
(1983) 08 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 310 of 1983

Barku Chendha Datir

APPELLANT

Vs

Sub-Divisional Magistrate and Another

RESPONDENT

Date of Decision : 22-08-1983

Acts Referred:

Bombay Police Act, 1951 — Section 56, 59

Citation : (1983) 2 BomCR 761

Hon'ble Judges : S.J. Deshpande, J;B.C. Gadgil, J

Bench : Division Bench

Advocate : R.M. Agrawal, for the Appellant; B.D. Kamble, for Respondents 1 and 2, for the Respondent

Judgement

B.C. Gadgil, J.—The petitioner against whom an order u/s 56 of the Bombay Police Act has been passed has filed this petition challenging the legality, validity and correctness of that order.

2. The petitioner is a resident of village Sitane in Malegaon Tehsil. He is the Sarpanch of the Village Panchayat for about three years and is also the Chairman of the Milk Producing Society. On 16-1-1982, the Sub-Divisional Police Officer, Malegaon, issued a notice to the petitioner u/s 59 of the Bombay Police Act informing the petitioner that the said Sub-Divisional Police Officer had been authorised by the Sub-Divisional Magistrate to hold an inquiry and that in accordance therewith the notice had been issued. The notice further states that an action is intended to be taken for externment of the petitioner from Nasik, Dhule, Jalgaon and Ahmednagar Districts on account of certain averments and allegations mentioned in the accompaniment to the notice. The said accompaniment states that three cases were pending against the petitioner in the Court, while three cases were pending with the police for investigation. It also states that in spite of these criminal matters, petitioner did not improve his conduct and behaviour and as such three chapter cases have been initiated against him. It is then averred that the petitioner has ben committing offences in

spite of the fact that he has been convicted previously. The petitioner appeared before the Sub-Divisional Magistrate and filed his written reply stating therein that he has been acquitted in the three criminal cases which were pending before the Magistrate and that the chapter cases mentioned in the notice have been dropped. As far as the criminal cases pending investigation are concerned, he has alleged that those cases are false and that he hopes to get an acquittal. In the reply, the petitioner, further alleged that he would like to cross-examine the witnesses that would be examined against him and also intend to lead evidence of certain witnesses. The record of the said inquiry has not been made available to us at the time of the hearing of this petition, though Shri Kamble for respondents Nos. 1 and 2 has taken time for this purpose. Shri Agrawal has made a statement that after the above written reply was filed, the petitioner examined nine witnesses and that no one was examined against him by the other side.

3. These inquiry papers were sent to the Sub-Divisional Magistrate. On 15-7-1982, he has issued the notice (page 35) again stating therein about the pendency of three criminal cases in the Court and two criminal cases at the investigation stage. The notice called upon the petitioner to appear and to put in his say as to why he should not be externed. The petitioner filed his reply (page 36). Thereafter, the learned Sub-Divisional Magistrate has passed an order (Page 23) dated 31-1-1983 externing the petitioner from Nasik District for a period of one year. It is this order that is being challenged before us.

4. The grievance of Shri Agrawal for the petitioner is that the impugned order is bad on two counts. In the first instance, he submitted that there was no material before the Sub-Divisional Magistrate to come to a conclusion about the existence of the facts that are necessary for passing any order either u/s 56(1)(a) or u/s 56(1)(b). It is for verifying this submission that the record of the inquiry was necessary to be produced before us and as stated earlier, the Public Prosecutor has not done so, though he has taken time. In the absence of such records, there would be much substance in the contention of Shri Agrawal that there was no material which would have enabled the Sub-Divisional Magistrate to pass the order of externment in question.

5. The other contention of Shri Agrawal is that the various averments made in the notice issued either by the Sub-Divisional Police Officer or by the Sub-Divisional Magistrate do not make out a case for passing any order. All that has been stated in both the notice is about the pendency of some cases before the Magistrate and some before the investigation agency. There is also a reference to the pendency of chapter cases. We have already observed that this criminal cases before the Magistrate have ended in an acquittal and the chapter proceedings have been dropped. We are told that two or there cases which were pending investigation at the time when the notice had been issued are at the stage of trial before the Magistrate. However, there is nothing to show as to what are the allegations made in these cases and hence, it will not be possible for the Government to contend that the movements or the acts of the accused were

causing or calculated to cause alarm, danger or harm as contemplated by section 56(1)(a). Similarly, the details of the Criminal cases that were previously pending before the Judicial Magistrate or which are now pending before him do not pertain to offences under Chapters XII, XVI or XVII of the Indian Penal Code. It is only if the offences are under these chapters and if the witnesses are not willing to come forward to give evidence that the Sub-Divisional Magistrate can pass an order u/s 56(1)(b).

6. The result, therefore, is that the impugned order is liable to be set aside. The rule is made absolute by setting aside the impugned order of externment dated 31-1-1983.