

(2018) 01 GUJ CK 0053
In the Gujarat High Court
Case No : 3191 of 2017

KASAM @ BATAT ISMAILBHAI PATEL

APPELLANT

Vs

STATE OF GUJARAT & ORS

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Bombay Police Act

Citation : (2018) 01 GUJ CK 0053

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : VALIMOHAMMED PATHAN, MANAN MEHTA

Judgement

1. By way of the present petition, under Articles 226 and 227 of the Constitution of India, the petitioner has challenged an order dated 31.05.2016

passed by respondent No.3 in Externment Case No. 1 of 2016, by which, the petitioner has been externed for a period of two years from

different Districts namely Gir Somnath, Junagadh, Porbandar, Rajkot, Amreli and Div, as well as he has challenged the order passed by the

respondent No.2 dated 30.01.2017 by which, appeal preferred by the petitioner being Externment Appeal No. 282 of 2016 is dismissed.

2. Brief facts emerges from the record are as under :

2.1 The petitioner was served with a notice issued by Sub - Divisional Magistrate, Veraval under Section 59(1) of the Bombay Police Act, 1951,

calling upon the petitioner to show cause as to why an order shall not be passed under Section 56(a) of the Bombay Police Act, since several

offences were registered against him. The case was registered as Externment

Case No. 1 of 2016 by the Sub-Divisional Magistrate, Veraval.

2.2 The petitioner was heard through his lawyer. The petitioner was present at the time of hearing of the said case. The Sub- Divisional Magistrate

after hearing the petitioner as well as the lawyer and after considering the facts, came to the conclusion that petitioner is required to be externed for

a period of two years from certain Districts, which are referred hear-in-above and passed an order dated 31.05.2016.

2.3. The petitioner challenged the said decision before the State of Gujarat by preferring Externment Appeal No. 282 of 2016. The appeal was

heard by Joint Secretary, Home Department, Gandhinagar and the same was dismissed by an order dated 30.01.2017. Hence, the present

petition.

3. Learned Advocate for the petitioner submitted that the notice as well as orders issued and passed by the Authorities are of totally non-

application of mind. The respondent authority had issued notice to the petitioner under Section 56(a) of the Act, however has considered other

aspects which do not fall within perview of Section 56(a) of the Act. He has submitted as per section 56(a), if is found that movements or acts of

any person causing or calculated to cause alarm, danger or harm to a person or property, an order can be passed under Section 56(a) of the Act.

While issuing notice as well as deciding the matters, the Authorities have taken into consideration five offences which are registered which falls

either Chapters 16, 17 or 21 of the Indian Penal Code. If the authority has considered the externment proceedings for the said offences, the notice

ought to have been issued under the provisions of Section 56(b) of Bombay Police Act. He submitted that since notice, order of Sub- Divisional

Magistrate and Appellate Authority are perused under Section 56(b), the same is totally non-application of mind.

4. In support of his submission, he has relied upon a decision of this Court in the case of Shri Hussainmiya @ Jago Razakmiya Qadri v. State of

Gujarat & Ors. reported in 1999 (2) G.L.H. 786. He submitted that in the said decision this Court has held that if the Authority has taken any

action under the Bombay Police Act other than the provision mentioned in the Show-cause notice, like one in the present case, this Court has

quashed and set aside the externment order passed by the Authority.

5. Per contra, learned APP submits that the competent authority has passed the impugned order after considering all the relevant materials and

statement of witnesses as well as the fact that the petitioner is involved in other criminal offences, so as to demonstrate that there is likelihood of

breach of peace in the area and therefore, the learned APP supported the impugned order and urged to dismiss the petition.

6. Notice dated 09.02.2016 issued by Sub-Divisional Magistrate, Veraval under Section 59 of the Act and makes it clear that the petitioner was

called upon to show cause as to why he should not be externed under 56(a) of the Act.

7. It appears from the said order dated 31.05.2016 passed by the Sub Divisional Magistrate, Veraval, by which, the petitioner is externed, that the

Authority has considered the offences registered against the petitioner which are mentioned in the notice. On perusing the order passed by

Appellate Authority it also appears that the Appellate Authority has also considered the said offences Section 56(b) empowers the authority to

issue notice for the offences mentioned therein. However, the petitioner was called upon to reply for the alleged action under Section 56(a) of the

Act. It has been held by this Court in the case of Shri Hussainmiya @ Jago Razakmiya Qadri (supra), if the notice is issued under Section 56(a) of

Bombay Police Act and where the externment order shows that the powers under Section 56(b) of the Act, has been exercised, the same is non

application of mind and therefore, it can be said that subjective satisfaction recording by the authority, before passing the order of externment, is

vitiated.

8. In view of the above facts and in view of the above judgment, I am of the opinion that the petition requires consideration and accordingly is

allowed. The orders dated 31.05.2016 and 30.01.2017 passed by the Authority as well as Appellate Authority are hereby quashed and set aside.

Rule is made absolute. Direct Service is permitted.