
(2014) 02 BOM CK 0282

In the Bombay High Court

Case No : Criminal Writ Petition No. 64 of 2014.

Firojkhan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Bombay Police Act, 1951 — Section 56, 56(1)(a)(b), 59

Citation : (2014) ALLMR(Cri) 2968

Hon'ble Judges : B.R. Gavai, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : R.K. Tiwari, Advocate for the Appellant; M.K. Pathan, APP, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.S. Chandurkar, J.—Rule. Heard finally with the consent of the learned counsel for the parties. The challenge in the present writ petition is to the order dated 30th November, 2013 passed by the respondent no. 1 thereby externing the petitioner for a period of two years from the local limits of Nagpur District. The aforesaid order has been passed u/s 56 of the Bombay Police Act, 1951 (hereinafter to referred to as the "said Act" for short).

2. The facts insofar as they are relevant for adjudicating the present controversy are that initially on 9/10/2013 the respondent no. 2 issued a notice u/s 59 of the said Act thereby calling upon the petitioner to show cause as to why proceedings should not be initiated for externing the petitioner from Nagpur City as well as Nagpur Rural District. In aforesaid notice there was reference to about 23 criminal cases in which the petitioner was an accused. A reference was also made to threats received by witnesses that had been given at the behest of the petitioner. The petitioner submitted his reply to the aforesaid notice. However, not being satisfied by the said reply, a report dated 30th of October, 2013 was prepared by the respondent no. 2 and submitted to the respondent no. 1.

3. Thereafter, another notice u/s 59 of the said Act was issued to the petitioner based on aforesaid report dated 30th of October, 2013. In said notice reference was also made to the 23 criminal cases in which the petitioner was an accused. The petitioner on 19th November, 2013 submitted his reply and denied the assertions made in the said notice. It was stated that the petitioner had been acquitted in all the 23 criminal cases and hence there was no legal basis to extern the petitioner as proposed in the show cause notice. Thereafter, on 30th November, 2013 the impugned order of externment for a period of two years from Nagpur district was passed against the petitioner. It is this order that has been passed u/s 56(1)(a)(b) of the said Act that has been challenged in the present writ petition.

4. Shri R.K. Tiwari, the learned counsel appearing for the petitioner has submitted that the impugned order of externment has been passed without due application of mind to the material on record. It is submitted that the orders of acquittal in the aforesaid 23 cases were duly filed before the respondent no. 1. Similarly, it was submitted that there was no proximity with the criminal cases referred to in the show cause notice and the order of externment passed against him. The reason for externing the petitioner was not discernible from the impugned order. It was therefore submitted that said impugned order cannot be sustained and it deserved to be set aside.

5. Shri M.K. Pathan, the learned Additional Public Prosecutor appearing for respondents has relied upon reply-affidavit dated 14th February, 2014 filed by the respondent. It has been submitted that the impugned order has been passed after due application of mind and after taking into consideration all the relevant aspects. The material on record was sufficient to justify the order of externment. It was further submitted that merely because the petitioner was acquitted from aforesaid criminal cases would not be a valid justification for not externing the petitioner if otherwise there was sufficient material on record to support the same. The learned counsel therefore prayed for dismissal of the writ petition. Having heard the learned counsel for the parties and having perused the material on record it can be seen that the show cause notice on the basis of which the action of externment was proposed refers to about 23 criminal cases in which the petitioner had been arrayed as an accused. The last incident referred to in show cause notice is dated 6/5/2011. The process for externing the petitioner commenced with show cause notice dated 30th September, 2013. It is therefore clear that it has been issued after almost two years and four months. It is therefore clear that the proceedings for externment have been initiated after lapse of considerable time from the last incident that occurred on 6th May, 2011.

It is to be noted that the petitioner has been acquitted in all the 23 criminal cases referred to in the show cause notice. The impugned order does not reflect due application of mind to the requirement of Section 56 of the said Act. The basis on which the Authority has arrived at the satisfaction that there was likelihood of breach of law and order due to presence of the petitioner cannot be

gathered from the impugned order. The detailed reply filed by the petitioner to the show cause notice has not been considered by the said Authority in its proper perspective. An action of externment is required to be taken after due satisfaction of the requirements of Section 56 of the said Act and the order passed for said purposes must reflect such satisfaction. Besides referring to likelihood of there being breach of law and order the impugned order does not disclose the actual basis on which the same has been issued. We therefore find the impugned order unsustainable in law. The same is therefore required to be set aside. Hence, writ petition is allowed. Rule is made absolute in terms of prayer clause (a) of the petition.

The writ petition stands disposed of in the aforesaid terms with no order as to costs.