

(2022) 04 BOM CK 0031

In the Bombay High Court

Case No : Criminal Writ Petition No.190 Of 2021

Akshay @ Nana

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 07-04-2022

Acts Referred:

Maharashtra Police Act, 1951 — Section 7, 56(1)(a)(b), 60

Citation : (2022) 04 BOM CK 0031

Hon'ble Judges : V. K. Jadhav, J; Sandipkumar C. More, J

Bench : Division Bench

Advocate : Shaikh Ashraf Patel, A. P. Avhad, S. J. Salgare

Final Decision : Allowed

Judgement

Sandipkumar C. More, J

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. Under this writ petition, the petitioner is seeking quashing of order dated 07/09/2020 in Externment Case No. 2 of 2019 passed by Sub-Divisional Magistrate, Parner i.e. present respondent no.3 and also order dated 08/12/2020 in the Externment Appeal No. 80 of 2020 passed by the Divisional Commissioner, Nashik i.e. respondent no.2. Under the order dated 07/09/2020 respondent no.3 has externed the petitioner from entire Ahmednagar and Pune Districts for a period of six months. Further, under order dated 08/12/2020 passed by respondent no.2 the earlier order has been confirmed. It is to be noted here that even though the externment period mentioned in the aforesaid orders is now over but the petitioner has sought quashing of these orders merely because the externment order is yet not executed. We have already noted in our order dated 21/02/2022 about submission made by the learned APP, whereby it was submitted that there is no question of expiry of externment period mentioned in the order since it is yet not executed. Be that as it may, we have to consider

legality of the impugned orders any how.

3. Background facts are as under :

According to the petitioner, he is a law abiding citizen of India and agriculturist by profession. However, he was served with show cause notice dated 23/09/2019, whereby he was informed to remain present before respondent no.3 on 30/09/2019 and to explain as to why he should not be externed from Ahmednagar District and adjacent district for a period of two years as per Section 56(1)(a)(b) of the Maharashtra Police Act, 1951 (hereinafter referred to as "the Act"). The petitioner then filed his detailed reply, but under the order dated 07/09/2020 in the Externment Case No. 2 of 2020 the petitioner has been externed from Ahmednagar and Pune Districts for a period of six months. The petitioner also filed an Externment Appeal No. 80 of 2020 before the present respondent no.2 as per Section 60 of the Act. However, respondent no.2 was pleased to dismiss the aforesaid appeal of the petitioner on 08/12/2020 and thereby confirmed the earlier order of externment dated 07/09/2020.

4. Learned counsel for the petitioner submits that both the impugned orders passed by the authorities below, are erroneous and contrary to the provisions of law. He further submits that the authorities below have considered stale crimes against the petitioner for his externment and that too without considering that fact that the same were registered against the petitioner on account of political rivalry. Learned counsel for the petitioner further submits that the impugned orders are excessive in nature and without application of mind. He further submits that there is no live link present in this matter. As such, he prayed for quashing of the impugned orders.

5. On the contrary, the learned APP by filing an affidavit in reply strongly opposed the submissions made on behalf of the petitioner and supported the impugned orders being passed in appropriate manner. The learned APP submits that both the authorities below have properly considered the material on record and rightly come to the conclusion that since the petitioner is involved in the serious crimes and his presence in the area is dangerous to public at large, he needs to be externed. As such, he prayed for rejection of the present criminal writ petition.

6. We have carefully gone through the entire material on record and also submissions made on behalf of rival parties. It is significant to note that under the order dated 07/09/2020 though respondent no.3 has externed the petitioner from Ahmednagar and Pune Districts for a period of six months, but he has also ordered that the petitioner should not enter into these districts till further order. However, the said situation is thereafter clarified by respondent no.3 under letter dated 21/02/2022 issued to the learned APP, whereby it is made clear that the period of externment was only for six months and there was no bar for the petitioner to enter Ahmednagar and Pune Districts thereafter.

7. Admittedly, a person can be externed from the area where it is found that his movements or acts are causing alarm, danger or harm to person or property

under section 56(1)(a)(b). We would like to reproduce Section 56(1)(a)(b) of the Act herein below :

"56. Removal of persons about to commit offence :

(1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate [* * *] empowered by the State Government in that behalf-

(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 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"

Though the power of externment under the aforesaid section is given to the authorities below, but the authorities are under obligation to see that the order of such externment should not be an\ empty formality, excessive in nature and without application of mind. The petitioner has been externed on the basis of four crimes registered against him in Supa Police Station as mentioned in the impugned order as below :

Sr. No

Police Station

Crime No.

Under Section

Remark

1

Supa, Tq. Parner, District Ahmednagar

I-126 of 2016

143, 147, 148, 149, 324, 323, 504, 506, 427, 452 of IPC and under Section 4/25 of Arms Act

Subjudice

2

Supa, Tq. Parner, District Ahmednagar

I-127 of 2016

307, 143, 147, 148, 323 of IPC, under Section 4/25 of the Arms Act and under Section 3(1) (10) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

Subjudice

3

Supa, Tq. Parner, District Ahmednagar

I-37 of 2018

Subjudice

4

Supa, Tq. Parner, District Ahmednagar

Noncognizable case

323, 504 and 506 of IPC

Subjudice

However, out of the aforesaid crimes, the crime at serial No.4 is in fact non-cognizable offence. Moreover, it appears that the trials of the remaining crimes are pending before the court for adjudication. Those crimes appear to be committed in the period from 2016 to 2018. As such, it appears that from 2018 till passing of the impugned order dated 07/09/2020 there is no fresh crime registered against the petitioner. Therefore, it prima facie appears that the authorities below have considered the crimes up to 2018 for the externment of the petitioner, which took place in the year 2020. It is to be noted here that this court in various earlier cases has observed that the externment order is not sustainable if it is passed on the basis of stale crimes.

8. Further, though respondent no.3 in the order dated 07/09/2020 has observed that nobody is coming forward to lodge complaint against the petitioner openly due to his deterrent behaviour, but there are no confidential statements of witnesses on record. Further respondent no.3 has not referred any such confidential statements in his order but still respondent no.2 while dismissing the appeal of the petitioner, has mentioned about existence of the statements of confidential witnesses. As such, there is clear non-application of mind appearing on the part of respondent no.2 while confirming the order dated 07/09/2020 passed by respondent no.3. Moreover, three crimes appear to be registered in the period from 2016 to 2018, are considered for the externment of the petitioner in the year 2020. As such, there appears no live link between the last crime committed by the petitioner and his externment order dated 07/09/2020. Moreover, it is extremely important to note that all the crimes considered for externment of the petitioner, have been registered in Supa Police

Station, Taluka Parner, District Ahmednagar but without paying attention to this aspect, the authorities below have externed the petitioner from so much larger area covering the limits of entire Ahmednagar and Pune Districts. As such, the order of externment is definitely an excessive order. This court as well as the Hon'ble Supreme Court in many cases, have already observed that when the criminal activities of a person are restricted to certain smaller area, then he can not be externed from larger area than that wherein there are no criminal activities of the said person.

9. The learned counsel for the petitioner has also relied upon the judgment of this court (Coram : S. S. Shinde & V. K. Jadhav, JJ.) in Criminal Writ Petition No. 541 of 2018, wherein it is mentioned as follows :

"12. We have given careful consideration to the submissions advanced by learned counsel appearing for the petitioner and learned APP appearing for the Respondents-State. We have also carefully perused the reasons assigned by the authorities in the impugned orders. It appears that though the petitioner examined the witnesses in support of his contentions in the written statement, nevertheless there is no discussion about the contentions of the witnesses. Though the authorities have mentioned in the impugned orders that they have seen the statements of the witnesses, nevertheless it was necessary at least to discuss in brief about what the witnesses have stated. The valuable remedy of appeal is available to the externee and once the appeal is fled, the appellate authority is obliged to consider the case of the externee on the facts as well as on law. To brand a person habitual criminal, it is necessary to find out his past record. In the present case, both the authorities have not considered the fact that, the petitioner is not convicted in any of the criminal cases registered against him. It appears that, in pending criminal cases, he is enlarged on bail by the trial court and also the High Court respectively. There is no material brought on record by the respondent that liberty granted in favour of the petitioner has been misused by him. All these contentions raised by the petitioner ought to have been considered by both the authorities, and to that effect at least there should have been discussion in the order passed by the appellate authority. Learned counsel appearing for the petitioner is right in placing reliance on the ratio laid down in the cases of Hanuman Rajaram Mhatre, Praful Bhausaheb Yadav and Akas Madhukar Patil (Rajput) (supra)".

10. In the light of aforesaid observations and as per the discussion mentioned above, we find that both the impugned orders are passed without proper application of mind. There is complete absence of live link and also the aspect of subjective satisfaction is missing. Further, the impugned orders are excessive in nature without there being any criminal activity of the present petitioner except the area under the jurisdiction of Supa Police Station. Hence, considering all these factors, we proceed to pass following order.

ORDER

- I) Criminal writ petition is hereby allowed in terms of prayer clause "B and C".
- II) Rule made absolute in above terms.
- III) Criminal writ petition is accordingly disposed of.