

(2024) 09 BOM CK 0003

In the Bombay High Court

Case No : Criminal Application No. 615 Of 2024

Hitesh Santosh Shinde Andothers

APPELLANT

Vs

Divisional Commissioner And Other

RESPONDENT

Date of Decision : 02-09-2024

Acts Referred:

Indian Penal Code, 1860 — Section 307, 324, 327

Maharashtra Police Act, 1951 — Section 55, 56, 57, 57(a), 59, 59(2)

Citation : (2024) 09 BOM CK 0003

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

Bench : Single Bench

Advocate : Atul M. Pawar, Bhausahab S. Deshmukh, A.S. Shinde

Final Decision : Allowed

Judgement

S. G. Mehare, J

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

2. The petitioner has impugned the externment order of Superintendent of Police, Jalgaon dated 25.11.2023 passed in Outward No.7019/Stagusha/Haddparaadesh/2023 and the order of the Divisional Commissioner Nashik passed in Haddpar Appeal No.110/2023 dated 13.03.2024.

3. The Police Inspector, Local Crime Branch Jalgaon, had placed a proposal of externment of the petitioner and the members of his gang under Section 55 of the Maharashtra Police Act ('The Act' for short). The Superintendent of Police sent the proposal to the Sub Divisional Police Officer (S.D.P.O. for short) Jalgaon for inquiry. The SDPO issued the show cause notices to the petitioner. They have submitted their explanation on 13.07.2023. The SDPO placed the proposal before the Superintendent of Police Jalgaon in the month of August, 2023 to extern the applicant and his gang members for two years from Jalgaon District.

4. The Superintendent of Police Jalgaon again issued a show cause notice to the petitioner. All the externees filed their joint reply. In sum and substance, their explanation was that they were falsely implicated in the crime. All the externees were the joint family members even then a false notice of forming a gang was issued. The show-cause notice is illegal. Before issuing the notice, no inquiry was done. They have made allegations against one PSI Pradeep Chandelgar, that he was asking for a bribe to them for not taking serious action against them in a crime registered against them for the offence punishable under Section 307 of the Indian Penal Code. It was a quarrel between two groups. The opposite party had also caused the injury to his father by chopper. Even then, the said PSI registered the crime under Section 324 of IPC instead of Section 327 or 307 of the Indian Penal Code. He was asking for ransom to them. He was also asking bribe for not filing the chapter case against them. The police were taking action at the instance of one Mahesh Govinda Choudhary. On his instance Crime No.44 of 2023 was registered for attempt to commit murder and forming an unlawful assembly. The false evidence was created against them. They had no any gang. Therefore, it cannot be said that they were causing or calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by them. There was no satisfactory material before the authority to take stringent action under Section 55 of the Act. The petitioner no.1 is deliberately shown as the leader of the gang.

5. The learned counsel for the petitioners vehemently argued that both authorities did not apply the mind. The impugned order was passed after five months. That shows that there was no link and proximity in registering the crimes and passing the externment orders. Only one offence was registered against them. Two offences were registered against petitioner no.2 However, he was acquitted in that crime after the show cause notice. The camera statement of the witnesses were not examined. However, wrong findings regarding the camera witnesses were recorded. To bolster his arguments, he relied on the case of Iqbaluddin Ziauddin Pirzade Vs. The State of Maharashtra and others, 2015 ALL MR (Cri) 2298.

6. Per contra, the learned APP argued that Section 55 of the Act has been complied with. All the petitioners were committing crime by forming a gang. To form a gang, it is not essential that a gang member should be from different families. Petitioner no.2 was acquitted after the show cause notice. Hence, the impugned order cannot be said to be illegal. There was objective material to record the subjective satisfaction. Both orders are free from illegalities.

7. To initiate an action against an offender under Section 55 of the Act, the authority passing the externment order should satisfy that there were communality of the actions of several persons joint together. Section 55 would be applicable only when the persons seem to be acting as members of the gang or body of persons, and it is only then that action under Section 55 of the Act can be taken and when it is to be taken, it must be taken against all members and

not only a few of them selectively. Section 59 of the Act provides for a show cause notice to be served upon the proposed externee informing them in writing the general nature of material allegations against them. If the proposed externee bona fide seeks leave to lead the evidence and such application is not vexation or delaying the proceeding, the application for recording the evidence should be accepted.

8. The record of the proceeding produced before the Court includes the show cause notice of the Superintendent of Police. The show cause notice given the details of five crimes of the year 2019, 2021 and 2023. Out of five crimes, in two crimes registered in 2020 and 2023, all petitioners were the accused. However, a crime registered in 2019 was only against Petitioner Hitesh and crime registered in 2020 was similarly registered against petitioner Aakash. In a notice, it was mentioned that all the petitioners forming a gang caused danger to the property or the residents of Jalgaon City. They always disturb the law and order and create terror by committing the crime against the properties.

9. The show cause notice was silent about not coming of the witnesses forward to give the evidence in public against them due to apprehension to their life and property. However, the Superintendent of Police while passing the impugned order has observed that the petitioners by gang spreading the terror in Jalgaon City as well as nearby area. They did not respond to the preventive actions.

10. The first question to be answered is whether the family members constitute a gang as required under Section 55 of the Act. The term 'gang' has not been defined in the Act. The dictionary meaning of the term 'gang' is to join together with other people in order to act against somebody. As per the Oxford Advanced Learners Dictionary 8th Edition the term 'gang' means an organized group of criminals (ii) a group of young people who spend a lot of time together and often cause trouble and fight against other groups (iii) an organized group of workers or prisoners. As per Wikipedia, the term 'gang' means is a group or society of associates, friends or members of the family with a defined leadership and internal organization that identifies with or claims control over territory in a community and engages, either individually or collectively in illegal and possibly violent, behavior, with such behavior often constituting a form of organized crime (extracted from Google).

11. From the above dictionary meaning of the term 'gang' it could be understood that gang is a group of criminals. Therefore, it cannot be separated from the definition of family members. The illegal activities of such persons either individually or collectively should be considered while understanding the term gang used in Section 55 of the Bombay Police Act. The separate and individual acts not committed collectively may not amount the gang. But if such illegal acts are committed, separately or collectively, with the common intention or the object, those are the illegal acts committed by a gang. Considering the dictionary meaning of the term 'gang', the Court does not find substance in the argument of the learned counsel for the petitioners that family members could be said to be a

gang and no action under Section 55 of the Act could be initiated against them.

12. The learned counsel for the petitioners argued that after the show cause notice, it is not necessary to appear before the inquiring officer in person with the witnesses and furnish the surety bond. It was not a legal requirement. But the inquiring officer, to impress the higher authority, has recorded the finding after show cause, the petitioners did not appear before him with surety and witnesses and they have furnished their submissions through the registered post.

13. Section 59(2) of the Act provides that the authority or the officer proceeding under sub-section (1) may for the purpose of securing the attendance of any person against whom any order is proposed to be made under Sections 55, 56, 57 or 57(a), pass a security bond with or without securities for such attendance during the inquiry. If the person fails to pass security bond as required or fails to appear before the officer or authority during the inquiry, it shall be lawful to the officer or authority to proceed with the inquiry, and thereupon such order as was proposed to be passed against him may be passed. Sub-section (2) reflects that the officer or authority proceeding under sub-section (1) may direct such person to furnish such bond with or without sureties only for the purpose of securing the attendance of such person. The consequences of failure to appear in person and furnishing bond do not take away the defence of such a person. The authority may proceed with the inquiry on the basis of material available before it. Therefore, it cannot be said that the inquiring officer recorded observation of not appearing in person and furnishing security bonds to influence the higher authority. It was just the finding of the fact of non-appearance and not furnishing the security bond by the petitioners. However, the authority has considered the written submissions/explanations and recorded the finding that the explanation was extraneous and irrelevant.

14. The record reveals that the first offence against the petitioners were jointly registered in 2020 and thereafter 2023. The rest of the offences registered against the petitioner Hitesh and Aakash were of 2019, 2020 and 2021. The authority did not have the material to show that those individualistic crimes were committed by the members of the gang to their knowledge. In a crime of 2023, the counter crime was registered. So far as the body offence against all registered in 2020, it seems that thereafter till 2023, no offences as such were registered against the petitioners.

15. The law is well settled that the authority exercising power under Section 55 of the Act should record the subjective satisfaction at such activity to form the basis that the act could cause any danger, alarm, or reasonable suspicion that unlawful designs are entertained by such gangs or body or members thereof. Invoking his powers, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movement or the encamped movement of a gang or body of a person is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof. There

should be live link and proximity in the registration of crime and the initiation of the action. The crimes jointly registered against the petitioners appears individualistic and not affecting the danger to the common man or their property. Both orders are silent about the effect of the crimes registered against the particular persons. Both authorities did not mention the conclusion of the chapter cases. The chapter cases also do not show that those were registered against all petitioners jointly. Those actions were individualistic filed in 2011 then 2020 and 2022. The Divisional Commissioner Nashik in the impugned order considered the extraneous material about recording the camera statement of the witnesses which was neither mentioned in the show cause notice nor the order of the Superintendent of Police. Therefore, it could be said the opportunity to explain the statement of such witnesses was not granted to the petitioners. Recording such finding show non-application of mind.

16. After examining the material and the impugned orders, the Court is of the view that there was no objective material to record the subjective satisfaction that the movements or the encampment of the alleged gang of the petitioners were causing or calculated to cause danger or alarm of reasonable suspicion that the gang or any member thereof entertaining the unlawful designs. Apart from that, there was no objective material to believe that the movement of the petitioners was causing any danger to the person or their property. There also appears to be no live link and proximity in registering the crime and initiating the externment proceeding against them,. Therefore, the impugned orders warrant interference. Hence, the following order :

ORDER

(I) The writ petition is allowed.

(II) Both impugned orders are quashed and set aside.

(III) The rule is made absolute in the above terms.

(IV) Record and proceedings be returned to the learned APP