

(2024) 09 BOM CK 0002

In the Bombay High Court

Case No : Criminal Application No. 1190 Of 2024

Deepak S/o Kailas Aglave

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-09-2024

Acts Referred:

Constitution of India, 1950 — Article 19
Indian Penal Code, 1860 — Section 34, 143, 144, 147, 148, 149, 323, 324, 336, 337, 354, 354D, 427, 452, 504, 506
Arms Act, 1959 — Section 4, 25
Maharashtra Police Act, 1951 — Section 55, 56, 56(1)(a), 56(1)(b), 57, 57A, 59

Citation : (2024) 09 BOM CK 0002

Hon'ble Judges : S. G. Mehare, J

Bench : Single Bench

Advocate : M.P. Kale, S.P. Sonpawale

Final Decision : Allowed

Judgement

S. G. Mehare, J

1. Rule. Rule is made returnable forthwith and the petition was heard finally with the consent of respective counsels.

2. The petitioner has impugned the externment order of Sub Divisional Magistrate Parbhani, dated 19.03.2024 passed in Case No.2024/BPA/XTN/CR-286 and the order of the Divisional Commissioner Aurangabad, Chhatrapati Sambhajinagar passed in Appeal No.2024/GA/D-1/POI-1/Externment/CR-48 dated 28.05.2024.

3. As per the prosecution, the first crime against the applicant for the offences punishable under Sections 323, 324, 504, r/w 34 of the Indian Penal Code was registered on 30.1.2016. The second was registered on 25.09.2020 for the offences punishable under Sections 452, 504 and 506 of the Indian Penal Code. Third was registered on 03.01.2021 for the offences punishable under Sections 336, 337, 427, 504, 506, r/w 34 of the Indian Penal Code. The fourth crime was

registered on 04.01.2021 for the offences punishable under Sections 452, 427, 504, 506, 143, 144, 147, 148, 149 of the Indian Penal Code r/w 4/25 of the Arms Act, and the fifth was registered on 22.01. 2022 for the offences punishable under Sections 354, 354-D, 504 and 506 of the Indian Penal Code. The chapter case was registered arising out of the fourth crime in which has been acquitted on 23.08.2023.

4. The Police Station Officer, Navamondha, Prabhani submitted an externment proposal to the Sub Divisional Magistrate, (S.D. M. for short) Prabhani, through the Superintendent of Police. The S.D.M. authorized and directed the Sub Divisional Police Officer, Parbhani to hold the inquiry. He issued a show cause notice to the petitioner on 06.06.2023, giving details of the above crimes, and the contents of the camera statements of two witnesses.

5. The petitioner explained that all the cases registered against him are pending. He has not been convicted of any crime. He had not created terror in the vicinity. He cannot be externed from the entire District because the crimes are registered in Navamondha Police Station only. He is a social worker and educating. The cases registered against him were politically motivated. He is the breadwinner of his family. He is peace loving person. Due to his act there was no apprehension to the witnesses to the property of the persons. The order externing him from the entire district is excessive and harmful to him.

6. The learned counsel for the petitioner has argued that there was no sufficient material before the Authority to curtail his liberty enshrined in Article 19 of the Constitution of India. Both authorities passed the mechanical orders without application of mind. The conditions of Section 56 (1)(a) and (b) of the Maharashtra Police Act have not been followed. There was no live link between the crimes registered and the dates of initiating the proceedings. He submits that both impugned orders lack subjective satisfaction from objective material. He submitted that the order of the Commissioner was without reason. Nowhere in a show cause notice, it was mentioned that the witnesses were not coming forward to depose against him. The Authority did not personally meet and verify the truthfulness of the apprehension of camera witnesses. The offences against the petitioner were stale. The Offences were registered only in Navamondha Police Station. However, the Authorities illegally externed him from the entire Parbhani District. He did not create terror in the vicinity. Hence, there was no reason for the camera witness to state that they apprehended him to lead the evidence publicly. To bolster his arguments, relied on the case of Hussain @ Bantu Mohammad Bashir Vs. Deputy Commissioner and Others, AIR Online 2023 BOM 1803. He further relied on the case of Pappu @ Akhilesh Shivshankar Mishra Vs. State of Maharashtra and Others, 2017 1 ABR (CrI) 377 and argued that care must be taken to ensure that terms of Section 56 and 59 of the Maharashtra Police Act are strictly complied with and the slender safeguards with those provisions offer be made available to the externee. He prayed to allow the petition.

7. Per contra, the learned APP producing the record of the original proceeding has vehemently argued that the applicant was consistently involved in the crimes. He had created a terror in the locality. The objective material before the authorities was sufficient to record the subjective satisfaction. The repeated involvement of the applicant itself shows that his activities and movements were causing alarm, danger and harm to the public and property. There were reasonable grounds for believing that the accused was engaged and was about to engage in the commission of an offence involving force and violence. The externment order was based upon the camera witnesses. The Authority has correctly formed the opinion that the witnesses are not willing to come forward to give evidence in public against the applicant because of apprehension about his past as regards the safety of their person and property. The case laws relied upon by the applicant are based on different facts. There was a live link between the offences registered against the applicant and the date of initiating the action under Section 56 of the Maharashtra Police Act.

8. The record produced before the Court appears incomplete. It does not contain the statements of the camera witnesses. However, the copy of the proposal sent to the Sub Divisional Police Officer through the Superintendent of Police shows that the statements of two camera witnesses were recorded. One incident was in January 2023, and another was around February 2023.

9. So far as the allegations of no witnesses coming forward, the camera statements of the witnesses were recorded. The Bombay High Court, in the case of Hussain @ Bantu Mohammad (supra), has reiterated the law laid down by the Hon'ble Supreme Court in Pandrinath Shridhar Ragnekar Vs. Deputy Commissioner of Police, State of Maharashtra, 1973 SCC 1 372. The Hon'ble Supreme Court in that case held that although section 56 makes a serious inroad on personal liberty, such restraints have to be suffered in the large interest of the society. An externnee is entitled before the externment order is passed under Section 56 to know the material allegations against him and the general nature of those allegations. The externnee is not to be informed of the specific particular related to the material allegations for the reason that full and complete disclosure of particulars, such as a requisite in an open prosecution, will frustrate the very purpose of the externment proceeding. Further, the case of Bhagubai Dullabhbai Bhandari Vs. District Magistrate Thana and others, AIR 1956 SC 585, was referred. In that case, it has been held that in order to attract the operation of Section 56 of the Act, the officer concerned himself has to satisfy himself that witnesses are not willing to come forward to give evidence in public. It is not necessary that all the witnesses must be found, thus unwilling to give evidence. The Court must ensure that the terms of Sections 56 and 59 are strictly complied with and that the slander safeguards that those provisions offer are made available to the proposed externnee. The Bombay High Court, in the above said case, reproduced the statement of the camera witnesses and observed that if one goes through the particulars of the incident as disclosed to the petitioner through the notice, the very purport of recalling in the camera statement has

been defeated, as both the witnesses can be easily verified by the externee. The original record shows that, in reply filed by R/1 in appeal filed by the petitioner against the order of the Deputy Superintendent Commissioner stated that he summoned those two witnesses. However, the Senior Police Inspector has replied that the witnesses have refused to appear to verify their statements because, during the inquiry by a Senior Police Inspector, they narrated the incident on the condition that they would not appear before any government office of the Court. In reply, it was further mentioned that the Assistant Police Commissioner had visited the spot and inquired with the neighbouring persons, who had stated that the incident had occurred, and the occurrence of the incident had been verified through the secret information as well. Therefore, it has been held that respondent No.1, who passed the externment order had not verified the correctness of the statement made by the witnesses to form an opinion about their unwillingness to come forward to give evidence against the petitioner in public.

10. Section 59 of the Maharashtra Police Act provides for giving a hearing to the externee before passing an order under Sections 55, 56 and 57 or 57A of the Act. The office has to inform the proposed externee in writing of the general nature of the material allegations against him. If such a person makes an application for examination of the witness produced by him, the officer or the Authority concerned shall grant such application. However, if the officer or the Authority is of the opinion such application is made for the purpose of vexation or delay, the Authority with reason, may refused to allow the application calling witnesses.

11. Not mentioning the general nature of material in a show cause notice invalidates such notice. It must mention the fact that the witnesses are not coming forward to give the evidence against him in public for the reason of apprehension as regards to the safety to his person and property. The law is well settled that the camera statement of the witnesses should mention the specific details regarding the time, place, and month of the incident. If such statements are vague, the externment order should be considered invalid.

12. The pronouncement of the Hon'ble Supreme Court and the Bombay High Court on section 56 of the Act would be summarized as follows;

- a) The show cause notice under section 59 of the Act should mention the details of crimes registered against the proposed externee.
- b) The show cause notice should disclose the facts that the witnesses are not willing to come forward to give the evidence against the proposed externee in public by reason of apprehension on their part as regards the safety of their person or property.
- c) The Authority should believe that there are reasonable grounds to form an opinion that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offences punishable under

Chapters XII, XVI and XVII of the Indian Penal Code and abetment thereof.

d) The principle of natural justice by granting fair hearing to such person shall be followed.

e) There shall be live link and proximity in crime and the action of the externment. There should be no abnormal delay in passing externment orders from the last offence registered against him.

f) The Authority shall be subjectively satisfied with the objective material.

g) The cases registered and pending against such a person should not be stale and old.

h) The orders should not be for excessive areas of externing such a person from larger areas and while passing such orders, the authority must assign the reasons for externing him beyond the area of operation.

i) The authority can not consider the extraneous material which was not disclosed in the show cause notices.

j) The camera statements of the witnesses should not be vague and identical. The order should reflect the application of mind.

13. The Hon'ble Supreme Court in *Deepak s/o Laxman Dongare V State of Maharashtra*, 2022 Live Law (SC) 93 was dealing the matter under Section 56 of the Act and held that for invoking clause

(a) of Section 56 (1) of the Act there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or the acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order clause (b), there must be objective material on the basis of which the competent authority must record subjective satisfaction that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of the offences involving force or violence or offences punishable under chapters XII, XVI or XVII of the Indian Penal Code or abatement of such offences. Lastly, it is held that the recording of subjective satisfaction by the competent authority is sine qua non.

14. In *Dilip Laxman Kokare v S.M. Ambedkar* 1991 (1) Mh.L.J. 833, this Court at principal seat observed that it need to be reiterated that in these cases that the law visualizes a situation where an offender has become so persistently troublesome or dangerous to society around him that his physical presence in that area has to be done away with in the public interest. Delay in implementation therefore, runs counter to and frustrates the objective behind the provisions of the Act. It has further held that in view of the abnormal delay in the passing of the order as far as the present case is concerned, the externment order is liable to be quashed and set aside. of externment.

15. The law has been crystalised on the stringent action of forcing such a person to leave his place of residence and depart from his family, which may cause him many difficulties including his livelihood. Such powers should be quickly exercised to protect the people at large from the dangerous and harmful activities of such person. The delay in actions may frustrate the objective of the provisions of the Act.

16. The facts this case were that the last offence was registered on 21.01.2022. The first show cause notice by S.D.P.O was issued on 06.06.2023. He submitted his inquiry report to the S.D. M. on 11.07.2023. The S.D.M. issued a fresh show-cause notice on 02.08.2023 and passed the impugned order 19.03.2024. Considering these facts, it was clear that there was no live link and proximity between the last crime registered against the petitioner and the action under Section 56(1) (a) and (be) of the Act. The prosecution has no explanation for such inordinate delay. Therefore, the impugned orders could be branded arbitrary.

17. The camera statement of one witness was identical to the allegations, and the spot of the incident in crime no. 30/2022 registered on 22.01.2022. Therefore, his statement could not be considered to believe that the witnesses were not coming forward to give evidence against the petitioner in public due to the acts of the petitioner.

18. The impugned order of the learned Commissioner does not reflect the verification of the camera statement of the witnesses. He did not comment on this material aspect. The order of the Divisional Commissioner appears just reproduction of the submissions of the petitioner and the respondent. He did not discuss the material produced before the external Authority and assigned the reasons how it was correct.

19. Though the petitioner was acquitted of one crime, the authorities did not give weightage to these facts. The S.D.M. considered the fact of his acquittal which was after the show cause notice. However, there were other crimes registered against him. Hence, the authorities proceeded to take the action against him. In this situation it could not be accepted that the petitioner could be benefited of the acquittal.

20. Considering the facts and the law discussed above, the Court is of the view that the impugned orders are liable to be quashed and set aside. Hence, the following order,

ORDER

A) The writ petition is allowed.

B) The impugned orders of the S.D.M. and the Additional Divisional Commissioner Chhatrapati Sambhajinagar, mentioned above, stand quashed and set aside.

C) Rule is made absolute in the above terms.

D) The papers produced by the prosecution should be returned to the learned A.P.P.