
(2020) 10 BOM CK 0034

In the Bombay High Court

Case No : Criminal Writ Petition No. 841 Of 2020

Dinesh Santlal Yadav

APPELLANT

Vs

Divisional Commissioner And Ors

RESPONDENT

Date of Decision : 21-10-2020

Acts Referred:

Maharashtra Police Act, 1951 — Section 56, 56(a), 56(1)(a)(b), 56(b), 59
Code Of Criminal Procedure, 1973 — Section 110

Citation : (2020) 10 BOM CK 0034

Hon'ble Judges : S.S. Shinde, J; M.S. Karnik, J

Bench : Division Bench

Advocate : Irfan Alim Shaikh, A.S. Pai

Final Decision : Dismissed

Judgement

M.S. Karnik, J

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the parties.

2. By this Petition an exception is taken by the petitioner to the externment order dated 22/11/2019 passed by the respondent No.2 - The Deputy Commissioner of Police, Zone - 3, Kalyan whereby the petitioner was externed from the limits of Thane District for a period of 1 year. The petitioner also challenges the order passed in Appeal by the respondent No.1 - Divisional Commissioner, Konkan Division dated 22/1/2020 confirming the order of externment consequently rejecting the Appeal.

3. The facts of the present case in brief are as under :

The petitioner was served with the show cause notice dated 30/9/2019 under Section 59 of the Maharashtra Police Act [Title Substituted for "The Bombay Police Act, 195] (hereinafter referred to as "the said Act" for short). The said notice mentions about four First Information Reports ('FIRs' for short) registered

against the petitioner within the limits of Manpada Police Station. The said notice also states about one Chapter proceeding registered against the petitioner at Manpada Police Station under Section 110 of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C. for short) being Chapter Proceeding No. 26/2016. The show cause notice further reflects that two 'in-camera' statements of the witnesses were recorded. Witness 'A' states about an incident dated 12/9/2019 alleging that the petitioner along with his friends had assaulted the said witness and had taken away his income for the day. Witness 'B' deposed about the alleged incident dated 23/5/2019 about the petitioner along with his friends had assaulted the said witness and her husband and took away their day's earning. The notice further proceeds to state that despite registering the said offences, the petitioner did not mend his ways and that his presence would be harmful for the society at large.

4. The respondent No.2 by the impugned order externed the petitioner from the limits of Thane District for a period of 1 year. The Appeal filed by the petitioner came to be dismissed by the Appellate Authority.

5. The learned counsel for the petitioner submitted that the impugned order is excessive. According to him, all the offences are registered against the petitioner within the limits of Manpada Police Station despite which the petitioner has been externed from the entire district of Thane. The Externing Authority has mechanically reproduced the contents of the show cause notice relating to the registration of 4 FIRs, 1 Chapter Proceeding under Section 110 of the Cr.P.C. and 'in-camera' statements of two witnesses and without assigning any reasons has proceeded to pass an order of externment. According to learned counsel for the petitioner, the impugned order does not reflect the subjective satisfaction of the Externing Authority for coming to the conclusion that the externment of the petitioner is warranted.

6. The learned counsel for the petitioner would submit that the petitioner has not been convicted even in a single case. Even the two secret witnesses have been planted to falsely implicate the petitioner. The versions of the secret witnesses is in a standard format. The statement and the allegations are similar which would create a doubt on the authenticity of these 'in-camera' witnesses. The externment proceedings have been conducted with a motivated and pre-meditated mind. The learned counsel for the petitioner would submit that registration of the FIRs itself would indicate that the people are coming forward to give evidence against the petitioner and therefore, the Externing Authority could not have concluded that the witnesses are not willing to come forward to give evidence in public necessitating the externment order.

7. The learned counsel for the petitioner would rely upon the decision of the Apex Court in the case of (1) Pandharinath Shridhar Rangnekar vs. Dy. Commissioner of Police, State of Maharashtra 1 and the decision of this Court in the case of Yashwant Damodar Patil vs. Hemand Karkare, Deputy Commissioner of Police, Thane and another 2 to contend that the order of externment does not comply

with the requirements of the Sections 56 and 59 of the said Act. The learned counsel would submit that the impugned notice as well as the impugned order of externment must fail by reason of the fact that the Externment Authority has not mentioned anything as regards the witnesses not willing to come forward to give evidence as in the requirement of sub-section (a) and (b) of Section 56 of the said Act.

8. The learned APP for the respondents - State defended the order of externment. The learned APP Smt. Pai invited our attention to the findings of the Externment Authority. She would submit that on the basis of the materials which were brought to the notice of the petitioner under Section 59 of the said Act, the Externment Authority upon arriving at his subjective satisfaction passed the order of externment under Section 56 of the said Act. According to her, the subjective satisfaction is very much refuted from the impugned order. According to her, the materials on record are sufficient to warrant an order of externment against the petitioner.

9. We have heard the learned counsel for the petitioner and learned APP Smt. Pai for the respondents - State. We have also gone through the Petition, the annexures, records and the 'in-camera' statements of the witnesses 'A' and 'B'. We also called for the original record and perused the same.

10. The show cause notice states about 4 crimes registered against the petitioner under the various provisions of the Indian Penal Code ('IPC' for short). The details of which are as under :-

a. C.R.No.I-311/2016 registered at Manpada Police Station u/s. 324, 341, 504, 506 r/w. 34 of IPC. (14/6/2016).

b. C.R.No.I-172/2017 registered at Manpada Police Station u/s. 324, 504, 506, 427 r/w. 34 of IPC (23/3/2017).

c. C.R.No.I-146/2018 registered at Manpada Police Station u/s. 324, 323, 506(2), 504 r/w. 34 of IPC and u/s. 3, 25 of the Arms Act. (17/3/2018).

d. C.R.No.I-329/2019 registered at Manpada Police Station u/s. 324, 323, 504, 506, 427 r/w. 34 of IPC (11/5/2019).

11. The show cause notice then proceeds to narrate brief allegations in respect of each of the crime registered against the petitioner under the relevant provisions of IPC. The show cause notice then mentions about one Chapter case registered against the petitioner under Section 110 of the Cr.P.C. Despite the Chapter proceedings initiated in 2016, the offences were registered against the petitioner in the year 2017, 2018 and 2019. In the show cause notice it is clearly mentioned that the acts of the petitioner are causing alarm, danger or harm to the residents in the area and that because of the said criminal activities witnesses are not willing to come forward to give evidence in public. On the condition of anonymity statements of two witnesses are recorded.

12. Reading of the impugned order would reveal that the Externment Authority has taken into consideration the materials in the form of 4 FIRs registered against the petitioner of which 3 FIRs are registered in the year 2017, 2018 and 2019 after initiating the Chapter Proceedings under Section 110 of the Cr.P.C. on 30/9/2016. The impugned order also takes into consideration the 'in-camera' statements of two witnesses recorded on 12/9/2019 and 16/9/2019 indicating the criminal activities. Witness 'A' - rickshaw driver in his 'in-camera' statement alleges that when he asked the petitioner for the fare, the petitioner abused and assaulted him with fist blows.

13. 'In-camera' statement of witness 'B' reveals that she was assaulted when she refused to open the shutter of her shop which was closed. The petitioner got angry and forcibly opened the shutter. He not only took the tobacco packets and cigarettes but also took the sum of Rs.450/- kept in the drawer meant for keeping cash. Thereafter, the petitioner abused and assaulted the witness 'B'. Based on these materials the Externment Authority has come to the conclusion that the movements or acts of the petitioner are causing or calculated to cause alarm, danger or harm to persons and that there are reasonable grounds for believing that the petitioner is engaged or in about to be engaged in the commission of an offence involving force or violence.

14. The Externment Authority recorded his satisfaction that the witnesses are not willing to come forward to give evidence against the petitioner in public by reason of apprehension on their part as regards the safety of their person. The Externment Authority, therefore, passed an order of externment under Section 56 (1) (a) (b) of the said Act.

15. We do not find any merit in the contention of the learned counsel for the petitioner that the subjective satisfaction of the Externment Authority is not reflected from the impugned order. Based on the materials in the form of four FIRs and two 'in-camera' statements of witnesses, the Externment Authority came to the conclusion that the witnesses are not willing to come forward to give evidence in public against the petitioner by reasons of apprehension on their part as regards the safety of their person, has passed the order of externment under Section 56(1) (a) (b) of the said Act. The subjective satisfaction of the Externment Authority is very much reflected in the impugned order.

16. We also do not find favour with the submission of the learned counsel for the petitioner that the impugned order is excessive. Though the offences are registered against the petitioner within the limits of Manpada Police Station, however, the impugned order records reasons why externment of the petitioner is necessitated from Thane District. In the opinion of the Externment Authority, it was necessary to extern the petitioner from Thane District as it was necessary to put a curb on the criminal activities of the petitioner as considering the geographical proximity and convenient transport facility available in that area, possibility of the petitioner entering the area easily cannot be ruled out. It cannot be said that this approach of the Externment Authority is arbitrary or

unreasonable. There is, thus, no merit in the contention of the learned counsel for the petitioner that the impugned order is excessive.

17. We, therefore, do not find any merit in the present Petition, consequently the same stands dismissed.

18. Rule is discharged with no order as to costs.

19. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.