

(2024) 01 BOM CK 0069

In the Bombay High Court

Case No : Criminal Writ Petition No.794 Of 2023

Bhujang

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 22-01-2024

Acts Referred:

Maharashtra Police Act, 1951 — Section 56, 56(1)(b)
Indian Penal Code, 1860 — Section 379

Citation : (2024) 01 BOM CK 0069

Hon'ble Judges : M.W. Chandwani, J

Bench : Single Bench

Advocate : S.G. Karmarkar, Alap Palshikar

Final Decision : Disposed Of

Judgement

M.W. Chandwani, J

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioner challenges the order of exeternment dated 29.08.2023 passed by the respondent no.3 under Section 56(1)(b) of the Maharashtra Police Act (for short, 'the said Act'). The petitioner also lays challenge to the order dated 12.10.2023 passed by the respondent no.2 in Appeal No.47/2023 dismissing the appeal against the order dated 29.08.2023.

The necessary facts, which gives rise to the present petition, can be stated as under:

3. A proposal was initiated by Police Station, Kanhan for externment of the petitioner under Section 56 of the said Act, inter alia, alleging that the petitioner is involved in various criminal activities particularly theft of coal. Number of criminal cases have been registered against him at Police Station, Kanhan and he is continuously indulging in the criminal activities. Nobody comes forward to

depose against him. After considering proposal and in-camera statements as well as findings of the enquiry, the respondent no.3 passed impugned order thereby externing the petitioner and directing him to remove himself from Nagpur district for a period of six months. The petitioner made an unsuccessful attempt by filing appeal before the respondent no.2.

The orders of respondent no.3 externing the petitioner as well as dismissing the appeal are under challenge in this writ petition.

4. Though there are other grounds raised in the petition, Shri Karmarkar, learned counsel for the petitioner, mainly pressed on the ground that there is no live link between last crime relied by the respondent no.3 in the order of externment. There is inordinate delay in passing the externment order after proposal was received by the respondent no.2. Therefore, the live link is nabbed between the last crime and the order of externment.

5. Per contra, Shri Palshikar, learned Additional Public Prosecutor for respondents, vehemently submits that considering the history of the petitioner as well as recent crime registered against him the respondent no.3 has passed externment order. The petitioner was involved in stealing coal of Western Coalfield Limited. In spite of registration of offence, he is continuously indulged in said crime. Even preventive action was also taken but in vain. Therefore, authority proceeded to extern the petitioner. Hence, sought rejection of the petition.

6. Perusal of externment order goes to show that the respondent no.2 has relied on nine crimes. All are registered under section 379 of the Indian Penal Code. The last crime i.e. Crime No.131/2022 relied by the authority was registered against the petitioner on 13.03.2022 whereas the order of externment has been passed almost after one year and four months.

7. At the outset it is to be mentioned that the object and there cannot be any manner of doubt that an order of externment is an extraordinary measure. Purpose of externment is to offer protection to the society or people of the locality from constant fear to their life or property by restricting the movements and place of residence of a person who created terror in their mind. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. Therefore, there must be objective material on the record on the basis of which the competent authority must record its subjective satisfaction.

8. The reasons for externment of the petitioner is that he is continuously indulged in commission of crime and no witness is coming forward to depose against him. Externment order dated 29.08.2023 shows that the recent crime which was relied is of 13.03.2022 being stale material having no live link. The

stale material have been considered for subjective satisfaction by the authority.

9. I have gone also through the statement of witnesses 'A' and 'B'. None of them stated any specific incident. All they said about the alleged crimes, registered against the petitioner, which are almost more than one year old, therefore, there is no live link between the alleged offence and the object which was sought to be achieved by the impugned order of externment.

10. The case in hand is clear example of non-application of mind by the authority. The live link between the alleged offence and avowed purpose of externment is snapped, which vitiate the externment order.

11. In view of above, the order impugned externing the petitioner passed by the respondent no.3 on 29.08.2023 and confirmed by the respondent no.2 on 12.10.2023 are hereby quashed and set aside

12. Rule made absolute in above terms. The petition stands disposed of.