

(1952) 09 GUJ CK 0006
In the Gujarat High Court

Case No : Civil Miscellaneous Application No. 35 of 1952

Mahmed Alimahmed

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-09-1952

Acts Referred:

City of Bombay Police Act, 1902 — Section 27(1)
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 363, 370, 372
Saurashtra District Police (Amendment) Act, 1951 — Section 47B, 47B(A), 47E

Citation : (1952) 09 GUJ CK 0006

Hon'ble Judges : Shah, C.J.;Baxi, J

Bench : Division Bench

Advocate : T.U. Mehta, for the Appellant; A.R. Baxi, General, for the Respondent

Judgement

Shah, C.J.—This is a petition for a writ under Article 226 of the Constitution for declaring as illegal and ultra vires an order dated 5-5-1952 made by the District Magistrate, Madhya Saurashtra District, u/s 47-B (b) of the Saurashtra District Police (Amendment) Act, 1951, externing the Petitioner from the Madhya Saurashtra District. The Petitioner was served with a notice to show cause u/s 47-E of the Act which stated, inter alia, that he was engaged in activities of converting Hindu women into Muslims and abducting them, that he had converted a Bhil woman named Santok that he had helped in the abduction of two women Bai Prabha and her daughter Shanta by one Gulmahamed who had been involved in a murder case and had been acquitted by the High Court, that in respect of the same a case under Sections 363, 370 and 372, Indian Penal Code was pending against him (Petitioner), that he was tampering with the witnesses in that case by giving them threats and was also giving threats and intimidation to abduct Hindu women and that he was a bully.

The notice purports to say in para. 2 thereof that it was dangerous to allow him to live in the Madhya Saurashtra District and that the public residing in the area apprehended the safety of their women. This notice was served upon the

Petitioner while the abduction case in respect of Bai Prabha and Shanta was pending against him in the Court of Session of Rajkot. The Petitioner was given a hearing after which the District magistrate passed the order, Ex. 2, which stated that evidence was placed before him that the Petitioner had forcibly converted Bai Santok, that he was giving threats and intimidation to abduct Hindu women and was a bully and that after hearing the Petitioner and considering his explanation he, the District Magistrate was satisfied that the Petitioner's acts and movements were calculated to cause danger and alarm to the persons in the Madhya Saurashtra District, and that in his opinion witnesses were unwilling 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.

2. u/s 47-B of the Act the District Magistrate can pass an order of externment if it appears to him that facts answering the requirements of Sub-clause (a) of Section 47-B or of subcl. (b) of the section exist, that is to say, he can extern a person in case the requirements of any of the Sub-clause (a) or (b) are satisfied. Section 47-B is similar to Section 27(1), City of Bombay Police Act, and referring to this latter Act, their Lordships of the Supreme Court have held in -- Gurbachan Singh Vs. The State of Bombay and Another, that the said:

law is certainly an extraordinary one and has been made only to meet those exceptional cases where no witnesses for fear of violence to their person or property are willing to depose publicly against certain bad characters whose presence in certain areas constitute a menace to the safety of the public residing therein

Section 47-E requires that before any order is passed u/s 47-B the person shall be informed in writing of the general nature of the material allegations against him and a reasonable opportunity of tendering an explanation regarding them shall be given to him. Now the notice given to the Petitioner opens with the allegation that the Petitioner was engaged in converting Hindu women into Muslims and abducting them, but, as the order of the District Magistrate shows, no evidence was placed before him regarding this allegation and the order too does not take into account this particular allegation. The next allegation is that the Petitioner had abducted Bai Santok but that was about ten years back and in all conscience this act of the Petitioner which had been forgotten since long cannot be resurrected and it cannot be invoked for the purpose of taking action under the District Police Act at this distance of time. The allegation regarding the abduction of Prabha and her daughter Shanta was the subject of a criminal case against the Petitioner and the said case was pending in the Sessions Court at Rajkot at the time of the present proceedings, and in connection with the said case the allegation is that the Petitioner was threatening witnesses and attempting to break the case, the threats being to abduct Hindu women. The gravamen of the notice thus appears to be that the Petitioner was uttering threats and giving intimidation of abducting Hindu women, and the question is whether these allegations justify an order u/s 47-B (b).

3. However, what Section 47-B (b) requires is that the person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters 12, 16, or 17, Indian Penal Code or in the abetment of any such offence, and that in the opinion of the District Magistrate 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. Now reading the notice carefully it is clear that the allegations regarding the threats and intimidation of converting Hindu women referred to in the last two lines of para 1 of the notice have reference to the pending criminal case against the Petitioner. The said allegation is not properly worded but taking it as it stands, it can only mean that the Petitioner was giving threats to witnesses of that case and that the threats were of abducting Hindu women. It does not speak of an act done by the Petitioner independently of and apart from that case. However the allegation taken at its highest is of criminal intimidation, and it is vital to note that the notice does not say that the Petitioner was engaged in or was about to be engaged in the commission of an offence falling under Chaps. 12, 18 and 17, Indian Penal Code. The question of witnesses not being willing to come forward to give evidence in public against the Petitioner on account of an apprehension as regards their safety, therefore, does not really arise because that ground can be invoked provided there is an allegation that the person was engaged in or was about to be engaged in the commission of an offence specified in Section 47-B (b). No doubt the first allegation in the notice is that the Petitioner was engaged in converting Hindu women and in abducting them, but that is more or less of an introductory nature, the burden of the notice being that he was giving threats or intimidation in the pending criminal case. Apart from it, as the District Magistrate's order itself shows no evidence regarding this particular allegation, viz., that the Petitioner was engaged in converting and abducting Hindu women, was placed before the Dist. Magistrate and the order is not based on any such allegation. The statement in the notice, as also in the order, that the Petitioner was a bully is merely a conclusion drawn from his acts, and is not by itself an act. As regards Santok, it was an act which had taken place ten years back and the Petitioner cannot on that account be said to be engaged in or about to be engaged in committing an offence envisaged by Sub-clause (b). Therefore the only material allegation is as regards the threats and intimidation to abduct Hindu women, but giving threats or intimidation is not the same thing as being engaged in or about to be engaged in the commission of an offence specified in Section 47-B (b). The offence of criminal intimidation falls under Chap. 22, Indian Penal Code and is not covered by Sub-clause (b) of Section 47-B. Therefore on the evidence placed before the District Magistrate, as has been stated in the order, there was no scope for the District Magistrate to be satisfied that the Petitioner was engaged in or was about to be engaged in committing an offence involving force or violence, or falling under Chap. 12, 16 or 17, Indian Penal Code. The question of the District Magistrate's satisfaction as regards the witnesses not coming forward to give evidence is therefore not relevant. The result, therefore, is that the District Magistrate's order does not fall

u/s 47-B (b).

4. We may next see whether the said order is covered by Section 47-B (A) of the Act. Obviously here again the allegation regarding Bai Santok cannot be taken as a movement or an act of the Petitioner causing or calculated to cause alarm, danger or harm to person or property, it being a state incident. The allegation in the notice as regards the giving of threats and intimidation to abduct Hindu women is, as I said, confined to the Criminal case. It cannot be torn off its context and taken as something apart from the alleged attempt to break the case. It follows that it cannot be read as a general allegation of threat or intimidation to abduct Hindu women. Now the District Magistrate's order should have relevance to and should proceed on the allegations made against the person and which the person is called upon to meet, but we find that the order makes a departure from this course. The allegation of threats and intimidation to abduct Hindu women, as stated in the order, is not the same as the one stated in the notice, because whereas the latter had reference to the pending criminal case, the former is a general allegation of threat and intimidation to abduct Hindu women, and it virtually amounts to making out a new case. The notice does not contain any such independent allegation, and it does not say that because of such threats and intimidation the public residing in the area are alarmed and apprehend the safety of their women. The order does not mention to whom the threats and intimidation were given and if it was meant by the statement in the said order that the threats were given to the general public, then having regard to the language used in the notice and the context in which it occurs, it must be said that the Petitioner had no reasonable opportunity of tendering an explanation in respect of the same. In the circumstances the order of the District Magistrate cannot also be justified u/s 47-B (A).

5. In our opinion the order of externment in the present case was not well advised in view of the pending criminal case against the Petitioner. It is not desirable that such concurrent action should be taken because it is likely to prejudice the person in the criminal trial. Besides the proceedings for externment of the Petitioner are substantially based on the allegation that he has been tampering with witnesses in the pending prosecution by intimidating them. We do not see that on any reasonable construction of the District Police Act it can be held that a person can be externed on this ground and it would be startling to hear that the Government can extern a person after launching prosecution against him if he is found, tampering with witnesses. There is no provision in the District Police Act justifying such action. The District Magistrate himself seems to have recognised the justice of this position for his order eschews all reference to the pending prosecution and intimidation to witnesses concerned therein and we need not therefore pursue this point any further.

6. In the result, therefore, we allow this petition and direct that a writ be issued to the opponent declaring that the order of externment dated 5-5-1952 passed by the District Magistrate, Madhya Saurashtra District, is illegal and ultra vires.

No order as to costs.

Baxi, J.

7. I agree.