
(1950) 09 BOM CK 0003

In the Bombay High Court

Case No : Criminal Application No. 912 of 1950

In Re: Shaikh Husein Shaik Mahomed

Date of Decision : 25-09-1950

Acts Referred:

City of Bombay Police Act, 1902 — Section 27(2A)
Constitution of India, 1950 — Article 13(1), 15(1)

Citation : AIR 1951 Bom 285 : (1951) 53 BOMLR 57 : (1951) ILR (Bom) 175

Hon'ble Judges : Rajadhyaksha, J;Chainani, J

Bench : Division Bench

Advocate : H.M. Choksi, Govt. Pleader, N.V. Phadke and M.V. Paranjpe, for the Appellant;

Judgement

Rajadhyaksha, J.—Shaikh Husein Shaik Mahomed was externed from Greater Bombay under an order passed by the Assistant Comr. of Police, Bombay, on 24-7-1950, u/s 27(2-A), City of Bombay Police Act, IV [4] of 1902. He has now challenged that order on the ground that the section under which the order has been passed is void & inoperative in view of Article 15 of the Const. Ind.

2. On 20-7-1950, a notice was served upon the extreme in the following terms :

"Name, address & age:--Sk. Husein s/o Sk. Moho-med M. 22 years, occ : Winchman, Res :--Jumma Mosque Building, 3rd floor, Nishanpada Road, Bombay.

Under Section 27 (4), Bombay City Police Act, IV [4] of 1902, you are hereby informed that you are, in consequence of the undermentioned allegations made against you, reasonably suspected to be a person whose conduct brings you within the scope of Section 27 (2-A) of the said Act. (cross out the figures & letters not wanted) I have appointed 9-0 A. M. on 24-7-1950 to give you an opportunity of explaining these allegations & you are hereby required to call upon me at that time at Dongri P. Stn. for the purpose.

Allegations :--

(1) That you were not born in Greater Bombay, &

(2) That you have been convicted of offences punishable under chapter XVII of the I. P. C.

Read over, explained in Hindustani."

3. On 24-7-1950, the extreme appeared before the police authority & stated that the allegations made against him were true; but he pleaded that it was all a matter of history & for the last five years or so--since the time the petnr. started realising his responsibilities he had not been guilty of any offence or any breach of law. Hence he prayed that the contemplated order of externment was wholly unjust & harsh. This plea of the petnr. did not appeal to the Superintendent of Police before whom the petnr. appeared, & ultimately an order u/s 27 (2-A) of Act IV [4] of 1902 came to be passed asking the petnr. to remove himself from Greater Bombay after the conclusion of the case pending against him & not to enter Greater Bombay at any time without a written permission of the Comr. of Police. It is against this order that the extreme has filed this appln.

4. The facts of the case are not disputed. It is admitted that the petr. was born outside Greater Bombay, that is, in a village called Ashtini, taluka Roha, District Kolaba. The appct. has stated in his petn. that the convictions which have been recorded against him were more than five years old. That statement has not been challenged in the affidavit which has been filed by the Assistant Comr. of Police, Crime Branch No. 1. That being so, Section 27 (2A) clearly applies & the only question is whether that sub-section is void & inoperative in view of Article 15 of the Constitution. Sub-section (2A) of Section 27 enables the Police Comr. to pass an order of externment (1) if a person has not been born in Greater Bombay & (2) if he has been convicted of any offence punishable under (i) Chaps. 12, 16 or 17, Penal Code, (ii) Section 65 or 66, Bombay Prohibition Act, 1949, (iii) Chap. 3, Dangerous Drugs Act, 1930 & (iv) Section 4 or 12A, Bombay Prevention of Gambling Act, 1887. Prima facie the section makes it clear that an order under that section could not be passed against any person resident in Greater Bombay, if he has not, in fact, been born outside Greater Bombay. This would immediately attract the provisions of Article 15(1) of the Constitution which says :

"That the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Under. Article 13(1) of the Constitution.

"All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

From this it would follow that Sub-section (2A) of Section 27, Bombay City Police Act in so far as it discriminates against persons who are not born in Greater Bombay should be deemed to be void in view of Article 13 of the Constitution read with Article 15(1) thereof. The learned Govt., Pleader contended that u/s 27

(1) there was power in the Comr. of Police to extern even those persons who are born within Greater Bombay if their movements or acts were causing or were likely to cause alarm, danger or harm to person or property or that there were reasonable grounds for believing that such person was engaged or was about to be engaged in the commission of an offence involving force or violence or an offence punishable under chaps. 12, 16 or 17, Penal Code. He argued that a greater protection had been afforded to those people who were not born in Greater Bombay by insisting under Sub-section (2A) that they could not be deported unless they were convicted of the various offences which have been mentioned in that sub-section. In our opinion this argument is altogether unconvincing. u/s 27 (1), it is open for the Comr. of Police to take action against any person whether he is born in Greater Bombay or not. No special immunity is given to a person born outside Greater Bombay. But the conditions precedent to his taking action are those which have been mentioned in that sub-section. Under that sub-section, it would not be open to him to deport a person merely because he had once been convicted of the offences which are referred to in Sub-section (2-A). In taking action u/s 27 (1), he had got to be satisfied that the movements & acts of the person proposed to be dealt with are causing or calculated to cause alarm, danger or harm to person or property, or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of certain offences. So a conviction of a person recorded 5 or 10 years earlier would not enable the Police Comr. to take action u/s 27 (1). But it is open to the Police Comr. to take action against a person u/s 27 (2A) merely because he has once been convicted of the offences mentioned under Chat subsection, provided he was born outside Greater Bombay. Under similar circumstances he cannot take action against a person born within Greater Bombay. It seems, therefore, clear that Sub-section (2A) does discriminate against persons who have not been born in Greater Bombay & to that extent that sub-section appears to us to be contrary to the provisions of Article 15(1) of the Constitution. We must, therefore, hold that to the extent of this repugnancy, the subsection is void under Article 13(1) of the Constitution. Any order, therefore, that has been passed under Sub-section (2-A) of Section 27 must, therefore, be held to be void & inoperative.

5. We accordingly make the rule absolute & direct the Comr. of Police to forebear from preventing the entry of the extreme into Greater Bombay & from taking any action in pursuance of the order of externment. The learned Govt. pleader has asked for a certificate for leave to appeal to the S. C. & we grant the certificate asked for by the learned Govt. pleader.

Chainani, J.

6. I agree. I can find no answer to the argument that Sub-section (2-A) of Section 27, Bombay City Police Act, discriminates between persons born in the Greater Bombay & persons born outside the Greater Bombay. Sub-section (1) of this section provides inter alia that whenever it shall appear to the Comr. of

Police (a) that the movements or acts of any person in the Greater Bombay are causing or calculated to cause alarm, danger or harm to person or property, or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence, or an offence punishable under chaps. XII, XVI or XVII, Penal Code, or in the abetment of any such offence, & when in the opinion of the Comr. witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or (b) that an outbreak of epidemic disease is likely to result from the continued residence in the Greater Bombay of an immigrant, the Comr. of Police may by order direct such person to remove himself outside the Province or to such place within the Province as the Comr. shall prescribe & not to enter the Province or, as the case may be, the Greater Bombay. Sub-sections (2) & (2-A) are in the following terms :

"(2) It shall also be competent to the Commissioner of Police to direct the removal & prohibit the entry in like manner of any person who has been twice convicted of an offence u/s 6, 9 or 23 of the Bombay Beggars Act, 1945, or under the Bombay Prevention of Prostitution Act, 1923, or of any person who has been thrice convicted within a period of three years of an offence punishable either u/s 4 or Section 12-A of the Bombay Prevention of Gambling Act, 1887, or under the Bombay Prohibition Act, 1949, or the Dangerous Drugs Act, 1930.

(2-A) It shall be further competent to the Commissioner of Police to direct any person who, not having been born in the Greater Bombay, has been convicted of any offence punishable under :

- (i) Chap. XII, XVI or XVII, Penal Code,
- (ii) Section 65 or 68, Bombay Prohibition Act, 1949,
- (iii) Chap. III, Dangerous Drugs Act, 1930, or
- (iv) Section 4 or 12-A, Bombay Prevention of Gambling Act, 1887,

to remove himself in like manner from the Greater Bombay and not to enter the Greater Bombay". It will, therefore, be seen that Sub-section (1) & (2) apply both to persons born in the Greater Bombay & to persons born outside the Greater Bombay. Sub-section (2-A) applies only to persons born outside the Greater Bombay. Under this sub-section, the Comr. of Police can extern a person born outside the Greater Bombay, if he has been once convicted of any one of the offences specified in the sub-section, even if this conviction had taken place several years ago & even if his recent activities have not been such as to be prejudicial to safety of person or property. Action on the same ground cannot be taken against a person born in the Greater Bombay. A person born in the Greater Bombay can be extended only if his recent activities have been prejudicial to safety of person or property, or if he is engaged or about to be engaged in the commission of one of the offences specified in Sub-section (1) or if he has more

than one previous conviction for the offences mentioned in Sub-section (2). Sub-section (2-A), therefore, discriminates between persons born in the Greater Bombay & those born outside the Greater Bombay. Such discrimination is not permissible under Article 15(1) of the Constitution, which directs that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Sub-section (2-A) of Section 27, Bombay City Police Act, being repugnant to Article 15(1) of the Constitution, is, therefore, void.

7. I, therefore, agree with the order proposed by my learned brother.