

(2017) 11 BOM CK 0208
In the Bombay High Court
Case No : 1211 of 2017

Abasaheb Balasaheb Warkhade

APPELLANT

Vs

The State of Maharashtra, & Ors.

RESPONDENT

Date of Decision : 22-11-2017

Acts Referred:

[Bombay Police Act, 1951](#), [Section 59](#), [Section 56\(1\)\(b\)](#), [Section 56\(1\)\(a\)](#) -
Hearing to be given before order under sections 55, 56, or 57 is passed - Removal of persons about t

Citation : (2017) 11 BOM CK 0208

Hon'ble Judges : S.S. Shinde, Mangesh S. Patil

Bench : DIVISON BENCH

Advocate : Satej S. Jadhav, D.R. Kale

Judgement

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. The background facts for filing the present Petition as disclosed in the memo of the Petition, in brief, are as under: . It is the case of the Petitioner that on 19th September, 2016 the Petitioner he received the showcause notice under Section 59 of the Bombay Police Act, 1951 (for short "the Act of 1951"). In all 4 offences alleged to have been registered against the Petitioner and that has been made basis for proposed externment. It is submitted that the Petitioner filed reply, and submitted that out of four offences, he has been acquitted in one offence i.e. offence at Sr. No.3 and offence at Sr. No.4 is only a chapter case. On 30th November, 2016 Respondent No.3 passed an order thereby externing the Petitioner from Ahmednagar District for two years. Aggrieved by the said Judgment and order passed by Respondent No.3, the Petitioner filed appeal before Respondent No.4 Divisional Commissioner, Nashik Division, Nashik. By order dated 28th April, 2017 Respondent No.4, partly allowed the appeal and modified the order passed by Respondent No.3 and externed the Petitioner only from Rahuri Taluka instead of Ahmednagar District. It is the case of the Petitioner

that Respondents failed to consider that out of the four crimes mentioned in the notice, the Petitioner was acquitted in one crime while another crime is merely a preventive action and is not a registered crime, and therefore the order externing the Petitioner from Rahuri Taluka needs to be quashed and set aside.

3. Learned counsel appearing for the Petitioner submitted that the notice issued to the Petitioner under Section 59 of the Act of 1951, not even in brief gives the circumstance for which he is proposed to be externed and only four crimes registered against the Petitioner at Rahuri police station are mentioned. It is submitted that despite being apprised by the Petitioner that from the offence mentioned at sr. No.3 of the notice already he has been acquitted, the Sub Divisional Magistrate, Shrirampur has gone ahead and considered the same for the purpose of externing the Petitioner from Ahmednagar District, which by itself is excessive. It is submitted that nowhere on record there is any allegation or material to show that the Petitioner has caused any hindrance in the course of investigation. There is no allegation as to how and whether the Petitioner has tried to influence or threaten any witnesses, at any point of time thereby causing discord between society and law.

4. Learned counsel further submitted that neither the notice nor the order narrate the circumstances under which the Petitioner is harmful for the health and texture of society, and how witnesses are under terror and are not coming forward to depose against the Petitioner. It is further submitted that, it is nowhere brought on record, as to when and how the witnesses were examined, and what instances such witnesses have stated regarding the incidents caused by the Petitioner. There are no incamera statements. It is submitted that one crime mentioned against the Petitioner is of the year 2010, while the other two crimes are of the year 2015, and therefore there appears to be no consistency or continuance in the criminal conduct of the Petitioner. It is further submitted that the Petitioner is already before the Court of law in remaining two crimes and peacefully attending all the dates, wherein he is chargesheeted just before the initiation of externment proceedings. It is submitted that it is settled law that very fundamental right of the Petitioner of free movement is infringed upon by way of curbing his civil right on the basis of unwarranted consideration. It is submitted that in the show cause notice there is no reference that incamera statements of the witnesses were recorded. Lastly, learned counsel submitted that the order passed by Respondent No.4 is liable to be quashed and set aside and therefore he prayed that the Writ Petition deserves to be allowed.

5. On the other hand, learned A.P.P. appearing for the Respondent - State relying upon the reasons assigned by Respondent nos.3 and 4 in the impugned orders submits that the appellate authority, after adhering to the procedure prescribed under the provisions of Section 56 [1] [a] [b] of the Act of 1951, has rightly externed the petitioner from the boundaries of Rahuri Taluka in Ahmednagar District.

6. We have carefully considered submissions of learned counsel appearing for the Petitioner, and the learned APP appearing for the Respondents. With their able assistance we have carefully perused the grounds taken in the Petition, annexures thereto, and original record of the case maintained by the office of the Respondents. Upon careful perusal of the contents of the showcause notice sent by the Sub Divisional Magistrate, Shrirampur Division, Shrirampur to the Petitioner, it appears that in the said notice as many as four offences have been mentioned. All the offences have been registered at Rahuri police station of Ahmednagar District. In the said notice, it is not mentioned that the witnesses are not willing to come forward to give evidence in public against the Petitioner by reason of apprehension on their part as regards the safety of their person or property.

7. The Petitioner has filed reply to the said notice stating therein that before initiating an externment proceedings, the Petitioner is already acquitted from the offence mentioned at Sr. No.3. The Petitioner has further stated that the offence at Sr. No.4 is only a chapter case and in the offences at Sr. Nos.1 and 2 recently chargesheets have been filed and are pending for trial.

8. We have carefully perused the proposal submitted by Respondent No.2 to Respondent No.3. In the said proposal four offences are shown registered at Rahuri Police Station, against the Petitioner.

9. Respondent No.3 Sub Divisional Magistrate, Shrirampur has passed the order 30th November, 2016. Upon careful perusal of the contents of the said order, there is reference of Section 56 [1] [a] [b] of the Act of 1951, and also to the proposal submitted by Respondent No.2 Sub Divisional Police Officer, Shrirampur, with recommendation for externing the Petitioner from six Districts, i.e. Ahmednagar, Nashik, Solapur, Pune, Beed and Aurangabad. In spite of specific reply by the Petitioner that he has been acquitted from the offence mentioned at Sr. No.3 and the offence mentioned at Sr. No.4 is only a chapter case and in the offences at Sr. Nos.1 and 2 recently chargesheets have been filed and are pending for trial, Respondent No.3 without adverting to the said contention of the Petitioner, proceeded to consider the proposal submitted by Respondent No.2 on the basis that four offences have been registered against the Petitioner and those are under an investigation. It is mentioned in the said order that the witnesses are not willing to come forward to depose or to give complaint against the Petitioner due to his fear. Respondent No.3 Sub Divisional Magistrate, Shrirampur, passed an order externing the Petitioner from the boundaries of Ahmednagar District for the period of two years. Against the said order passed by Respondent No.3, the Petitioner has filed appeal before Respondent No.4 Divisional Commissioner, Nashik Division, Nashik. The Divisional Commissioner, modified the order passed by the Sub Divisional Magistrate and externed the Petitioner from Rahuri Taluka of Ahmednagar District, for the period of two years.

10. Upon careful perusal of contents of the showcause notice, it is nowhere mentioned that, the witnesses are not willing to come forward to give evidence in

public against the Petitioner by reason of apprehension on their part as regards the safety of their person or property. It is true that it is not expected from the authority that the names of such witnesses or date of such incident or other material particulars should be mentioned in the show cause notice. However, the Supreme Court in the case of Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police, State of Maharashtra, AIR 1973 SC 630, held that, proposed externee is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and general nature of those allegations.

11. At this juncture, it would be apt to make reference to the provisions of Section 56(1)(a)(b) of the Act of 1951, which reads thus:

56. Removal of persons about to commit offence

(1)

(a) that the movements or acts of any person are causing or 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 Chapters XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence 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, or

[Underlines are added]

12. Upon careful perusal of the aforesaid provisions, an order of externment can be passed against a person whose movements or acts are causing or calculated to cause alarm, danger or harm to person or property as provided in clause (a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence as provided in clause (b). An order of externment can also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, or Chapter XVI, or Chapter XVII of the Indian Penal Code. But in addition to the above, the concerned Officer, who is dealing externment proceedings, should be of the opinion that the 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.

13. Keeping in view the above legal position, it was incumbent upon Respondent No.4, who dealt with an externment proceedings, to arrive at the opinion that the 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.

14. Upon careful perusal of the showcause notice, it appears that there is no reference of recording incamera statements of the witnesses. The Division Bench of the Bombay High Court [at Principal seat] in the case of Yeshwant Damodar Patil Vs. Hemant Karkare, Dy. Commissioner of Police & another, 1989 (3) Bom.C.R. 240 had occasion to consider the scope of provisions of Section 56 [1] [a] and [b] of the Bombay Police Act. Para 3 of the said Judgment reads as under:

3. Section 56 (i) of the Bombay Police Act visualises three situations in which the order of externment could be passed by the designated officer. We will, however, ignore, for the purpose of the disposal of this petition the third type of situation and only analyse the two situations which are covered by Clauses (a) and (b) of section 56 (i) of the Act. An order of externment can be passed against a person whose movements or acts are causing or calculated to cause alarm, danger or harm to person or property. That is what is provided in clause (a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence. It is so provided in the first part of clause (b) of section 56 (i) of the Act. An order of externment can also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, of Chapter XVI, or Chapter XVII of the Indian Penal Code. This is so provided in the latter part of clause (b) of section 56 (i) of the Act. But it is not enough that these conditions alone are satisfied. In addition to this the designated officer should be of the opinion that 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.

[Underlines added]

15. Upon perusal of the offences registered against the Petitioner, it is abundantly clear that all offences have been registered at Rahuri police station, District Ahmednagar. Upon careful perusal of the discussion in the impugned order of Respondent No.3, there are no specific reasons assigned for externment of the Petitioner from entire Ahmednagar District.

16. Though the Appellate Authority i.e. Respondent No.4 has restricted the implementation and operation of the order of externment passed by Respondent No.3 from the boundaries of Rahuri Taluka, nevertheless the Appellate Authority did not consider the procedural irregularities and illegalities committed by Respondent No.3 while passing the impugned order, and also by Respondent No.2 while initiating the proposal for externment of the Petitioner from six Districts. While passing the impugned order, Respondent No.4 has not considered the fact that though before initiation of externment proceedings the Petitioner has been acquitted from the offence mentioned at Sr. No.3, the authority below has relied upon the said offence registered against the Petitioner and passed an externment order against the Petitioner. The Appellate Authority failed to

consider the fact that incamera statements of the witnesses were not recorded.

17. In that view of the matter, we are of the considered view that, the impugned orders passed by Respondent Nos.3 and 4 cannot legally sustain. Hence both the impugned orders are quashed and set aside. Rule is made absolute in terms of prayer clause B] and C] to the Writ Petition. The Writ Petition stands disposed of accordingly. No order as to costs.