
(1983) 10 BOM CK 0053

In the Bombay High Court

Case No : Criminal Writ Petition No. 335 of 1983

Ashok Kashinath Kale

APPELLANT

Vs

Ravindra Jadhav and Another

RESPONDENT

Date of Decision : 13-10-1983

Acts Referred:

Bombay Police Act, 1951 — Section 56

Citation : (1983) 2 BomCR 763

Hon'ble Judges : S.J. Deshpande, J;B.C. Gadgil, J

Bench : Division Bench

Advocate : S.R. Chinis, for the Appellant; Ranjana Samant Desai, Public Prosecutor, for the Respondent

Judgement

B.C. Gadgil, J.—The petitioner has filed this writ petition challenging the order dated 12-4-1983 (Exhibit "E" to the petition) passed by the Sub-Divisional Magistrate, Jalgaon, u/s 56(a) and 56(b) of the Bombay Police Act externing the petitioner from the districts of Jalgaon, Buldhana and Aurangabad, for a period of two years. The petitioner had preferred an appeal to the State Government against this order. However, that appeal has been dismissed on 16-7-1982.

2. Though a number of contentions have been raised in the petition, Shri Chitnis, for the petitioner argued only one point which goes to the root of the case. It is not, therefore, necessary to consider the rest of the contentions. An order u/s 56 is permissible if the concerned authority is satisfied (a) that the movements or acts of the petitioner are causing or calculated to cause alarm, danger or harm to any 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 offences punishable under Chapters XII, XVI and XVII of the Indian Penal Code and when, in the opinion of such authority, the witnesses are not willing to come forward to give evidence. After following the necessary procedure, the Sub-Divisional Magistrate has passed the impugned order. The grievance of the petitioner is that the order is based on irrelevant data and that for that reason

the order has to be quashed. The order is a detailed one. It refers to certain convictions of the petitioner for offences under the Bombay Police Act, the Bombay Prohibition Act and the Indian Penal Code. There is also a reference to entries of certain non-cognizable offences under the Indian Penal Code. Thereafter there is a reference to 19 cases under the Bombay Prohibition Act in which the petitioner was acquitted. The order then states that in addition, about 16 and 17 criminal cases were pending against the petitioner at the time when the order was passed. All these offences are under the Bombay Prohibition Act. Then the order refers to certain pending cases under the Indian Penal Code.

3. We have already observed as to under what circumstances an externment order can be passed u/s 56(a) or 56(b). A mere reading of the relevant provisions of section 56 would show that the convictions under the Bombay Prohibition Act or the pending criminal cases under that act would not be relevant while taking a decision as to whether the petitioner's case would fall u/s 56(a) or 56(b). Shri Chitnis, therefore, contended that here is an order which is based on irrelevant data or irrelevant matter and that on that count the order should be set aside. He drew our attention to an unreported decision of this Court (Coram : Tarkunde & Shah, JJ.) in (Special Criminal Application No. 511 of 1982 decided on 23rd January, 1983)². In that case, one of the allegations made against the externals was that he indulged in the commission of offences under the Bombay Prohibition Act. The Division Bench Prohibition Act. The Division Bench held that the conviction or pending criminal cases under the Bombay Prohibition Act would undoubtedly be foreign to section 56. In view of this, the petition succeeds and hence, we pass the following order :---

The rule is made absolute by quashing the impugned externment order dated 12-4-1983 (Exhibit "E" to the petition).