

(1987) 09 BOM CK 0024

In the Bombay High Court

Case No : Criminal Writ Petition No. 129 of 1987

Dhondiram Appa Hatkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-09-1987

Acts Referred:

Bombay Police Act, 1951 — Section 56, 57, 59

Citation : (1987) 3 BomCR 656 : (1987) 89 BOMLR 533 : (1987) MhLj 1046

Hon'ble Judges : C.S. Dharmadhikari, Acting C.J.; V.P. Tipnis, J

Bench : Division Bench

Advocate : N.S. Kasture, for the Appellant; J.A. Barday, Public Prosecutor, for the Respondent

Judgement

V.P. Tipnis, J.—The petitioner was externed by the order dated 8th November, 1986, passed by the Sub-Divisional Magistrate, Phaltan Division, Phaltan, u/s 57 of the Bombay Police Act, 1961. The petitioner has challenged the said order on several grounds.

2. Before going into the facts of the case, it may be worthwhile to refer to the provisions of the Act and certain authorities which lay down certain principles relevant to the passing of valid and lawful orders as also indicating what caution and circumspection has to be exercised while considering the validity of the orders of externment passed u/s 56 or 57 of the Bombay Police Act.

3. In The State of Maharashtra Vs. Vishnu Ramchandra, , the Supreme Court has observed :---

"An externment order, however, to satisfy the requirements of section 57 of the Bombay Police Act, must be made bona fide, taking into account a conviction which is sufficiently proximate in time. Since no absolute rule can be laid down, each case must depend on its own facts."

In the case of Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, , the Supreme Court observed :

"It is true that the provisions of section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in Gurbachan Singh Vs. The State of Bombay and Another, had upheld the validity of section 27(1) of the City of Bombay Police Act, 1902, which corresponds to section 56 of the Act. Following that decision, the challenge to the constitutionality of section 56 was repelled in Bhagubhai Dullabhabhai Bhandari Vs. The District Magistrate, Thana and Others, . We will only add that care must be taken to ensure that the terms of sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee."

In the case of Prem Chand (Paniwala) Vs. Union of India (UOI) and Others, , the Supreme Court was considering the scope of sections 47 and 50 of the Delhi Police Act which are similar to the provisions of the Bombay Police Act. The Supreme Court observed :---

"The provisions of the statute ostensibly have a benign purpose and in the context of escalation of crimes, may be restrictions which, in normal times might appear unreasonable, may have to be clamped down on individuals. We are conscious of the difficulties of detection and proof and the strain on the police in tracking down criminals. But fundamental rights are fundamental and personal liberty cannot be put at the mercy of the Police. Therefore, sections 47 and 50 have to be read strictly. Any police apprehension is not enough. Some ground or other is not adequate. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in Delhi or any part thereof is hazardous to the community and its safety. We are clear that the easy possibility of abuse of this power to the detriment of the fundamental freedoms of the citizen persuades us to insist that a stringent test must be applied. We are further clear that natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Articles 14, 19 and 21 of the Constitution as expounded by this Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ."

In Vaghari Dhanabhai Bhalabhai Vs. State, , a Division Bench of the Gujarat High Court considered the scope and requirements u/s v(a), (b) and (c) of the Bombay Police Act. The learned Judges observed as follows :---

"The sale of liquor by a person or illicit manufacture or consumption of liquor may not by itself be objectionable to such a degree as to invite the extreme measure of externment of a person from an area for a fairly long time. Such externment would be justified only if there is absolute need for imposing such severe restraint on the freedom of a person. That will depend upon justification of such imposition or restraint. May be a person has turned out to be a nuisance of such a degree that he can no longer be allowed to move about freely in the

area in which he normally operates without serious harm to the public in some manner or other. Mere commission of an offence under the Bombay Prohibition Act may not necessarily have any impact on public order or may not injure public Interest, as for instance, in the case of a person consuming liquor in a prohibited area within the precincts of his own home without giving any cause for alarm or concern to anyone, even the members of his family. May be he commits an offence but that does not mean that the offence committed by him has any impact upon the public of a degree which justifies his removal from his usual abode to a place outside his District as a "preventive measure." "Preventive action" would not be called for in such a case though "punitive action" may be justified."

Section 57(a), (b) and (c) of the Bombay Police Act has to be read and understood not as enabling a mechanical invocation of the power to extern, but reasonably and consistent with the fundamental rights of citizens. Otherwise the provision itself would be bad as it would enable the exercise of the externment power merely because a person has committed an offence earlier. Such an approach would be abhorrent to all civilised notions and would be contrary to all the values that we hold sacred. This would necessarily mean that the provision in section 57(a), (b) or (c) is not to be invoked in any and every case of conviction for offences mentioned in the sub-sections, but only where, regard being had to the totality of circumstances, the externing authority has reason to feel that there is likelihood of repetition of the offence and the degree of harm or danger by such act would be so material as to be injurious to peace and social order and would justify the extreme step of externing the person concerned from his home district and in appropriate cases even the contiguous districts. The degree of seriousness of the harm to the public must be such as to justify the application of the provision in section 57(a), (b) or (c). That there is a case for externment could therefore be established only by reference to the conduct of the person against whom the externment order is proposed to be passed and an objective approach to materials in order to be satisfied that in the background of such conduct the preventive action contemplated by section 57(a), (b) or (c) is called for."

A Division Bench of this Court in *Ratan Singh v. M.V. Chitale* 1986 Mh.L.J. 879 had the occasion to consider the scope of and requirements u/s 57 of the Bombay Police Act. This Court observed as follows :---

"It will thus be apparent from the provisions of section 59 that before an externment order is passed on the grounds mentioned in section 57 the externing authority or the officer authorised by the authority has to hold an inquiry in which the proposed externee is to be afforded a reasonable opportunity to show cause against the ground or grounds on which he is sought to be externed. If the conviction or convictions already suffered were the only ground for passing an order of externment u/s 57, the exercise of an inquiry u/s 59 is obviously uncalled for. Thus the provisions of section 57(1) as well as the

provisions of section 59 make it abundantly clear that the externing authority must have in its possession material with regard to the activities of the proposed externee after the convictions in question, on the basis of which the authority will have reasons to believe that the person concerned is likely to engage himself in the commission of an offence similar to that for which he was convicted. Without such material the authority has no power to pass an externment order."

The Court in the very same case also observed that :---

"It is unnecessary to emphasise that if there was any such material before the externing authority it was incumbent upon the authority to indicate at least the general nature of the material allegations in the notice served upon the externee. Without such indication, it was impossible for the externee to meet them in the enquiry held u/s 59."

In *Fitrat Raza Khan Vs. State of Uttar Pradesh and Others*, the Supreme Court was dealing with the order of detention under the National Security Act (65 of 1985). In that context, the Supreme Court observed :---

"The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely" in the future, to act in manner prejudicial to the maintenance of public order It cannot be said that the prejudicial conduct or antecedent history of the petitioner was not proximate in point of time and had no rational connection with the conclusion that his detention was necessary for maintenance of public order."

4. As held by the Supreme Court in *Ramveer Jatav Vs. State of U.P. and Others*, :---

"Now, it cannot be laid down as a bald proposition that one ground can never be sufficient for founding the satisfaction of the detaining authority for detaining a person. There are cases where one ground may be regarded as sufficient if the activity alleged is of such a nature that the detaining authority could reasonably infer that the detenu must be habitually engaged in such activity or there may be other circumstances set out in the grounds of detention from which the detaining authority could reasonably be satisfied even on the basis of one ground that unless the detenu is detained he might indulge in such activity in future but here the only ground alleged against the petitioner is that he, alongwith others jointly committed murder in broad day light. This is the only ground given in the grounds of detention without any other circumstances from which any inference could be drawn that the petitioner could be likely to commit such act, if left free. It is no doubt true that in the counter affidavit filed by the District Magistrate several circumstances have been set out which might go to suggest that the petitioner is habitually indulging in criminal activity and some instances have also been set out by the District Magistrate in the counter-affidavit. But none of these circumstances finds a place in the grounds of detention. It is well settled that the

detaining authority cannot by an affidavit filed in Court supplement what is stated in the grounds of detention or add to it. It is difficult to infer from the solitary ground set out in the grounds of detention that the act alleged to have been committed by the petitioner would have disturbed public order as distinct from law and order or that one single act committed by the petitioner was of such a character that it could reasonably be inferred by the detaining authority that if not detained, he would be likely to indulge in such activity in future."

5. Thus, it is clear that the provisions of section 56 or 57 provide for extraordinary situation and the Court has to see that the provisions of sections 56, 57 and 59 are strictly complied with. As far as section 57 is concerned, it provides :---

"57. If a person had been convicted---

(a)(i) of an offence under Chapter XII, XVI or XVII of the Indian Penal Code, or

(ii) of any offence u/s 65, 66-A or 68 of the Bombay Prohibition Act, 1949, or

(iii) of an offence under sections 3, 4, 5, 6 or 9 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, or

(iv) or an offence u/s 135 of the Customs Act, 1962, or

(v) of an offence u/s 4, or for accepting bets in any public street, or thoroughfare or in any place to which the public have or are permitted to have access, or in any race course under Clause (a) of section 12 or u/s 12-A of the Bombay Prevention of Gambling Act, 1887, or

(b) twice or more of an offence under the Bombay Prohibition Act, 1949 not being an offence under sections 65, 66-A or 68 or

(ba) twice or more of an offence u/s 3 or 4 of the Railway Property (Unlawful Possession) Act, 1966, or).

(c) thrice or more of an offence u/s 122 or 124 of this Act, the Commissioner, the District Magistrate, or the Sub-Divisional Magistrate specially empowered by the State Government In this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether contiguous or not) by such route, and within such time, as the officer may specify and not to enter or return to the area or areas so specified (hereinafter referred to as "the specified area or areas.") from which he was directed to remove himself.

(2) An officer directing any person under sub-section (1) to remove himself from any specified area or areas in the State may further direct such person that, during the period the order made against him is in force, as and when he resides

in any other areas in the State, he shall report his place of residence to the officer, incharge of the nearest police station once in every month, even if there be no change in his address. The said officer may also direct that, during the said period, as and when he goes away from the State, he shall, within ten days from the date of his departure from the State, send a report in writing to the said officer either by post or otherwise of the date of his departure, and as and when he comes back to the State he shall, within ten days from the date of his arrival in the State report the date of his arrival to the officer in charge of the police station nearest to the place where he may be staying.

Explanation.---For the purpose of this section "an offence similar to that for which a person was convicted" shall mean---

(i) in the case of a person convicted of an offence mentioned in Clause (a)(i) and offence falling under any of the chapters of the Indian Penal Code, and (ii) in the case of person convicted of an offence mentioned in Clauses (a) (excluding sub-clause (i) thereof, (b) and (c), an offence falling under the provisions of the Acts mentioned respectively in the said clauses.

Therefore, it will be clear that the mere fact that the person has been convicted is not enough but the competent authority empowered to extern the person must have reason to believe that such person is likely again to engage himself in the commission of an offence similar to the one for which he was convicted. It is also clear that if notice u/s 59 in this behalf is to be worthwhile, then, at least, general indication in the notice has to be given regarding the material in possession of the Externing authority upon which his satisfaction is based. It may be that the fact that the person is persistently engaged in certain kind of offences or has been previously convicted itself may be the material or the ground which may enable the authority to come to the conclusion that such person is likely to engage himself again in the commission of similar offences, obviously depending upon the propensity, gravity, and magnitude of the crime and activities involved. It will all depend on the facts of each case, and no general rule can be laid down in that behalf.

6. In the case before us, the notice u/s 59, issued on 15th October, 1986, mentions that the petitioner has been convicted on 5th July, 1980 u/s 12-A of the Prevention of Gambling Act. Then he has been convicted for the same offence on 9th October, 1984 and again on 18th May, 1985. The last sentence in the notice merely mentions as follows:-

"And it is felt that you will again participate in the offences for which you have been convicted in the past."

In the final order of externment dated 8th November, 1986, after cataloging the said offences, it is mentioned that :---

".....I am satisfied that the said person has convictions mentioned above and I am further convinced that he is likely to engage himself in the commission

of a similar offence."

Firstly, we find that the first conviction is on 5th July, 1980, thereafter, till 9th October, 1984 there is not a single conviction. The last conviction was on 18th May, 1985 and the notice u/s 59 was issued on 15th October, 1986. In these circumstances, it is difficult to hold, that on the basis of these convictions alone, which were not proximate, any reasonable man could have come to the conclusion that the petitioner is again likely to engage himself in the commission of similar offences. Secondly the notice u/s 59 does not indicate at all any other material which could give the authority a cause to believe that the person is again likely to engage himself in similar offences. Even the final order of externment does not disclose, even remotely, any such material. The notice and the final order of externment merely reproduce the relevant words from section 57. In view of this, it is difficult to hold that the order passed u/s 57 is lawful, valid, or in accordance with the law. For these reasons, the impugned externment order is vitiated and, accordingly, the same is quashed and set aside. The rule is made absolute.