

(2013) 08 BOM CK 0105

In the Bombay High Court

Case No : Criminal Writ Petition No. 2385 of 2013

Ahammad Mainuddin Shaikh

APPELLANT

Vs

The State of Maharashtra and The Superintendent of Police

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Bombay Police Act, 1951 — Section 55, 7

Citation : (2013) ALLMR(Cri) 3804 : (2013) 4 BomCR(Cri) 559

Hon'ble Judges : S.C. Dharmadhikari, J;S.B. Shukre, J

Bench : Division Bench

Advocate : Anand Patil, for the Appellant; A.S. Gadkari, Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J.—By this writ petition, the petitioner has challenged the legality and validity of the order dated 30th April, 2013 passed by respondent No. 1-the appellate authority confirming the order passed by respondent No. 2 on 15th January, 2013 externing the petitioner u/s 55 of the Bombay Police Act, 1951 (hereinafter referred to as the Act) for a period of one year, from Kolhapur District. This petition has been finally heard at the stage of admission with the consent of parties. Hence, rule made returnable forthwith. Respondents waive service of the notice.

2. We have heard learned counsel for the petitioner, Mr. Anand S. Patil, and Mr. A.S. Gadkari, learned A.P.P. for the State.

3. The main contentions raised before us on behalf of the petitioner are that, the impugned orders dated 30th April, 2013 passed by the appellate authority and 15th January, 2013 passed by the externing authority Kolhapur, suffer from serious illegalities and arbitrariness. According to learned counsel for the petitioner, the order of the externing authority is based upon such a material as is not sufficient to record a satisfaction u/s 55 of the Act. He has submitted that,

Section 55 contemplates action against a gang or body of persons and, therefore, requires that each of the members of gang or body of persons should be found to have indulged in similar criminal activities and that the final action is also required to be taken against each of the members thereof. However, he submits, such is not the case here and it can be easily found out from the impugned order dated 15th January, 2013 that the material relied upon for externing the petitioner was quite different to the one referred to in relation to the other alleged members of the gang. He further submits that the impugned order is also discriminatory and arbitrary for the reason that the final action of externment has been taken only against the present petitioner, although 5 other persons were stated to be members of the gang allegedly formed by the petitioner.

4. The petitioner's other contentions relate to non-supply of copies of the reports dated 9th February, 2010 and 16th March, 2011 submitted by the Police Inspector, Laxmipuri Police Station, Kolhapur, to respondent No. 2, thereby denying an opportunity to the petitioner of properly defending himself, the offences relied upon by the externing authority being stale and of minor nature, the petitioner having been acquitted in 17 out of 26 criminal cases, that the petitioner has been given conviction with minor sentence of imprisonment till rising of the Court in only one crime, the other 8 criminal cases still pending at the time of passing of the impugned orders and that the order of externment of one year being excessive and unwarranted.

5. Learned A.P.P. for the State, opposing the petition, has submitted that the externing authority has passed a detailed order and has taken into account the entire graph of criminal activities of the petitioner right from the year 2006 till the year 2011. He has submitted that, in all 43 criminal cases have been found to be registered against the petitioner and it is not the law that mere pendency of criminal cases is irrelevant for recording a satisfaction that movement or encampment of any gang or body of persons, is causing or calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body of persons or by members thereof. According to him, registration of various criminal cases consistently over a long period of time, will be extremely relevant for finding that the gang or body of persons is most likely to entertain unlawful designs and, therefore, it would be necessary for the concerned authority to prevent such gang or body of persons from giving effect to those designs by passing an appropriate order u/s 55 of the Act. He further submits that, sufficient opportunity has been given to the petitioner to defend himself and this is quite evident from the detailed order passed by the externing authority-respondent No. 2. He has also defended the order passed by the appellate authority by urging before us the same grounds. Thus, according to him, there is no illegality nor any arbitrariness in passing of both the impugned orders.

6. With the assistance of the learned counsel for the petitioner and learned A.P.P.

for the State, we have gone through the petition and the documents annexed to it including the impugned orders.

7. Section 55 of the Act deals with dispersal of gangs and bodies of persons. It reads as under:-

55. Dispersal of gangs and bodies of persons.-Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed u/s 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the Superintendent empowered by the State government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous thereto within such time as such officer shall prescribe, and not to enter area (for the areas and such contiguous districts, or part thereof as the case may be,) or return to the place from which each of them was directed to remove himself.

Upon a careful reading of this section, it becomes clear that, whenever it appears to the competent authority that the movement or encampment of any gang or body of persons in the area under his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body of persons or by its members, such officer may by notification addressed to the leaders or chief men of such gang or body of persons and suitably published, issue two types of directions. The first direction is about regulating of conduct of such gang or body of persons in a manner prescribed in the direction in order to prevent violence and alarm. Such direction, in the alternative, can also be in the form of an order for dispersal of members of such gang or body of persons. The second direction which follows the first one, is about removal of each of the members of the gang or body of persons outside the area within the local limits of jurisdiction of the competent authority. In suitable cases, the order of removal can also be from district or its parts or together with contiguous districts or parts thereof. This second direction, in order to be reasonable, has to be passed for a definite period of time. In the entire section, there is common thread of participation by all and collective action against all that holds together all its parts. The section starts with gang or body of persons, sails through the dangerous impressions that the movement or encampment of gang or body of persons creates and ends with a direction of removal passed against each of the members of the gang or body of persons. This common thread is the essence of Section 55 and that is the mandate of the

legislature. In other words, Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then that action u/s 55 of the Act can be taken and which is to be taken against all members and not only a few of them selectively.

8. It may not be out of place to mention here that, in the case of Suraj Ramsing Bire & ors. v/s. State of Maharashtra & ors., Writ Petition No. 3572 of 2010 with Writ Petition No. 3573 of 2010, decided on 7th January, 2011, learned Single Judge of this Court has taken a view that for invoking the provisions of Section 55 of Bombay Police Act, it has to be shown that persons are acting as gang or body of persons. This view commends to us.

9. Now, having seen the essential requirements of Section 55, let us proceed to examine the impugned orders and see if they fulfill these requirements of law or not.

10. The first impugned order is passed by respondent No. 2 on 15th January, 2013 and it starts from page 31 of the paper-book. It is a prolix order but what can be culled out from it and, which is important for the purposes of this petition, is the consideration of a factor-registration of as many as 43 criminal cases against the petitioner, which has mainly weighed with the externing authority. Apart from these criminal cases, we could not find nor the learned A.P.P. for the State could point out to us, any other criminal activities except for some chapter and preventive action cases referable to the petitioner and that too not as a gang member. Since the action was proposed to be taken u/s 55 of the Act, the externing authority has also referred to the criminal cases registered against the other members of the alleged gang of the petitioner. The other members are Shafi Ahmed Mainuddin Shaikh, Mohammed Hussain, Mohammed Hussain Mehboob Faras, Sanjay Maruti Fagare, Salim Abdul Rafiq Shaikh and Suresh Kavdamal Tejvani. No significant criminal activities have been found to be mentioned in the order of the externing authority against these other persons.

11. While 43 criminal cases have been stated to be registered against the petitioner, as against the remaining 5 alleged members of the gang, not so many cases, as seen from the impugned order dated 15th January, 2013, have been found to be registered. Against the second alleged gang member Shafi Ahmed, 11 cases have been registered, out of which 10 cases have been commonly registered with the petitioner. Out of these 11 cases, he has been acquitted in 7 cases and 4 are pending. Two chapter cases have also been stated to be registered against him. As regards the third alleged member Mohammed Hussain, 3 criminal cases have been registered, out of which 2 are quite different cases and only one criminal case is commonly registered with the petitioner and in this case he has been acquitted by the Court. Against fourth alleged member Sanjay Maruti Fagare, only 2 cases have been registered, both commonly with the petitioner and he has been acquitted in one criminal case and convicted and sentenced till rising of the Court together with the fine of Rs. 300/- in one case. Only one criminal case has been stated to be registered against the 5th alleged

member which is in common with the petitioner and in this case he has been acquitted. As regards the 6th alleged member, only one criminal case has been registered commonly with the petitioner and it is presently pending.

12. So, it is clear that whatever criminal cases are there against the alleged gang members, they are more individualistic in nature than collective and do not show that these persons have got together and are indulging in criminal acts as a group. This material certainly does not make out any case against the petitioner as a member or chief of a gang or body of persons. There is no other material mentioned in the order which is relevant for determining as to whether or not the petitioner is a leader or member of a gang or body of persons. Therefore, the very first requirement of Section 55 is not satisfied in this case and on this ground alone the order passed by the externing authority and also the order of the appellate authority confirming it, deserve to be quashed and set aside.

13. The illegality so committed by both authorities does not stop here. The externing authority, while passing the final order which has been confirmed by the appellate authority, has directed externment only against the petitioner and not the remaining 5 members of his alleged gang, for a period of one year from the district of Kolhapur. Such discrimination between members of the gang is not permissible in law, particularly, when collective criminal activity is alleged on their part by arraigning at least some of them, as accused along with the petitioner. Section 55 of the Act contemplates a collective action against the gang or body of persons and, therefore, the final direction that is required to be issued in terms of this section, would also have to be necessarily against each of the members of the gang and not against one or a few of them on selective basis. So, on this ground also, we find that the impugned orders are absolutely illegal and cannot be sustained in law.

14. We thus find great substance in the submission canvassed before us on behalf of the petitioner and no merit in the arguments of learned A.P.P. for the State. There have been other contentions also made by the learned counsel for the petitioner which we have summarized in the earlier paragraph. However, we do not propose to deal with them in a specific manner as they pale into insignificance once it is found that both the impugned orders suffer from fundamental errors of law.

15. In the result, the petition deserves to be allowed and the impugned orders are hereby quashed and set aside. Rule is made absolute in the above terms.