
(2013) 09 BOM CK 0222

In the Bombay High Court

Case No : Criminal Writ Petition No. 270 of 2013

Balu @ Suresh Narayan Dhanorkar

APPELLANT

Vs

Secretary (Special), Home Department and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3890

Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J

Bench : Division Bench

Advocate : A.S. Mardikar, for the Appellant; M.K. Pathan, APP for State/
Respondents 1 to 6, for the Respondent

Judgement

Z.A. Haq, J.—Heard Shri A.S. Mardikar, the learned Advocate for the petitioner and Shri M.K. Pathan, the learned Additional Public Prosecutor for the State/respondents 1 to 6. Rule. Rule made returnable forthwith.

2. The petitioner has challenged the order passed by the Sub-Divisional Magistrate, Warora dated 9th April, 2013 externing the petitioner from Chandrapur, Yavatmal, Wardha, Nagpur, Gadchiroli and Bhandara districts for 2 years. The petitioner has also challenged the order passed by the Secretary (Special), Home Department, Government of Maharashtra rejecting the appeal filed by the petitioner and confirming the order passed by the Sub-Divisional Magistrate, Warora.

3. The case of the petitioner is that he belongs to a political party and is a social-activists and participated in various political gatherings and agitations, because of which the petitioner is arrayed as an accused in various cases. According to the petitioner he contested the elections of Legislative Assembly and lost by a narrow margin and to counter his popularity the petitioner is involved in criminal cases which are being used against the petitioner in the externment proceedings.

4. Mr. Mardikar, the learned Advocate for the petitioner, has submitted that the learned Sub-Divisional Magistrate has taken into consideration 23 prosecutions

against the petitioner for passing the impugned orders but in 9 prosecutions out of 23 prosecutions the petitioner is acquitted. According to the petitioner the prosecutions against the petitioner are for the offences which were in respect of agitations in public interest and those cannot be considered as of such a nature so as to pass orders of externment of the petitioner from 6 districts. Shri Mardikar has further submitted that in any case, there is no reason or justification for externing the petitioner from 6 districts and the impugned orders, to that extent, is excessive and unsustainable in law.

5. Shri Pathan, the learned Additional Public Prosecutor for State/respondents 1 to 6, has supported the impugned orders. According to the respondents during the period from 2006 to 2008 12 offences were registered against the petitioner, the proposal for externing the petitioner was moved by the respondent No. 3 Police Superintendent on 28th May, 2008. The respondent No. 5 - Sub-Divisional Police Officer, Warora was appointed as an Enquiry Officer as per the provisions of Section 59 of the Bombay Police Act who submitted the enquiry report on 30th September, 2008 to the respondent No. 2 Sub-Divisional Magistrate, Warora. Then enquiry report dated 4th February, 2011 is submitted by the respondent No. 5 to the Sub-Divisional Police Officer, Warora and the petitioner was given sufficient opportunity to put forth his defence and after hearing, the matter was closed for orders on 2nd September, 2011. According to the respondents, in the meantime, the respondent No. 4 Police Officer, Bhadravati filed report dated 5th February, 2011 stating that additional 8 offences were registered against the petitioner. Again the matter was sent for enquiry to the respondent No. 5, who submitted his report on 17th January, 2012 and after granting hearing to the petitioner the impugned order is passed.

6. We have considered the submissions of the respective parties. We are of the considered view that the impugned orders are unsustainable in law as there is a complete non-application of mind by the learned Authorities while passing the orders. The learned Authorities have taken into consideration the prosecutions which on the date of the impugned orders were not pending against the petitioner and the petitioner is acquitted in 9 out of 23 prosecutions taken into consideration by the Authorities for externing the petitioner from 6 districts. The petitioner has stated in para 10 of the writ petition that he had filed an application dated 16th March, 2013 before the learned Authorities for permission to file documents and the petitioner had filed the copies of the judgments in respect of the cases shown at serial Nos. 1, 2, 4, 5, 6, 8, 12 and 23 in the list of cases. It is clear that the Authorities have taken into consideration the material which could not have been taken into consideration for passing orders of externment against the petitioner when the petitioner is acquitted in 9 cases and taking into account those 9 cases for passing the orders against the petitioner show non-application of mind which vitiates the impugned orders. The crimes are registered against the petitioner at police stations Bhadravati, Warora, Ramnagar, Shegaon and Majri. It shows that the alleged activities of the petitioner were in Chandrapur district. The Authorities have not given any reason for externing the

petitioner from 5 other districts and to that extent we find that the impugned orders are excessive and unsustainable in law.

7. The impugned orders are liable to be quashed. Rule is made absolute in terms of prayer clause (i).

In the circumstances of the case, parties to bear their own costs.