

(2018) 01 GUJ CK 0050
In the Gujarat High Court
Case No : 9090 of 2017

BABBU @ DABBU S/O RAMPAL YADAV APPELLANT
Vs
STATE OF GUJARAT & ORS. RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

Constitution of India, Article 21, Article 226 - Amendment of the Schedule - Power of High Courts to Issue certain writs
Bombay Police Act, 1951, Section

Citation : (2018) 01 GUJ CK 0050

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : KISHAN H DAIYA, MANAN MEHTA

Judgement

1. Challenge in the present petition preferred under Article 21 and 226 of the Constitution of India is the order of externment dated 10.08.2017

passed by the respondent authority in Externment Order No.RB/HDP/43/2017.

2. Heard the submissions of learned advocates appearing for the petitioner and learned APP for the respondent State.

3. The petitioner challenged the impugned order on various grounds that the externment order is passed without application of mind. According to

the petitioner, the show cause notice issued to the petitioner dated 18.11.2015 is without application of mind, wherein the externing authority has

mentioned that the petitioner should be externed from districts of Surat City, Surat Rural, Tapi, Bharuch, Narmada, Valsad and Navsari. No

reason has been given in the show cause notice why externment from these districts was proposed when the activities of the petitioner was

confined only to the district of Surat.

4. Another contention has been that no reason has been given either in the show cause notice or in the impugned order of the externing authority

why the petitioner was externed from so many districts mentioned above whereas he is resident of district Surat only. On all such grounds, learned

advocate appearing on behalf of the of the petitioner prays to quash the impugned order.

5. This argument has substance and it discloses non-application of mind by the externing authority for externing the petitioner from the districts

mentioned aforesaid. When even the externing authority chooses to direct externment from not only the district within which the person against

whom the order is passed is seen to be active, but also from contiguous districts, the reason why such externment order should operate even in

regard to such contiguous districts should be shown in the notice preceding the order as well as in the order. It must be so, for if a person confined

his activities to a particular district there would be no justification to extern him not only from that district, but from the adjoining district also unless

it is shown that circumstances warrant such a course. If there is such lacuna in the show cause notice as well as in the impugned order, it is not for

the court to fill up lacuna in the material noticed by the externing authority by assuming that there must be some reason for externing from

contiguous district also. That must be indicated by the externing authority. For this full bench decision in *Sandhi Mamad Kala v. State of Gujarat*

14 G.L.R. 384 and *Saiyad Husen Saiyad Umar vs. State of Gujarat*, 1985 (2) G.L.R. 1045 can be referred.

6. Per contra, learned APP submits that the competent authority has passed the impugned order after considering all the relevant materials and

statement of witnesses as well as the fact that the petitioner is involved in other criminal offences, so as to demonstrate that there is likelihood of

breach of peace in the area and therefore, the learned APP supported the impugned order and urged to dismiss the petition.

7. The externing authority under Section 56 of the Bombay Police Act has power to remove or extern a person not only from the district within

which the externing authority has jurisdiction, but also from the districts contiguous to his own district. The criteria for passing such an order is

provided for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the

satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such

circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of

such material in the order. The case of Vrajlal Mohanlal v. District Magistrate, Rajkot and another, reported in 3 G.L.R. 807 can be referred on

the point.

8. The petitioner has already been acquitted by judgment and order dated 12.4.2017 by the learned Judicial Magistrate First Class, Surat in

Criminal Case No.498 of 2017 which is arising from the FIR No.178/2016 registered with Limbayat police station on 20.10.2016 based upon

which impugned order is passed as late as on 10.8.2017. It is also to be recorded that externment of coaccused of the same FIR has already been

quashed and set aside by coordinate bench of this Court by judgment and order dated 4.10.2017 in Special Criminal Application No.6591 of

2017 and allied matters.

9. In view of the foregoing reasons, the petition is allowed. The order of externment dated 10.08.2017 passed by the respondent authority in

Externment Order No.RB/HDP/43/2017 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Interim relief made

absolute. Direct service is permitted.