

(2017) 01 BOM CK 0077

In the Bombay High Court

Case No : Criminal Writ Petition No. 1547 of 2016

Balaji s/o. Ganpati Chame

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

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

Citation : (2017) 1 AIRBomRCri 686 : (2017) ALLMRCri 719 : (2017) 1 BomCR(Cri) 689 : (2017) MCR 431 : (2017) 1 MhLJCrI 551

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. A.N. Irpatgire, Advocate holding for Mr. V.D. Godbharle, Advocate, for the Petitioner; Mr. S.G. Karlekar, APP, for the Respondent nos.1 to 4; Mr. Shrikant Y. Patil, Advocate assist to P.P, for the Appearing Party

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Writ Petition is filed by the petitioner, under Articles 226 and 227 of the Constitution of India, questioning the legality, propriety and correctness of the order dated 25.11.2016 passed by respondent no.2 in Appeal No. Pra.Kra. 2016/ Sapra/Pol-1/Haddpar/CR-118, thereby partly allowing the appeal of the petitioner restricting the externment order to the area of Latur District, and also against the externment order dated 06.09.2016 passed by respondent no.3, externing the petitioner from Latur and Osmanabad District.

4. The petitioner has assailed the impugned orders on the following grounds:

(i) The proposal submitted by the Sub-Divisional Police Officer and Enquiry Officer, Sub Division, Ausa, wherein out of 4 offences mentioned on the date of

filing such proposal, the petitioner was already acquitted from 3 offences.

(ii) The copies of the proposal submitted by the said authority and also other documents were not given to the petitioner as a result the petitioner could not properly defend himself.

(iii) Respondent no.3 hurriedly passed the order of externment in absence of the advocate of the petitioner and thereby principles of natural justice have been violated.

(iv) Respondent nos.2 and 3 did not take consideration that, out of 4 offences mentioned in the show cause notice, the petitioner was already acquitted from 3 offences.

(v) The order passed by respondent no.3 was excessive inasmuch as the petitioner was externed from Latur and Osmanabad District, however, the alleged offences in the show cause notice were registered within the jurisdiction of the Latur District.

(vi) In order to satisfy requirement of the provisions of Section 56 (1) (a) (b) of the Maharashtra Police Act, respondent no.3 did not record incamera statements of the witnesses.

(vii) One of the reasons assigned in the order of externment that, the petitioner is creating law and order situation by spreading communal hatred is dehors the grounds mentioned in the show cause notice. The notice was issued under Section 56 (1) (a) (b) of the Maharashtra Police Act, however, the aforesaid reason assigned would attract ingredients of Section 56 1(bb) of the Maharashtra Police Act.

(viii) Though the Appellate Authority modified the order passed by respondent no.3 and confined to the AUSA Police Station, situate in Latur District nevertheless the legal aspects raised by the petitioner have not been properly considered by the Appellate Authority.

(ix) The reply filed by the petitioner to the show cause notice before respondent no.3, was not considered by respondent no.3 while passing the order of externment.

5. Therefore, relying upon the aforementioned grounds, the learned counsel appearing for the petitioner submits that, the petition deserves to be allowed.

6. On the other hand, the learned counsel appearing for the respondent ? State, assisted by Advocate Mr. S.Y. Patil relying upon the reasons assigned in the impugned orders and also original record submits that, the Writ Petition is devoid of merits and the same may be rejected.

7. We have carefully considered the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent? State. With their able assistance, we have also carefully perused the pleadings

and grounds taken in the Petition, annexures thereto, original record made available for perusal by the respondents and also the reported judgments cited across the Bar by the learned counsel appearing for the petitioner. At the outset, it would be apt to reproduce herein below the provisions of Section 56 (1) (a) and (b) of the Maharashtra Police Act which reads thus:

56. Removal of persons about to commit offence

(1)

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to 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 an offence involving force or violence or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or

[Underlines are added]

8. Upon careful perusal of the aforesaid provisions, an order of externment can be passed against a person whose movements or acts are causing or calculated to cause alarm, danger or harm to person or property as provided in clause (a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence as provided in clause (b). An order of externment can also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, or Chapter XVI, or Chapter XVII of the Indian Penal Code. But in addition to the above, the concerned Officer, who is dealing with externment proceedings, should be of the opinion that the witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.

9. We have carefully perused the order passed by respondent no.3 from the original record, it appears that respondent no.3 had made reference to the proposal submitted by the concerned Police Officer. In the said proposal, there is mention of 4 offences. Those crimes numbers are also mentioned in the show cause notice issued to the petitioner. Which are as under:

1. Crime No.6080/2012 registered with Ausa Police Station, for the offence punishable under Section 65 (a) (e) of the Maharashtra Police Act.
2. Crime No.6004/2013 registered with Ausa Police Station, for the offence punishable under Sections 65 (a) (e) of the Maharashtra Police Act.
3. Crime No.6038/2013 registered with Ausa Police Station, for the offence

punishable under Section 65 (a) (e) of the Maharashtra Police Act.

4. Crime No.169/2015 registered with AUSA Police Station for the offences punishable under Sections 307, 326, 143, 147, 148 and 149 of the Indian Penal Code, under section 135 of the Maharashtra Police Act and under section 3/25 of the Indian Arms Act.

10. Pursuant to the show-cause notice issued to the petitioner, the petitioner did file reply stating therein that out of said four offences, offences mentioned at serial nos.1 to 3, he is already acquitted by the Competent court even before initiating proposal of his externment by the concerned Police Officer. The petitioner has also placed on record copies of the judgment and orders passed by the concerned Court in those cases. While passing the impugned order, respondent no.3 adverted to the contention of the petitioner that the petitioner is acquitted from the offences mentioned at serial nos. 1 to 3, however, in the impugned judgment, it is stated that the petitioner is acquitted from the offences mentioned at serial nos.1 and 2, however, other two crimes at serial nos.3 and 4 are pending. Therefore, it clearly emerges that respondent no.3 did not consider assertion of the petitioner, which was supported by the copy of the judgment and order placed on record that the petitioner stands acquitted even from the crime No.6038/2013 [mentioned at serial no.3] registered with AUSA Police Station for the offences punishable under Section 65 (a) (e) of the Maharashtra Police Act.

11. Upon careful perusal of the discussion in the orders passed by the respondent no.3, there is no discussion in the said order as to how the offences registered from the year 2012 till 2015 are relevant for the purpose of passing the impugned order. In fact, from those alleged offences the petitioner stands acquitted even prior to initiating proposal for externment by the Police Officer, therefore, there is no live link between the said offences from which the petitioner stands acquitted and the impugned order passed by respondent no.3. Be that as it may, there is no discussion in the impugned order passed by respondent no.3 that as a matter of fact he recorded in-camera statements of the witnesses and they deposed about the alleged illegal activities of the petitioner.

12. The Division Bench of the Bombay High Court [at Principal seat] in the case of Yeshwant Damodar Patil v. Hemant Karkar, Dy. Commissioner of Police & another, 1989 (3) Bom.C.R. 240 had occasioned to consider the scope of provisions of Section 56 [1] [a] and [b] and also the mandate of provisions of Section 59 of the Bombay Police Act. It would be gainful to reproduce herein below para 3 of the said judgment:

3. Section 56 (i) of the Bombay Police Act visualises three situations in which the order of externment could be passed by the designated officer. We will, however, ignore, for the purpose of the disposal of this petition the third type of situation and only analyse the two situations which are covered by Clauses (a) and (b) of section 56 (i) of the Act. An order of externment can be passed against a person

whose movements or acts are causing or calculated to cause alarm, danger or harm to person or property. That is what is provided in clause (a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence. It is so provided in the first part of clause (b) of section 56 (i) of the Act. An order of externment can also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, of Chapter XVI, or Chapter XVII of the Indian Penal Code. This is so provided in the latter part of clause (b) of section 56 (i) of the Act. But it is not enough that these conditions alone are satisfied. In addition to this the designated officer should be of the opinion that witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.

[Underlines added]

13. The aforementioned provisions make it abundantly clear that in order to fulfil mandate of the provisions of Section 56 (1) (b), the designated officer has to record his opinion that witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.

14. Yet in another exposition of law in the case of Balu v. The Divisional Magistrate, Pandharpur, 1969 Mh.L.J. 387, while appreciating the facts involved in that case, this Court held that extending the area of externment not only outside Pandharpur Taluka but to the Districts of Solapur, Pune and Satara is illegal since the alleged activities against the petitioner therein, as stated in the show cause notice, were confined to the Pandharpur City.

15. As already observed in the foregoing paragraphs, it does not appear from the discussion in the order passed by respondent no.3 that, as a matter of fact he recorded in-camera statements of the witnesses and before passing the order of externment, he formed opinion that the witnesses are not willing to come forward to give evidence in public against the petitioner. It further appears that there is no discussion in the impugned order why the externment of the petitioner is necessary from Osmanabad District when the alleged activities/offences against the petitioner being Crime No. 169/2015 is registered with the Ausa Police Station.

16. In the light of the discussion in the foregoing paragraphs, an inevitable conclusion can be drawn that there was non application of mind of the concerned Police Officer at the time of initiation of proposal for externment of the petitioner inasmuch as though the petitioner was already acquitted from the three offences mentioned at serial nos.1 to 3, it was shown in the said proposal that said offences are pending. Respondent no.3 though made a casual reference to the reply filed by the petitioner making reference of crimes mentioned at serial nos.1

to 3, nevertheless did not take consideration the contention of the petitioner that even the petitioner stands acquitted from the offence, which is mentioned at serial no.3 i.e. Crime No.6038/2013 even before initiating the proposal of his externment.

17. It is true that the Appellate Authority modified the order passed by the respondent no. 3 inasmuch as the order of externment is confined to the limits of Latur District. However, the Appellate Authority had not taken consideration the contention of the petitioner that while passing the impugned order, the mandate of provisions of Section 56 (1) (b) has not been adhered to/followed by respondent no.3. Therefore, we are of the considered view that the impugned order passed by respondent no.2 is not in conformity with the mandate of the provisions of Section 56 (1) (b) of the Maharashtra Police Act and also suffers from non assigning the detailed reasons and hence call for interference under extra ordinary writ jurisdiction. Hence the following order :

ORDER

(i) The Writ Petition is allowed. The order dated 25.11.2016 passed by respondent no.2 to the extent of confirming the order of externment from the Latur District passed by the respondent no.3, and also the order dated 06.09.2016 passed by respondent no.3 stand quashed and set aside.

(ii) Rule made absolute in the above terms. The Writ Petition stands disposed of. No order as to costs.