
(2013) 12 BOM CK 0129

In the Bombay High Court

Case No : Criminal Writ Petition No. 3950 of 2013

Bilal Gulam Rasul Patel

APPELLANT

Vs

Divisional Magistrate

RESPONDENT

Date of Decision : 21-12-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 2161

Hon'ble Judges : S.C. Dharmadhikari, J; Revati Mohite Dere, J

Bench : Division Bench

Judgement

Revati Mohite Dere, J.—Heard Mr. Amin Solkar, the learned Counsel for the petitioner and Ms. Usha Kejriwal, learned A.P.P. for the State Rule. Rule made returnable forthwith, with the consent of the parties.

2. The petitioner, by way of this petition, has challenged the order of externment dated 15th. April, 2013 passed by the Sub-Divisional Magistrate, Thane Division, Thane, externing him from the limits of Thane, Pune, Nashik, Mumbai City, Mumbai Suburban Districts for a period of one year. Although the petitioner has not preferred an appeal against the said order of externment, we have entertained this petition only in view of the fact that the impugned order of externment dated 15th April, 2013 was informed to the petitioner at his residence as late as 27th September, 2013 and immediately thereafter in October, this petition has been filed and is pending since then. In view of the peculiar facts of this case, as an exception, we have entertained this petition, although an alternate efficacious remedy was available to the petitioner by way of an appeal.

3. At the outset, we may note that the petitioner in the year 2010 was externed from the limits of Thane, Brihan Mumbai, Mumbai Suburban and Raigad Districts by an order dated 18th February, 2010 for a period of two years by the Externing Authority. The said order came to be challenged by the petitioner in this Court by way of a petition, being Criminal Writ Petition No. 853/2010. This Court vide order dated 21st October, 2010 was pleased to quash and set-aside the said

order of externment on the ground that in the show-cause notice issued to the petitioner and in the order of externment, there was no material to show that on account of fear, the witnesses were not coming forward to give evidence in public, as against the proposed externee.

4. Coming back to the facts on which the present petition is filed, it is stated by the petitioner, that he learnt under the Right to Information Act, that the respondent No. 3 had sent a proposal to the respondent No. 2 for externing him along with his report dated 31st December, 2011. It is stated that in the said report, besides relying on the cases which were grounds set out in the earlier externment order, there was a reference to the in-camera statements. It is stated that after considering the said proposal based on the report dated 31st December, 2011, the respondent No. 3 issued a letter dated 20th March, 2012 informing the petitioner about reconsideration of the earlier externment proceedings against him. According to the petitioner, he was again served with a show-cause notice dated 28th May, 2012, which was issued by respondent No. 2, wherein, the very same cases were listed, on the basis of which the earlier order of externment was passed and which came to be quashed by this Court vide order dated 21st October, 2010. The petitioner by the said show-cause notice was informed, that it was proposed to extern him from the limits of Thane, Brihan Mumbai, Raigad, Nashik and Ahmednagar for a period of two years u/s 56 of the Bombay Police Act, 1951 (hereinafter referred to as "the said Act").

5. The petitioner has stated that he appeared before the respondent on 8th June, 2012 and participated in the inquiry proceedings. Petitioner states that on 27th September, 2013, some police officials came to his residence and informed him that an order dated 15th April, 2013 was passed by the Sub-Divisional Magistrate i.e. the Externing Authority, externing the petitioner from the limits of Thane, Pune, Nashik, Mumbai City and Mumbai Suburban Districts for a period of one year u/s 57 of the said Act.

6. The learned Counsel for the petitioner Shri Solkar contended that the in-camera statements recorded are bereft of details with regard to time, month, year, etc., thereby depriving the petitioner of an opportunity to explain the allegations made against him in the show-cause notice. He also contended that the order of externment, externing the petitioner from Pune District apart from other Districts, did not find place in the show-cause notice, issued to the petitioner, thereby not only causing prejudice to him but also depriving him of an opportunity to counter the same. Mr. Solkar further urged that the show-cause notice was passed u/s 56 of the said Act, whereas, the impugned order externing the petitioner has been passed by the Externing Authority u/s 57 of the said Act. It was also contended that not a single case was registered as against the petitioner, after quashing of the last externment order by this Court vide order dated 21st October, 2010, and that, there was an inordinate and unexplained delay between submission of the report to the respondent No. 1 and passing of the impugned order, thereby, defeating the very purpose of initiation of

externment proceedings.

7. Per contra, the learned A.P.P. Ms. Usha Kejriwal submitted that the impugned order has been passed taking into consideration the prejudicial activities of the petitioner. She pointed out that there were thirty-nine cases which were registered as against the petitioner at Kashimira, Bhayandar and Mira Road Police Stations in Thane District and that chapter and externment proceedings were also initiated as against the petitioner and therefore, considering the activities of the petitioner, it was necessary to extern him from the Districts from which he is sought to be externed.

8. We have perused the petition along with the annexures thereto and have given our anxious consideration to the submissions advanced by the parties.

9. A perusal of the show-cause notice shows, that the two in-camera statements which were recorded of the witnesses, "A" and "B", do not reflect the time, date, year and place, etc. when the incidents are alleged to have occurred. As regards the in-camera statement of witness "A", the said witness has stated that about 4 to 5 months prior, the petitioner had called him to his Kashigaon Office and threatened him not to do his business there and if he did, he would have to pay hafta to one Bhim Thapa for conducting his business in Kashigaon. It is further stated by the said witness that on his refusal to pay hafta, he was assaulted. He has further stated that due to the fear of the petitioner, he did not approach the Police Station. As regards the in-camera statement of witness "B", the said witness has stated that the incident occurred 4 to 5 months ago, when he was called by the petitioner to his Kashigaon Office and hafta came to be demanded from him, for carrying on his business and on his refusal to pay, he was assaulted by the petitioner and by 4/5 persons. He has further stated that on account of the fear of the petitioner, he did not lodge any complaint as against the petitioner and others.

10. A perusal of the in-camera statements of witnesses "A" and "B" clearly show, that there is no mention in the said statements with regard to the date, time, month, year, etc. when the incidents allegedly took place. The allegations in the said in-camera statements are vague, and do not give any definite instance of the incident, thereby depriving the petitioner of an opportunity to explain the allegations made against him in the show-cause notice.

11. It is pertinent to note, that a show-cause notice which is issued to the proposed externee, before an order of externment is passed, is issued in order to enable him to meet the allegations made against him by the witnesses. This Court in *Kishor Rajaram Durge v. Deputy Commissioner of Police & Ors.* 2004 (Supp) Bom. C.R. 481: [2003 ALL MR (Cri) 2023], in the facts of that case, while interpreting the provisions of Section 56, held that, mere mention of vague allegations, without giving any definite details as to the incident, deprived the petitioner therein from meeting the said allegations made against him. This Court in the case of *Kishor Durge* [2003 ALL MR (Cri) 2023] (supra) in Para 7, held as

under:

7. A perusal of the show cause notice shows that the in camera statement of witness "A" was recorded which indicated that the witness has stated that the petitioner had assaulted the witness on a trifle reason, about one year ago, that about three months ago, the petitioner had demanded money from him and had threatened to beat him if the money was not paid. However, bare perusal of these statements would indicate that there is no mention as to the place, date, time, etc. when the incident alleged to have occurred. There is also no mention of exact date, month and year. The mention is only about one year ago. Apart from this, there is not mention of any specific place, where these incidents occurred.

As regards the in-camera statement of witness "B", the witness has stated that the incident occurred about six months ago, when he was threatened by the petitioner to give money. Here again, there is no mention as to the place, date, time and months of the incident.

Thus, it is clear that the in-camera statements of the two witnesses, which are mentioned in the show cause notice, are vague allegations, without giving any definite details as to the incident and thereby the petitioner was deprived of meeting out those allegations made against him.

12. Therefore, in the facts of the present case, it can be said that the petitioner was deprived of an opportunity to explain the allegations made against him in the show-cause notice by witnesses "A" and "B", as they were bereft of details with regard to date, time, month, year, etc., thereby rendering the order of externment, illegal.

13. The other ground on which the order of externment also ought to be quashed, is that the show-cause notice dated 28th May, 2012 records that why the proposed externnee i.e. the petitioner ought not to be externed for a period of two years from the Districts of Thane, Brihan Mumbai, Raigad, Nashik and Ahmednagar, whereas, the order of externment passed by the Externing Authority, externing the petitioner is from Thane, Pune, Nashik, Mumbai City and Mumbai Suburban. It is pertinent to note, that although the show-cause notice includes the Districts of Thane, Brihan Mumbai, Raigad, Nashik and Ahmednagar from where the proposed externnee is sought to be externed, the order of externment which has been passed, externs him from Pune District, which was not incorporated in the show-cause notice dated 28th May, 2012. We are of the opinion, that the inclusion of Pune District in the order of externment dated 15th April, 2013, which was not the Districts in the show-cause notice issued to the petitioner, clearly shows non-application of mind by the Externing Authority, thereby vitiating the order of externment. We may note, that the proposed externnee cannot be sprung with a surprise, by including districts which were not proposed in the show-cause notice, thereby depriving the petitioner of an opportunity of replying to the same.

Considering the peculiar facts and circumstances of the case, we have entertained this petition, as an exception, instead of directing the petitioner to avail of an alternative efficacious remedy, which is an appeal before the State Government. In view of the findings recorded by us hereinabove, and without going into the other submissions canvassed before us, the impugned order of externment is quashed and set-aside and Rule is made absolute in terms of prayer clause (a), which reads thus:

(a) To call for the record and proceedings and after perusing the same to quash and set aside the Externment Order No. TD/PRS/T4/Externment/SR-45/11, dated 15.4.2013 passed by Respondent No. 1 against the Petitioner.