

(1986) 01 GUJ CK 0006
In the Gujarat High Court

Babu Kishan Kahar

APPELLANT

Vs

Dy. Commissioner of Police and Another

RESPONDENT

Date of Decision : 09-01-1986

Acts Referred:

Bombay Police Act, 1951 — Section 56, 56(b), 60

Citation : (1986) 1 GLR 553

Hon'ble Judges : P.R. Gokulakrishnan, C.J.;S.B. Majmudar, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—The petitioner has come forward with this Special Criminal Application for issue of a writ of mandamus or any other appropriate writ to declare that the orders of externment, Annexures B and C are illegal, not and void and to set aside the same. Superintendent of Police, Baroda Division, Baroda, who is the externing authority, issued show cause notice u/s 56 of the Bombay Police Act to the petitioner herein stating that he has committed the following offences:

(1) You are head-strong man and are threatening the persons passing through Pani Gate and Haran-Khana Road and taking money from them. You are also threatening them to kill them.

(2) You are looting the money from the Shopholders and Galawala at the point of knife. You give them threats to kill in case they file the complaint in the police.

(3) You tell the people residing in the surrounding area of Haran-Khana Road to put your illicit liquor in their houses and on their refusing to do so you give threats to kill them at the point of knife.

2. After stating so, the show cause notice mentions that the externing authority proposes to remove the petitioner from the area of Baroda City and District N and contiguous Baroda Rural area, Kheda, Broach and Panchmahals Districts for a period of two years from the date of the intended order. It is further stated in the show cause notice that the petitioner commits offences punishable under

Chapter XVI and XVII of the Indian Penal Code and his victims do not come forward to give evidence in public by reason of apprehension on their part as regards the safety of their person and property, In this notice it is directed that the petitioner should present himself before the externing authority at 12-00 noon on 28-2-1984 for giving his explanation. According to Mr. Patel, the learned Counsel appearing for the petitioner, in spite of the fact that the petitioner was present before the externing authority at 12-00 noon on 28-2-1984, he was not heard and on the other hand, the externment order was passed only on 23-4-1985. On 23-4-1985, the Deputy Commissioner of Police Vadodara City has passed the externment order u/s 56(b) of the Bombay Police Act, 1951 stating that the petitioner is a head-strong, ferocious and dangerous person and commits offences in the area of Pani Gate, Kabar Maholla, Haran-Khana Road, Ranavas, outside Pani Gate, Mojulvada, Khahki Vada, and near Pani-darvaja. The externment order further states that the petitioner used force and violence since 1984 March and that he is committing the offences listed in the show cause notice which has been extracted in paragraph supra. The externment order further states that the externing authority has considered the explanation submitted by the petitioner and the evidence produced on his behalf. Finally the order states that the externing authority is satisfied that the petitioner Babu Kishan Kahar is a dangerous and desperate person and he is involved in the commission of acts of force and violence and punishable under Chapters XVI and XVII of the Indian Penal Code. With these observations, the externing authority externed the petitioner from the area of Vadodara City under the Commissioner of Police and from the contiguous Districts of Vadodara Rural, Kheda, Panchmahals and Bharuch for a period of two years. Against this order, the petitioner preferred an appeal u/s 60 of the Bombay Police Act, 1951, and the appellate authority modified the order of the externing authority by confirming the externment order to the area of Baroda City and Baroda Rural District and that too for a period of one year only. It is as against this order the present Special Criminal Application has been filed. Mr. Satish R. Patel, the learned Counsel appearing for the petitioner, submitted that the externment order has been passed mechanically without any application of the mind, that the period of offence has not been given in the show cause notice and that the area of the offence contradicts between the show cause notice and the externment order.

3. We have carefully gone through the records in this case. In the show cause notice the Superintendent of Police has stated that the area of the offence committed is only at Pani Gate and Haran-Khana Road, but in the externment order, apart from this Pani Gate, and Haran-Khana Road places like Kahar Maholla, Ranavas, outside Pani-gate, Mojulvada, Khatkivada, and near Pani-darvaja have been given as places where the petitioner carries on his illegal activities. In the show cause notice the period of offence committed by the petitioner is not at all given, but in the externment order it is stated that the petitioner is using force and violence since March 1984. Thus, it is clear that the externing authority, without giving show cause notice as regards the places

mentioned in the externment order and also the period of the offence committed by the petitioner, has come to the conclusion that the petitioner has carried on the illegal activities in the places mentioned in the externment order referred above and that too from March, 1984. Mr. S.R. Patel, the Learned Counsel appearing for the petitioner submitted that even though the petitioner appeared before the externing authority at 12.00 noon on 22-8-1984 he neither submitted any explanation nor examined any witnesses. Even the record shows that no witnesses have been examined in this case. Nevertheless in the externment order it is stated that the externing authority considered the expiation submitted by the petitioner and the evidence produced on his behalf. This is patently a mistake. This shows how the externing authority mechanically passed the preset externment order without any application of his mind to the facts of the case. The failure on the part of the externing authority to correctly state the area of the operation of the petitioner and also the period of his commission of the offence in the show cause notice vitiates the order of externment passed by the authorities concerned. Mr. Mehta, the learned Counsel appearing for the State, on the facts and circumstances of the present case, is not able to support the externment order. The externment order bristles with various irregularities and exposes the callous attitude of the externing authority in passing such an order mechanically without any application of the mind. When especially the liberty of a person is involved, it is the duty of, the externing authority to be careful and accurate before passing any such order. This is a typical case where the authorities concerned have mechanically passed such an arbitrary order which cannot be upheld by any court of law.

4. For all these reasons we are of the view that the order of externment passed both by the externing authority and by the Government which marked as Annexures B and C to the main Special Criminal Application have to be quashed. Accordingly the rule is made absolute.