

(2000) 06 BOM CK 0016

In the Bombay High Court

Case No : Criminal Writ Petition No. 175 of 2000

Babadin

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-06-2000

Acts Referred:

Bombay Police Act, 1951 — Section 56, 59
Constitution of India, 1950 — Article 226, 227

Citation : (2000) 5 BomCR 782 : (2000) BomCR(Cri) 782 : (2001) 1 MhLj 502

Hon'ble Judges : S.D. Gundewar, J

Bench : Single Bench

Advocate : J.B. Kasat, for the Appellant; P.G. Pathak, Assistant Public Prosecutor, for the Respondent

Judgement

S.D. Gundewar, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order of externment dated 14-9-1999, passed by the Deputy Commissioner of Police, Amravati Division, Amravati, u/s 56 of the Bombay Police Act, 1951.

2. Heard Shri Kasat, learned Counsel for the petitioner and Shri P.G. Pathak, learned Additional Public Prosecutor for the respondent/State.

3. The impugned order of externment dated 14-9-1999 was passed by the respondent after the show-cause notice dated 24-3-1999 was issued to the petitioner u/s 59 of the Bombay Police Act, calling upon him to file his say as to why he should not be externed from the concerned district for a period of two years. The petitioner filed his say in response to the said show-cause notice and ultimately the impugned order came to be passed on 14-9-1999, externing the petitioner from certain areas, as mentioned in the said order of externment, hence this petition.

4. It is submitted by Shri Kasat, learned Counsel for the petitioner that the impugned order of externing the petitioner from certain areas has to be held as

vitiated since no opportunity of being heard can be said to have been granted by the respondent to the petitioner before passing of the order of externment. For this, he placed a reliance on a judgement of the Division Bench of this Court delivered in the case of Yeshwant Damodar Patil Vs. Hemant Karkar, Dy. Commissioner of Police and Another, . According to Shri Kasat, though the show-cause notice was issued, it was too vague and it did not incorporate that the action is being proposed to be taken against the petitioner on the ground that he is engaged or he is about to engage in the commission of offence involving force or violence, or in the commission of offence punishable under Chapter XII, or Chapter XVI or Chapter XVII of the Indian Penal Code, 1860, and he was also not informed that in the opinion of the Deputy Commissioner of Police, (Zone), Amravati, witnesses are not willing to come forward to give evidence in public against him. According to Shri Kasat, in fact, such formation of opinion by the authority concerned has to be reflected in the show-cause notice and since this is not so incorporated in the show-cause notice issued to the petitioner in the case at hand, consequent order of externment has to be held as vitiated and illegal and is, therefore liable to be quashed and set aside.

5. Shri Pathak, learned A.P.P., on the other hand, submitted that the shows-cause notice issued to the petitioner u/s 59 of the Bombay Police Act, in fact, does not suffer from any infirmity as it contains general nature of the material allegations, which are sufficient. For this he placed reliance on the decision of the Apex Court in the case of State of Gujarat v. Mehbubkhan, reported in AIR 1968 S.C. 1468. It is further submitted by Shri Pathak that in spite of an opportunity given to the petitioner, he did not agitate, before the concerned authority that the show-cause notice issued to him suffers from infirmity or it did not contain all the details and, therefore, now he is estopped from contending anything about the same.

6. The contention of the learned A.P.P. that as the petitioner had not made any grievance about the invalidity of the show-cause notice before the concerned authority, at the time when he was called upon to file his say in the matter, he is estopped from challenging the said show-cause notice in this criminal writ petition, cannot be accepted because the petitioner would come to know about the contents of the order of externment only after the same is served upon him and, therefore, it cannot be said that as he did not make any grievance about the invalidity of the show-cause notice before the concerned authority, he is prevented from making such grievance subsequently by filing the writ petition.

7. Shri Pathak, learned A.P.P. has urged that the petitioner had an alternative remedy of an appeal and he did not avail of it and so no relief should be granted to him in this writ petition. I find that only because the petitioner did not file an appeal, justice should not be denied to him as prima facie the impugned order is not tenable.

8. Considering the submissions made by the learned Counsel for the petitioner and that of the learned Additional Public Prosecutor and also going through the show-cause notice and the impugned order, in the light of the view taken by this

Court in the judgement (cited supra), in my opinion, the impugned order cannot be sustained. The show-cause notice refers to the provisions of section 56(1)(a) only, whereas the impugned order speaks of the provisions of section 56(1)(a) as well as provisions of section 56(1)(b) of the Bombay Police Act. The show-cause notice, in question, merely enumerates several cases. Merely case numbers without any details are given in the show-cause notice. There is no specific averment that because of the petitioner's indulgence in the crimes to which these cases pertain, an opinion is formed by the Designated Officer that the petitioner was further likely to engage in the commission of such offence in future as well. So also it is not mentioned in the show-cause notice that the authority concerned has reached to the satisfaction that the petitioner's indulgence into the activities to which these cases are related, is causing or calculated to cause an alarm, danger or harm to person and property and the witnesses are not coming forward to depose against the petitioner. This clearly indicates that the show-cause notice in question does not contain even the general nature of the material allegations. As such, the show-cause notice, in question, if read in the context of the impugned order in my opinion, it cannot be held to be a notice as contemplated by the provisions of section 59 of the Bombay Police Act. I, therefore, find no substance in the aforesaid submissions made by the learned A.P.P. that the show-cause notice in question does not suffer from any infirmity, nor the decision cited by the learned A.P.P. in this behalf, in my view, is applicable to the facts of the present case. I, therefore, find that the impugned order being based on such invalid notice has to be held as vitiated.

9. In this view of the matter, the impugned order of externment, at Annexure-A, as also the show-cause notice dated 24-3-1999 issued by Deputy Commissioner of Police, Gadge Nagar area, Amravati, are hereby quashed and set aside and the respondent is directed to set the petitioner at liberty forthwith.

10. Rule made absolute in the above terms.

11. Petition allowed.