses in support of his defence and that an advocate appeared for him. On February 9, 1965, the Deputy Commissioner passed an order, under s. 56 of the Act, directing the respondent to remove himself from the areas, mentioned in the order, for a period of two years and not to enter the same, without permission in writing, obtained from a competent authority. In this order also the Deputy Commissioner has stated that, on the materials available before him and, after considering the explanation and the evidence, produced by the respondent, he was satisfied that the respondent was a desperate and dangerous person and was engaged in the commission of acts, involving violence and acts, punishable under Chapters XVI and XVII, of the

Indian Penal Code, in the areas, mentioned in the notice, and that the three allegations, mentioned therein, were established, and, in view of the fact that the witnesses, regarding the above incidents, were not willing to come forward to give evidence, the order of externment was passed.

The respondent challenged this order of externment, passed against him, as well as the notice, issued under s. 59, before the Gujarat High Court, in Special Criminal Application No. 8 of 1965, under Arts. 226 and 227, of the Constitution. Here again, the stand, taken by the respondent, was that the allegations, contained in the notice issued under s. 59, were very vague and indefinite and inconclusive and, as such, it could not be said that he was given a reasonable opportunity, to offer his explanation, as contemplated under the said section. Certain other objections, regarding the legality of the order, were also raised.

In the counter-affidavit, filed by the Deputy Commissioner, it is stated that the order, dated February 2, 1965, was passed by him, under s. 56 of the Act, after a careful consideration, of all materials placed before him, including the written statement and the defence evidence adduced by the respondent. It was further stated that the notice, issued under s. 59, was in strict conformity with the provisions of that section, and the respondent had a reasonable opportunity of tendering an explanation, regarding the allegations, made against him. The learned Judges of the Gujarat High Court, adopting the reasoning given in Special Criminal Application No. 3 of 1965, held that the notice, under s. 59, was invalid and, in consequence, the order of externment, also, must fall to the ground. The learned Judges have held that allegation No. 1, in the notice, dated July 28, 1964, is analogous to ground No. 3, in the connected application, and that ground had been held to be vague. In consequence, the learned Judges struck down the order of the externment, dated February 9, 1965, as well as the notice, dated July 28, 1964. This order is attacked, by the Deputy Commissioner, in Criminal Appeal No. 168 of 1965.

Mr. G. L. Sanghi, learned counsel, appearing for the appellants, in these appeals, has raised two contentions : (1) that both the respondents had a right of appeal, as provided under s. 60 of the Act, to the State Government, against the orders, passed under s. 56 of the Act, and, therefore, the writ petitions, filed by them, in the High Court, should not have been entertained; (2) that the striking down, of the orders of externment, as containing vague allegations, was not justified, as the notices were strictly in accordance with s. 59, of the Act.

At the outset, it may be stated that the period of two years, for which the respondents were sought to be externed, has already expired and, in one sense, it now becomes purely academic, to consider the correctness of the orders of externment. But, counsel for the appellant has pointed out that the State is anxious to have a decision, from this Court, regarding the legal position, under s. 59, and therefore the correctness of the views, expressed by the High Court, may be considered by this Court. It has been made clear before us that no action will be taken against the respective respondents, in these appeals, on the basis of the orders, which are the subject of consideration. No doubt, Mr. Malhotra and Mr. I. N. Shroff, learned counsel, appearing for the respective respondents, in the appeals, have urged that the views, expressed by the High Court, are correct.

Regarding the first contention, we see no merit, especially when the High Court, in the exercise of its jurisdiction, under Arts. 226 and 227, has not chosen to reject the applications, filed by the respondents, on the ground that they had not exhausted their remedy of appeal, under s. 60, of the Act. That leaves us with the more important question, arising for consideration, viz., as to whether a proper interpretation has been placed, under s. 59 of the Act, by the High Court.

Chapter V of the Act deals with special measures for maintenance of Public Order and Safety of the State. Section 55 to 63AA, occur in the said Chapter, under the second sub-heading : 'Dispersal of gangs and Removal of persons convicted of certain offences'. Section 56 relates to removal of persons about to commit offence. Under s. 58, a direction, made under ss. 55, 56 or 57, shall, in no case, exceed a period of two years from the date on which it was made. Section 59 provides for hearing to be given, before an order under ss. 55, 56 or 57, is passed. We may pause here for a moment and state that both the respondents, in response to the notice, issued under this section, had filed written statements and also adduced evidence. In particular, the respondent in Criminal Appeal No. 168 of 1965, was also represented by an advocate, in those proceedings.

Section 60 provides for an appeal, to the State Government, against an order passed under ss. 55, 56 or 57.

Normally, we would have dealt with the scheme of these sections, and in particular, of s. 56 and 59, very elaborately; but, we are absolved from that task, in view of two decisions of this Court, in *Hari Khemu Gawali v. The Deputy Commissioner of Police Bombay* [[1956] S.C.R. 506.] and *Bhagubhai Dullabhabhai Bhandari v. The District Magistrate, Thana* [[1956] S.C.R. 533.]. A writ petition, No. 272 of 1955, was filed, under Art. 32, challenging the vires of the Act and, in particular the provisions of s. 57. Similarly, in two other writ petitions, Nos. 439 and 440 of 1955, the provisions of s. 56, of the Act, were challenged, and a particular attack was made, against the notice, issued under s. 59, on the ground that the allegations, contained two separate judgments, which are reported, as above, one in respect of writ petition No. 272 of 1955 and the other in respect of writ petitions Nos. 439 and 440 of 1955, it is seen from the reports, that all these matters were heard together. We are referring to this aspect because the scheme of the Act and, in particular, of the provisions of ss. 55 to 57, have been dealt with in these judgments. The Act has been held to be valid and the sections, with which we are concerned, viz., ss. 56 and 59, have also been held to be valid. We do not find any reference, unfortunately, in the judgment of the High Court, to these two decisions of this Court.

In the first decision, it is stated at p. 518 of the Reports, that the Act is based on the principle that it is desirable, in the large interests of society, that the freedom of movement, and residence of a comparatively fewer number of people, should be restrained, so that the majority of the community may move and live in peace and harmony, and carry on their peaceful avocations untrammelled by any fear or threat of violence to their person or property. In particular, it is also stated that the individual's right to reside in and move freely in any part of the territory of India, has to yield to the larger interests of the community. This Court further states that ss. 56 and 57 of the Act, broadly speaking, correspond to s. 46 of Act IV of 1890 and s. 27 of Act IV of 1902. The scheme of s. 59 is dealt with at p. 521, and the criticism, levelled against that section, is rejected. It is further emphasized, at p. 522, that the proceedings, contemplated by s. 57, or for the matter of that, sections 55 to 56, are not prosecutions for offences or judicial proceedings, though the officer or authority, charged with the duty aforesaid, has to examine the information, laid before him, by the police, and that the police force is charged with the duty, not only of detection of offences and of bringing offenders to justice, but also of preventing the commission of offences, by persons with previous records of conviction, or with criminal propensities.

In particular, a contention appears to have been raised that as only general nature of the material allegations have to be given in the notice, issued under s. 59, and, as it did not further provide for particulars to be supplied to such a person, it would be very difficult for a party to urge, in appeal before the State Government under s. 60, that there was no material, before the authority concerned,

upon which it could have based its order. This objection was repelled by this Court, at p. 524, as follows :

"But in the very nature of things it could not have been otherwise. The grounds available to an examinee had necessarily to be very limited in their scope because if evidence were available which could be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example, under section 107 or section 110. But the special provisions now under examination proceed on the basis that the person dealt with under any of the sections 55, 56 and 57 is of such a character as not to permit the ordinary laws of the land being put in motion in the ordinary way, namely, of examining witnesses in open court who should be cross-examined by the party against whom they were deposing. The provisions we are now examining are plainly intended to be used in special cases requiring special treatment, that is, cases which cannot be dealt with under the preventive sections of the Code of Criminal Procedure."

In the Second decision, where this Court had to consider specifically the scope of s. 56, it has been held that the common arguments, regarding ss. 56 to 59, had already been dealt with and discussed in the first decision. The parties against whom the order of externment had been passed, under s. 56, specifically challenged the notice, issued under s. 59, on the ground that the particulars of the evidence, against them, and of their alleged activities, had not been mentioned and that amounted to not giving a reasonable opportunity to explain, as envisaged, under s. 59. This contention was disposed of, by this Court, on the ground that it had been dealt with, in the judgment, given by it, in the earlier decision, to which we have already referred. Ultimately, s. 56 was held to be valid and the notice, issued under s. 59, was also held to be valid.

In our opinion, in considering as to whether the notices, issued in the present cases, under s. 59, suffer from an infirmity, the observations of this Court, in Hari Khemu Gawali's case [[1956] S.C.R. 506.], extracted above, will have to be borne in mind.

During the course of the arguments, counsel for the respondent, have drawn our attention to a decision of the Bombay High Court in *In re : Govind Pandurang* [A.I.R. 1956 Bom. 61.] and that of the Gujarat High Court, in *Jawaher v. Sub-Divisional Magistrate* [(1962) 3 Guj. L.R. 1041.], interpreting s. 59 of the Act. But, we are not advertent to those decisions, in view of the decisions of this court, referred to above.

In the instant case, the learned Judges of the Gujarat High Court, accept the position that under s. 59, of the Act, the notice should inform the person, in writing, of the general nature of the material allegations, against him, and it need not contain particulars. But they have held that the allegations, regarding the two respondents, consuming eatables, from places of public entertainment, without payment, and beating persons, when legal dues were demanded, contained in the two notices, are vague. The reasoning of the learned Judges that the said allegations should have contained all the particular places of public entertainment, or what particular establishment the respondents were supposed to have visited, is not warranted, by the provisions of s. 59. In fact, if we may say so, with respect, there is a slight inconsistency in the reasoning of the learned Judges, because, in the later part of the judgment they say that a party is not entitled to be supplied with particulars of the allegations made against him. We are therefore, not inclined to accept the above reasoning of the Gujarat High Court. The notices, referred to the periods during which the acts are stated to have been committed. No doubt, the expression 'place of public entertainment', is defined in s. 2(10) of

the Act; but the mere fact that the said definition takes in various types of places, does not militate against the allegation No. 1, in Special Criminal Application No. 3 of 1965, or allegation No. 3, in the connected application, being of a general nature of the material allegations, as contemplated, under s. 59. Without attempting to be exhaustive we may state that when a person is stated to be a 'thief', that allegation is vague. Again, when it is said that 'A stole a watch from X on a particular day and at a particular place', the allegation can be said to be particular. Again, when it is stated that 'X is seen at crowded bus stands and he picks pockets' it is of a general nature of a material allegation. Under the last illustration, given above, will come the allegations, which, according to the Gujarat High Court, suffer from being too general, or vague. Considering it from the point of view of the party against whom an order of externment is proposed to be passed, it must be emphasized that when he has to tender an explanation to a notice, under s. 59, he can only give an explanation, which can be of a general nature. It may be open to him to take a defence, of the action being taken, due to mala fides, malice or mistaken identity, or he may be able to tender proof of his general good conduct, or alibi, during the period covered by the notice and the like. The allegations made in the notices, issued under s. 59, as against the respective respondents, in our opinion, contain the general nature of the material allegations made against each of them, in respect of which the respondents had been given a reasonable opportunity of tendering an explanation, regarding them. Therefore, it follows that the view of the Gujarat High Court that the notices, under s. 59, and the orders of externment, passed under s. 56, are invalid, cannot be sustained. The orders of the Gujarat High Court are, accordingly, set aside, and these criminal appeals, allowed. But, we may make it again clear, that in spite of our decision, in favour of the appellants, no action can be taken against the respondents, in these appeals, on the basis of the orders, which are now held to be valid.

# Appeals allowed.##

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