
(2013) 06 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 153 of 2013

Deepsingh @ Deepaksingh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3151

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : Mahesh Rai, for the Appellant; Nitin Rode, Additional Public Prosecutor, for the Respondent

Judgement

M.L. Tahaliyani, J.—Heard ADMIT.

2. Heard finally by consent of learned counsel for the parties.

3. The externment order is mainly based on eight prohibition cases mentioned in order dated 31st July, 2012. During the course of arguments it was submitted by Mr. Rode that there are 24 cases against the applicant under the Bombay Prohibition Act. Mr. Rai has submitted that the petitioner has been acquitted of all the charges at least in seven cases.

4. At the outset, it may be mentioned here that what is not there in the order cannot be considered. I have to go by what is stated in the order passed by respondent No. 2 Sub-Divisional Magistrate, Hinganghat dated 31st July, 2012. As already stated, the order is based on eight offences allegedly committed by the petitioner under the Bombay Prohibition Act. This Court has repeatedly said that the externment order u/s 56 of the Bombay Police Act cannot be passed on the basis of cases pending under the Bombay Prohibition Act. There is one case u/s 379 of the Indian Penal Code and one proceedings (Istagasa) u/s 110 of the Code of Criminal Procedure against the applicant. If one deletes eight cases under the Bombay Prohibition Act, what remains in the chart is one case u/s 379 of the Indian Penal Code and one case u/s 110 of the Code of Criminal

Procedure. This, obviously, is not sufficient to pass externment order. Such externment order cannot be sustained. The appeal filed by the petitioner before the Government of Maharashtra has already been dismissed. Needless to state that since the original order is not maintainable the order passed by the appellate Authority also cannot be maintained. In the result, the petition succeeds. Order passed by Sub-Divisional Magistrate, Hinganghat on 31st July, 2012 u/s 56 of the Bombay Police Act and the order passed by the Secretary (Special), Home Department, Government of Maharashtra on 22nd November, 2012 in Appeal No. EXT-2012/194/SPL-3(B) are quashed and set aside.

The writ petition stands disposed of accordingly.