
(2016) 08 BOM CK 0168

In the Bombay High Court

Case No : Criminal Writ Petition No. 2213 of 2016

Maresh Bajrang Dalvi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-08-2016

Acts Referred:

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

Citation : (2017) ALLMRCri 777 : (2017) 1 BomCR(Cri) 734 : (2016) 6 MhLJCrI 127

Hon'ble Judges : Naresh H. Patil and Prakash D. Naik, JJ.

Bench : Division Bench

Advocate : Mr. P.D. Dalvi, Advocate, for the Petitioner; Mr. D.P. Adsule, APP, for the Respondent/State

Final Decision : Allowed

Judgement

Prakash D. Naik, J.—Rule. Rule is made returnable forthwith. Heard by consent of both the parties.

2. Learned APP waives service of notice for Respondent ? State.

3. The petitioner herein have challenged the externment order passed by the Sub-Divisional Magistrate, Ichalkaranji on 17th August, 2015. The said order of externment has been initiated in exercise of powers under Section 56(1)(a) and (b) of the Maharashtra Police Act (for short "the said Act").

4. The Sub-Divisional Police Officer had issued a notice dated 25th December, 2014 to the petitioner under Section 59 of the said Act. In the said notice, it was stated that it was proposed to initiate externment proceedings against the petitioner and an inquiry is being conducted vide Section 59 of the said Act. It was further mentioned that the externment proceedings are proposed to be invoked against him under Section 56(1)(a) and (b) of the said Act. The notice refers to seven cases pending against the petitioner. The notice also refers to the preventive natures adopted against the petitioner under Section 107 and 110 of

the Code for Criminal Procedure.

5. In pursuant to the inquiry being conducted by the Sub-Divisional Police Officer vide Section 59 of the said Act, a report was forwarded to the Sub-Divisional Magistrate. Thereafter another notice was issued by the externing authority on 15th July, 2015. In the said notice it was mentioned that it was proposed to extern the petitioner for a period of two years from the areas of Kolhapur and Sangli. It is further stated that the acts and movements of the petitioner are causing harm, alarm and danger to the person or property and there is likelihood of peace and public order.

6. Petitioner forwarded his reply dated 3rd August, 2015. In the said reply it was stated that he was acquitted in Sessions Case No.3 of 2006 and Regular Criminal Case No.73 of 2006. It is also stated that the other cases are also pending in the Court of law.

7. The Sub-Divisional Magistrate vide order dated 17th August, 2015 directed that the petitioner should remove himself from the area of Kolhapur district for a period of two years. In the said order it was stated that the action has been initiated under Section 56(1), (a) and (b) of the said Act and the order made reference to the cases registered against the petitioner.

8. Learned advocate appearing for the petitioner submitted that the action initiated against the petitioner vide impugned order of externment is bad in law. There is non-application of mind on the part of externing authority while issuing the impugned order. The criminal cases referred to in the order of externment at serial no.2 which was registered vide CR No.87 of 2004, cannot be the subject matter of proceedings as the alleged offence is under Sections 279, 337, 338 of the Indian Penal Code and Section 189 of the M.V. Act are not covered by Chapter 12 or 16 or 17 of the IPC. It was further submitted that the petitioner was acquitted in connection with the cases arising out of C.R. No.14 of 2005 and 7 of 2006. However, in the order of externment the said cases were shown as pending against the petitioner. It is further submitted that the order is passed on extraneous material of which no notice was given to him and hence the same is violative of principles of natural justice. It is further pointed out that in the show-cause notice dated 25th December, 2014, there is no recording of satisfaction that the witnesses are not willing to come forward to depose against the petitioner. Even in the second notice dated 15th July, 2015 issued by the externing authority, there is no reference of witnesses not coming forward to depose against him. However, in the order of externment, such satisfaction is being recorded by the externing authority.

9. Petitioner had challenged the order of externment by preferring an Appeal under Section 60 of the said Act. The said Appeal was rejected vide order dated 5th May, 2016. In the said order it is stated that the offence registered vide C.R.No.24 of 2004 has not been taken consideration by issuing order of externment. It is mentioned that in relation to other acts committed by the

petitioner, the witnesses are not willing to come forward to depose against him and offences under Chapter 16 and 17 of the IPC has been registered against the petitioner. In view of the said observations, Appeal preferred by the petitioner was rejected.

10. We have perused the show-cause notice, order of externment as well as the other documents placed on record. The externing authority has adopted a casual approach while issuing the order of externment. The manner in which the impugned order is issued reflects total non-application of mind on the part of externing authority. The execution of the order infringes the right of citizens to move freely through out the territory of India and to reside and settle in any part of the country. The initiation of the externment proceedings takes away the fundamental right of the citizens guaranteed under Article 19 of the Constitution of India. Although the State has a right to impose certain restriction, in the interest of justice, such power has to be exercised with care and caution and by following mandatory safeguards. In catena of decisions, this Court has time and again laid down principles governing the exercise of powers under Section 56 of the said Act. In spite of the law laid down by this Court in several decisions, the authorities have repeatedly committed same mistakes while issuing externment orders.

11. In the present case, it is noticed that the order of externment is based on extraneous material. In order of externment, it is stated that externee is a resident of Shirol village, District - Kolhapur. He has been indulging crimes since 2004. He has created terror in the area as a result of which no one is coming forward to depose against him openly. His acts are likely to cause danger to the peace loving citizens and the youth in the society are likely to influence by the attitude of externee in earning quick money and may follow him by ruining their life and therefore it is proposed to initiate externment proceedings against him. This averments are not reflected in the show-cause notice dated 25th December, 2014 or the second notice dated 15th July, 2015. The externing authority has formed its conclusion on extraneous material of which no notice was given to the petitioner under Section 59 of the Act. The whole object of the notice is to give an opportunity to the person against whom the proposed action is initiated to tender an explanation. Such an order is bad in law and deserves to be quashed and set aside.

12. In the show-cause notice, there is no reference of the satisfaction for initiating the externment proceedings that the witnesses are not willing to come forward to depose against the externee against whom the action is sought under Section 56(1) (a) and (b) of the said Act. Surprisingly, in the order of externment although it is shown that order can be issued against the persons which satisfies the requirement of Section 56 of the said Act. There is no satisfaction recorded that the witnesses are not willing to give evidence in public against him by reason of apprehension on their part as regards their safety of their person and property. This is a basic requirement of law to initiate the externment

proceedings. This shows that there is total non-application of mind on the part of the externing authority while initiating the order of externment. The Appellate Authority has mechanically confirmed the said order.

13. Section 56(1),(a) and (b) provides that the authorities may initiate action under the said provisions in the event of their satisfaction that the movements or acts of any person are causing or calculated to cause harm, alarm to person or property or there are reasonable grounds for believing that such person is engaged or is about to engage in the commission of offence involving force or violence or an offence punishable under chapter 12, 16 or 17 of the IPC or in the abatement of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public such person by reason of apprehension on their part as regards the safety of their person or property. However, in the present case, the externing authority has not adhered to the aforesaid requirements of law.

14. In the case of Yashwant Damodar Patil v. Hemant Karkare, 1989 Mh.L.J. 1111 this court has held that :

"The Fact that the proposed externee is engaged or is about to be engaged in one or the other type of the activity or movement in Clauses (a) and (b) of Section 56 (i) of the Bombay Police Act, is not sufficient by itself to warrant an order of externment. That fact, coupled with the opinion formed by the designated officer that witnesses are not willing to come forward to give evidence in public for the reasons mentioned in clauses (a) and (b) of Section 56(i) of the Bombay Police Act, will provide a proper basis for the exercise of the power of externment under the provisions of the Act...

? in any case of acts involved on the part of the proposed externee, where an order of externment proposed to be passed, it is necessary that the officer concerned must be satisfied that witnesses are not willing to come forward to give evidence against him. Notice of such satisfaction must also necessarily be given to the proposed externee under section 59 of the Bombay Police Act."

15. In view of the above, the order of externment deserves to be quashed and set aside.

16. Hence, we pass the following order :

ORDER

(i) Rule is made absolute;

(ii) Impugned order of externment dated 17th August, 2015 issued by the Sub-Divisional Magistrate, Ichalkaranji under Section 56(1)(a) and (b) of the Maharashtra Police Act, 1951 as well as the order dated 5th May, 2016, passed by the Divisional Commissioner Pune Division, Pune confirming the order of externment is quashed and set aside.

(iii) Parties to act on an authenticated copy of this order.