
(1991) 01 BOM CK 0071

In the Bombay High Court

Case No : Criminal Writ Petition No. 637 of 1990

Abdul Kadir Razzaque Beg

APPELLANT

Vs

The Sub-divisional Magistrate (S.S. Zende), Nasik Sub-division and others

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Bombay Police Act, 1951 — Section 59
Penal Code, 1860 (IPC) — Section 302, 394

Citation : (1991) 1 BomCR 589 : (1991) 93 BOMLR 760 : (1991) CriLJ 1725 : (1991) 1 MhLj 474

Hon'ble Judges : S.W. Puranik, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : R.L. Patil, for the Appellant; C.M. Kothari, Public Prosecutor, for the Respondent

Judgement

Saldanha, J.—This Criminal Writ Petition is directed against an order of externment dated 31-3-1990 passed by the Sub-Divisional Magistrate, Nasik Sub-Division, Nasik, under which the Petitioner was externed from the limits of Nasik District for a period of two years. The Petitioner thereafter filed an appeal before the State Government, which came to be dismissed by an order dated 13-6-1990.

2. Before dealing with the specific facts of the present case, we consider it necessary to advert to one peculiarity that is prevalent with a degree of consistence in a large number of externment appeals that have been decided by the State Government. We have brought it to the notice of Mr. Kothari, the learned Public Prosecutor appearing for the Respondents, that the wording of the orders passed by the State Government in all these cases is so similar that it almost appears to this Court that the concerned officers are passing cyclostyled orders with the minimum amount of modification as far as the name and address of the petitioner is concerned. To this, Mr. Kothari pointed out that the wording of the operative part of the order while disposing of all these appeals is similar, but that the appellate authority has been passing orders separately dealing with the

merits of each case, and that unfortunately the appellants have not been obtaining the copies of these orders as a result of which the aforesaid impression is created. Mr. Kothari pointed out that the appellants are required to apply separately for a certified copy of the order in question and in the absence of their adopting such a procedure that they have been relying only on an operative part of the order. If the Court before which these cases appear for decision is to be in a position to gauge as to whether there has been due application of mind at the appellate level, it is but essential that the complete order be placed before this Court. If this is not done by the Petitioner, it would be extremely difficult for the Court to arrive at a proper, decision. It would, therefore, stand to reason that the appellate authority must, in all cases, furnish to the party concerned a full and complete copy of the order and not only the operative part of it. The additional reason for this is that the appellant against whom the order is made must have a reasonable opportunity of placing before the Court all grounds of challenge. As matters stand, where the appellant points out to the Court that the appellate authority is mechanically disposing of the appeals in externment cases the argument finds support in the order from the fact that orders in all the matters are identical and it becomes extremely difficult to repel such an argument in the absence of the complete order.

3. Dealing with the facts of the present case, Mr. Patil, the learned advocate appearing on behalf of the Petitioner, has contended that the order of externment dated 31-3-1990 is assailable basically on two grounds. His first submission is that the order suffers from a degree of vagueness which virtually renders it impossible for the Petitioner to meet the charges that have been levelled against him. The second contention advanced by Mr. Patil is that one of the important circumstances alleged against the Petitioner was that a prosecution, namely, C.R. No. 190 of 1989, was pending against him. The Accused in this case was charged with having committed offences punishable under Sections 394 and 302 of the Indian Penal Code, both of which are extremely serious charges. It is the contention of Mr. Patil that the Petitioner was acquitted by the Sessions Court of these offences on 28-3-1990, i.e., before the passing of the order of externment. Mr. Patil has annexed a copy of the judgment of the Sessions Court to the Petition and he has submitted that the Petitioner was not acquitted either for want of evidence or on the basis of any technicality, but that the Petitioner came to be acquitted on merits. In this view of the matter, according to Mr. Patil, this circumstance could not have either been relied upon or the same been used for the purposes of making any order against the Petitioner.

4. Respondent No. 1, in his affidavit-in reply at para (4), has contended that the petitioner did not bring to his notice the fact that he had been acquitted in that case. He further contended that regardless of the circumstances of the Petitioner's acquittal, his involvement in that case was a ground which the authority could take into consideration. In support of his submission, Mr. Kothari has placed considerable reliance on a decision of the Supreme Court in the case of Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and

Another, . The Full Bench of the Supreme Court in that decision has observed that the legality of the order of externment cannot be impugned on the ground that there was no sufficient evidence to bring the charge home to the Petitioner, because these are all matters which cannot be examined by the Court in an objective way when the Legislature has provided for the subjective satisfaction of the authorities or officers who have been entrusted with the duty of enforcing the special provisions of the Act. The all important issue as to whether material relating to important supervening developments, such as an acquittal by a Court of law which drastically changes the complexion of the record, must be taken into consideration by the authority was not decided there because the Supreme Court was only dealing with the question regarding sufficiency of material for the purpose of making an order. It is true that this Court will not re-appraise the material that is before the authority nor will the Court go into the question of sufficiency, but the issue that is before us is of a slightly different nature, namely, the question as to whether the authorities were required to take cognizance of the order of acquittal. To this extent, Mr. Patil is wholly justified when he submitted that the total absence of any mention of the order of acquittal, both in the initial order of externment as also in the appellate order, would justify his submission that the circumstance regarding the pendency of a prosecution for serious charges under Sections 394 and 302 of the I.P.C was taken into account by both the authorities in question. To the limited extent that Mr. Patil alleges the non-application of mind on the part of the authorities, he is justified, in so far as it was certainly obligatory on their part after having made this material the subject-matter of the charge to have at least observed in the orders as to what their reaction to the order of acquittal was.

5. On a perusal of the order of externment passed by the Externing Authority as also the Appellate Authority, it would be difficult for this Court to uphold the view that the authorities in question had applied their minds to the facts of the present case. We have pointed out to Mr. Kothari, the learned Public Prosecutor, that, undoubtedly, the Courts have consistently taken the view that an Externing Authority is not required to give any detailed reasoning or judgments in support of the orders or decisions, but one has, at the same time, to bear in mind the fact that the appellate authority or the reviewing authority must be provided with sufficient material from the order whereby that authority or Court can come to the conclusion that the order has not been passed arbitrarily or mechanically. Mr. Kothari relied on an unreported decision of this Court in the case of State v. Sushil Govind Kasale (Criminal Appeal No. 1201 of 1969), wherein a Division Bench of this Court did take the view that no reasons need to be given and that only the subjective satisfaction required to be recorded. This Court has consistently upheld this view, but it needs to be clarified that while detailed reason are not required to be recorded, the authority would not be justified in merely reproducing the ingredients of the Section and pre-fixing it with the clause "I am satisfied that". The inherent danger in an order of this type is that it is virtually impossible for the Court to find out as to whether at all the authority

has perused the record and whether at all the authority has applied its mind to what was pointed out against the person against whom the order is made. While dealing with cases of externment where the consequences are serious and where the rights and liberty of a person over a protracted time stand to be affected, it is essential that the order must pass the tests of judicial scrutiny. The duty to act fairly and the duty to act reasonably are now crystallized. Principles which must be embodied in all such orders and for the purpose of ascertaining as to whether these principles have been followed, it would be necessary for the concerned authorities to produce an order of the type whereby the Court can reasonably be satisfied of due compliance of the procedure prescribed by law.

6. Dealing with the first submission advanced by Mr. Patil, namely, that as far as the present notice is concerned it suffers from the vice of vagueness, Mr. Kothari has submitted that both the Supreme Court and this Court have consistently taken the view that as long as the general and material particulars are set out that the notice in question would pass the test of legal scrutiny. There is no dispute with regard to this proposition, but it is also essential that while setting out the charges against the person concerned, that the time, the date, the place, the nature of the incident, etc. should be circumscribed within such reasonable limits that it would be possible for the person concerned to adequately meet those charges. The Supreme Court in the case of *State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc.*, , has set out one such illustration when it pointed out that unless the time period is reasonably specified, it may be difficult for the person against whom the charges are made to sustain a defence of alibi by saying that he was not at that particular place around that period of time or by bringing forth documentary evidence in support of his contention that he was at some other place. Mr. Kothari drew our attention to a copy of the show cause notice served on the petitioner, which has not been annexed to the Paper Book. A perusal of the show cause notice indicates that certain incidents have been referred to in that show cause notice. He, therefore, submitted that the authority indicated particularly as to what were the heads of charges by setting out these incidents and that the authority also indicated the cases that were pending against the petitioner. According to Mr. Kothari, this was full and adequate compliance with the requirements of S. 59 of the Bombay Police Act, 1951. Mr. Patil, on the other hand, pointed out that a perusal of the order of externment that has been passed will indicate that there is not even the remotest possible reference to the earlier part of the show cause notice in the order of externment. He also reiterated his contention that the broad description of the incidents set out in the show cause notice was too vague. As far as the present case is concerned, it is difficult to uphold Mr. Patil's submission that the show cause notice in substance is vitiated by the vice of vagueness, because a perusal of the show cause notice will indicate that it did conform to the requirements of law. Unfortunately, from the order that proceeded thereafter, this Court is unable to gauge as to what were the circumstances that weighed with the mind of the authority while passing the order of externment in question,

because apart from reproducing the ingredients of the relevant Sections and prefixing the same with the wording "I am satisfied that" no factual details are set out in the order of externment. We, therefore, have no hesitation in holding that the order of externment will have to be quashed on the ground of non-application of mind.

7. Even though the acquittal order was passed on 28-3-1990, which was just three days prior to the date on which the order of externment was passed, and since there appears to be serious dispute on the question as to whether at all this order came to the notice of the learned Sub-Divisional Magistrate, we are not examining that aspect of the matter, but what this Court will have to take into account is the fact that this all important circumstance was totally ignored by the appellate authority. This re-enforces our view that even at the appellate stage, there was no due application of mind and, consequently, the appellate order will have to be quashed on the same ground.

8. In the result, the Criminal Writ Petition is allowed. The rule is made absolute in terms of prayers (a) and (b) of the Criminal Writ Petition.

9. Petition allowed.