

(1996) 03 BOM CK 0015

In the Bombay High Court

Case No : Criminal Writ Petition No. 16 of 1996

Baban Sudam Kamble

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 18-03-1996

Acts Referred:

Bombay Police Act, 1951 — Section 56, 59
Constitution of India, 1950 — Article 19

Citation : (1997) 1 BomCR 182 : (1997) BomCR(Cri) 238 : (1996) CriLJ 2668

Hon'ble Judges : L. Manoharan, J

Bench : Single Bench

Advocate : S.H. Qazi, for the Appellant; D.B. Patel, Assistant Public Prosecutor, for the Respondent

Judgement

1. In this petition, the petitioner challenges Annexure A order as well as Annexure - B Notice. These notice and order were rendered u/s 56(1)(a)(b) and Section 59 respectively of the Bombay Police Act. The learned counsel for the petitioner, Mr. Qazi, has submitted that this notice and order are not sustainable in the eye of law, for this order is beyond the jurisdiction of the Deputy Commissioner of Police who rendered it and according to the learned counsel if the order is given effect to, as it now stands, the very section, i.e. Section 56(1)(a)(b) on the basis of which the order is rendered would become opposed to Art. 19(1)(d) and (e) of the Constitution of India. The next point urged by the learned counsel is, though there is allegation in the notice as well as a statement in the impugned order to the effect that the witnesses are not coming forward to give evidence against the petitioner out of fear, it is not established that summons to the witnesses has ever been issued.

2. As regards the first point, what the learned counsel maintained was, though the notice mentions of the illegal activities of the petitioner in the localities of Imamwada, Patel chowk and nearby localities, the order purports to extern him from the whole of the Nagpur city and Nagpur rural. According to him, when his

activities, as noticed are confined to Imamwada, Patel chowk and nearby localities, the order externing him from whole of the Nagpur city and Nagpur rural area cannot be supported as when Section 56 is understood in the context of Art. 19(1)(d) and (e) of the Constitution, the same cannot yield an interpretation to the effect that the authority can extern a person from an area which is not covered by his activities. The learned counsel relied on the decision of Balu Shivling Dombé Vs. The Divisional Magistrate, Pandharpur and Another, in support of his aforesaid submissions. Para 9 of the decision would show that the effect of the order in that case was extended to three revenue districts of Solapur, Pune and Satara. This decision of course lays down that the section cannot be interpreted so as to enable the authority to extend the area of externment without reference to the purpose of externment.

3. The notice states that the activities of the petitioner is in the localities of Imamwada, Patel Chowk and nearby localities. The instances of his criminal activities are enumerated in the notice. The notice purports to proceed on the basis that the activities of the petitioner is in Imamwada, Patel Chowk and nearby localities.

4. Unless the area of externment has nexus and relevance with the impugned movements and the activities of the person concerned, the measure cannot pass the test of reasonable restriction of right under Art. 19(d) and (e) of the Constitution. The rights conferred under Art. 19 are subject to reasonable restriction, but the restriction imposed shall not be arbitrary. The aim and object of Section 56 is in the interest of the society in general; particularly to safeguard peaceful life. Of course, the measure should not be excessive or arbitrary. That is, the measure should not be in excess of what is required in the interest of the public life. The order should have reasonable relation to the object which the legislation seeks to achieve.

5. The very notice specifies three areas and the former two areas are admittedly within Nagpur city. The rural area certainly will answer the description of the area immediately near to Imamwada and Patel Chowk. When the objectionable and criminal activities of the petitioner is specifically stated to be in Imamwada, Patel Chowk and nearby localities, one cannot question the correctness of the order on the ground that its effect is throughout Nagpur city and also the nearby area. The very wording of Section 56 confers enough jurisdiction on the appropriate authority to pass an order of this kind. As is already noticed, whereas the case in Balu Shivling Dombé Vs. The Divisional Magistrate, Pandharpur and Another, is concerned, the order therein was extended to three revenue districts, the case in hand is not so. Therefore, the said case is thus distinguishable from the facts of the present case.

5A. The next contention of the learned counsel for the petitioner is that the witnesses are not yet been summoned to know whether they would abstain from the witness box out of fear of the petitioner. The impugned order states that the conclusions are reached as per the evidence tendered before the authority and

the reply filed by the respondents states that they were examined in camera proceedings before the appropriate authority. There is no denial of these facts. In such circumstances, one cannot say that the decision is not supported by any data whatsoever. It is necessary in this connection to note that the petitioner was issued with notice and was afforded enough opportunity before the order was rendered. Therefore, one cannot challenge the order on the ground of procedural irregularity or lack of fair play.

6. Mr. Qazi finally submitted that nine months has passed since the rendering of the order and therefore the effect of the externment order has to be confined to the said period. With due regard to the facts and circumstances revealed from the notice as well as from the order, this Court cannot interfere with the period fixed by the appropriate authority unless it is shown that it is highly disproportionable and unrealistic when considered in the context of the acts attributed to the petitioner. No data or even proper allegation in that regard is forthcoming. Therefore, the said submission by Mr. Qazi too cannot be sustainable. In the result, the petition fails and the same is dismissed.

7. Petition dismissed.