

(2015) 03 BOM CK 0014

In the Bombay High Court

Case No : Criminal Writ Petition No. 116 of 2015

Iqbaluddin Ziauddin Pirzade

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Bombay Police Act, 1951 — Section 56 (1) (b), 56 [1] [b], 59
Constitution of India, 1950 — Article 227

Citation : (2015) ALLMR(Cri) 2298 : (2015) 2 BomCR(Cri) 464

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

Bench : Division Bench

Advocate : Satej S. Jadhav, for the Appellant; M.S. Patni, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Heard.

2. Rule. Rule made returnable heard forthwith with the consent of the parties.

3. This Criminal Writ Petition, under Article 227 of the Constitution of India, takes an exception to the Order dated 19.01.2015 passed by the Sub-Divisional Magistrate, Jalgaon Division, Jalgaon, against the petitioner in Ext. Case/S.R./No./21/2014 under Section 56 [1] [b] and Section 59 of the Bombay Police Act, 1951.

4. It is the case of the petitioner that, the petitioner received notice from the office of Sub Divisional Police Officer, Jalgaon Division, Jalgaon, informing him that, there is a proposal to extern the present petitioner from Jalgaon and adjacent Districts, and that he should remain present and give explanation as to why said proposal be not made, and for this purpose the said notice contained details of 5 crimes registered against the petitioner at MIDC Police Station, Jalgaon. Pursuant to the said notice, the present petitioner was present in the office of Sub Divisional Police Officer on 25.09.2014, and he submitted written

explanation, wherein he mentioned that, out of five crimes mentioned, he has been acquitted in three and in other two charge sheet is not yet filed. He also annexed certain documents to display his credentials.

Petitioner received show cause notice on 6th October, 2014. He has filed his written explanation on 28.10.2014 to the said show cause notice. On 19th January, 2015, the Sub Divisional Magistrate was pleased to extern the present petitioner from the Jalgaon District and also directed the petitioner to attend the Police Station once in a month. Hence this Petition.

5. The learned counsel appearing for the petitioner submits that, though it was brought to the notice of the respondent Authority that, the petitioner is acquitted from Crime No. 114/2003, 116/2003 and 46/2008, said aspect has not been discussed by the respondent Authority while passing the externment order. It is further submitted that, the petitioner never indulged into communal activities as alleged in the notice and order of externment. It is submitted that, in crime numbers mentioned at serial No. 1, 2 and 3 of the notice and the order, the petitioner has been duly acquitted and in remaining two crimes i.e. Crime No. 44/2012 and 173/2014 charge sheets are yet to be filed. That when matters are under investigation, a person cannot be subject to be extern, on the basis of those crimes. Moreover when the petitioner is to be made to face the law, then for the same consideration, he cannot be subject to action of externment.

6. It is further submitted that, it is a settled law that, an order affecting civil rights of a person can be passed and be sustained only if based on relevant considerations. That in this case, there appears no nexus between the order of externment and the object sought to be achieved by such experiment. Hence, on this ground also the show cause notice and the externment order stands vitiated. It is further submitted that, based on the above grounds, it is apparent that, the rights of the petitioners have been infringed upon by way of curbing his civil rights on the basis of unwarranted considerations. Hence, the order externing the petitioner deserves to be quashed and set aside. Therefore, the learned counsel appearing for the petitioner submits that, the Petition may be allowed.

7. On the other hand, the learned Additional Public Prosecutor for the Respondent - State invited our attention to the reasons assigned in the impugned order, and also original record and submits that, respondent Authority has rightly externed petitioner from Jalgaon District since his activities were prejudicial to the public at large. It is submitted that, the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property. The learned Additional Public Prosecutor appearing for the respondent - State submits that, Petition may be dismissed.

8. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and the learned Additional Public Prosecutor appearing for the Respondent - State, with their able assistance, we have

carefully perused the notice dated 4th October, 2014, and also further show cause notice and the impugned order and also original record made available for perusal. Upon careful perusal of the show cause notice dated 4th October, 2014, it appears that, in all 5 offences registered against the petitioner have been mentioned in the said notice. It appears that, petitioner did file his reply to the said notice, stating therein that, the offences registered against him, are out of the political vendetta. It is stated in the reply that, he is office bearers of the various religious and educational trusts. He along with other members of the community celebrate Durga Festival, Dasera, Dipawali, Ganesh Festival and also Eid, and therefore, the allegations against him that he has indulged himself in communal disharmony are contrary to the record.

9. It appears that, principal reason stated in the notice is that, petitioner tries to encourage communal disharmony. No witnesses are coming forward to depose against the petitioner. There is likelihood of breach of peace and law and order and the petitioner is likely to commit serious offences during forthcoming Assembly Election since the petitioner is active in politics, and therefore, his externment is warranted.

10. Upon careful perusal of the impugned order, though the Authority while recording the contention of the petitioner, has recorded that, petitioner is acquitted from three offences, nevertheless while recording the findings - reasons, there is no discussion about the contention of the petitioner that, he is acquitted from three offences. Though there are three statements of the various persons stating therein about alleged harmful activities of the petitioners, however, there is no date and time of recording the said statements. There is nothing to indicate in the impugned order that, as a matter of fact the Police has recorded in-camera statement of the witness. The fact that petitioner was tried in three cases and acquitted ought to have been taken into consideration by the Authority. The respondent Authority ought to have made detail discussion about remaining two offences, and how those offence has relevancy in passing the externment order. However, such discussion is consciously missing in the impugned order. It appears that, the Sub Divisional Magistrate, while passing the impugned order, has placed reliance even on the offences from which the petitioner is already acquitted. The relevant portion from the impugned order, which is part of the discussion and conclusion reached by the authority reads thus:

Therefore, it appears that, the Authority, while passing the order, even placed reliance on the offences from which petitioner is already acquitted. So far offence which was registered on 28th June, 2014 is concerned, there is no detail discussion how said offence can form basis for passing the impugned order. Though there is reference about riot between Hindu and Muslim at Pachora on 14th January, 2015, there is nothing on record to show that, as a matter of fact petitioner was involved in the same riot. It is observed that, petitioner may likely to indulge in Hindu and Muslim riots in future, and therefore, it is observed that,

his externment is necessary. On the whole, it appears that, the authority has not recorded subjective satisfaction objectively, which is necessary while passing the externment order. The authority has also not taken into consideration the fact that, remaining two offences are awaiting trial, and those will be tried by the Competent Court.

11. Upon careful perusal of the findings recorded by the respondent No. 2, there is no mention about in-camera statements recorded by the concerned Police Station against the petitioner. The Bombay High Court in the case of Juber Abdul Vahid Kureshi Vs. State of Maharashtra and ors in Criminal Writ Petition No. 1511 of 2006 decided on 10th September, 2007, in para 3 held thus:

"3. There is no doubt that the impugned order of externment has been passed under Section 56 (1) (b) of the Bombay Police Act, 1951 which indicates that there were reasonable grounds for believing that the petitioner was engaged or was about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code or in the abetment of any such offence and in the opinion of such officer there were no witnesses 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. To support the order of externment passed on such ground, it is imperative that the Competent Authority before passing the order of externment went through such in-camera statements recorded and duly verified and reached to the conclusion that the witnesses were apprehensive to come in the open and depose against the petitioner / externee."

[Underlines added]

In the present case, as already observed, there is no mention of in-camera statements of the witnesses recorded by the Police, and therefore, on said ground also the impugned order deserves to be interfered with. As already observed, though in original record there are statements of three witnesses, no date, time or place is mentioned. The Authority has not taken into consideration contention of the petitioner that, he along with other members of the community celebrate Ganesh Festival, Durga Festival, Dasera, Dipawali and also Eid, and therefore, the allegations against him that, he has indulged in communal disharmony are not correct. The respondents ought to have called upon the petitioner to place on record material to support afore-stated contention.

12. In the light of discussion in the foregoing paragraphs, the impugned order of the externment deserves to be quashed, and accordingly same is quashed and set aside.

13. Rule made absolute in terms of prayer clause-B. The Criminal Writ Petition is allowed and stands disposed of accordingly.