
(2013) 07 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 22053 of 2011

Massu alias Musheer Mohammad

APPELLANT

Vs

Sub-Divisional Magistrate and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2014) 3 MPHT 17 : (2013) 4 MPLJ 177

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : J. Aiyer, for the Appellant; Lalit Joglekar, Panel Lawyer, for the Respondent

Judgement

A.K. Shrivastava, J.—By this petition under Article 226 of the Constitution of India the petitioner is seeking quashment of the criminal proceedings initiated against him by the respondent No. 1 for externment in Case No. 196/2011 under the provisions of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (in short "the Adhiniyam"). By inviting my attention to earlier order dated 7th July, 2009 passed in Case No. 84/Criminal Appeal/08-09, Massu alias Massu Pathan v. State of M.P. by the Commissioner, Bhopal Division, Bhopal u/s 9 of the Adhiniyam (Annexure P-1) whereby the order dated 21-4-2009 passed by the Additional District Magistrate, Bhopal in Case No. 078/2009 has been set aside, learned counsel for the petitioner submitted that thereafter on the same facts and grounds another Case No. 1/2010 was registered by the District Magistrate, Bhopal u/s 3 of the said Adhiniyam against the petitioner and on 29-9-2010 again an order of externment was passed against the petitioner. The said order was again assailed by the present petitioner by filing an appeal u/s 9 of the Adhiniyam to the Commissioner, which was allowed on 7-12-2010 (Annexure P-5) and it was categorically held that the case u/s 3 of the said Adhiniyam cannot be registered on the basis of the cases which were registered 16 years ago. Anyhow the petitioner obtained information that again on the same facts and grounds me proceedings 6f externment has been initiated against him in

Case No. 196/2011 before the Additional District Magistrate, Bhopal. Hence, this petition has been filed.

2. The contention of learned counsel for the petitioner is that the cases which were registered against the petitioner several years ago on the basis of those cases, the proceedings u/s 3 of the said Adhinyam cannot be initiated by the District Magistrate. In this context, learned counsel has placed heavy reliance on the Division Bench decision of this Court Ashok Kumar Patel Vs. State of M.P. and Others, . Hence, it has been submitted that now there cannot be any order of externment on the basis of those cases. It has also been put forth by her that no notice of hearing of that case which is pending before the Additional District Magistrate has been received by the petitioner.

3. On the other hand, Mr. Lalit Joglekar, learned Panel Lawyer for the respondents/State has invited my attention to the document Annexure R-1 filed along with their return giving a list of as many as 18 cases which are registered against the petitioner. It would be germane to quote the said list, which reads, thus:--

4. A rejoinder has also been filed by the petitioner stating therein that from Item 1 to 13 the petitioner has already been acquitted and the State appeal has been dismissed. So far as Item No. 14 with regard to registration of Crime No. 200/2008 for the offence punishable under sections 294, 324, 506/34 Penal Code is concerned, it has been contended by her that complainant has withdrawn the said complaint. In regard to Item No. 15 it has been contended that against the Crime No. 94/2010 registered against the petitioner u/s 341, 294, 323, 506, Penal Code a criminal revision is pending. For Item No. 16 pertaining to Crime No. 1/2010 it has been stated that the said order has been set aside by the Commissioner vide order dated 7-12-2012. For Items 17, and 18 it has been submitted that these proceedings are under sections 107, 116(3), Criminal Procedure Code but the petitioner has no knowledge about them and the life of the case u/s 107, Criminal Procedure Code is one year while the proceedings u/s 116(3) Criminal Procedure Code are to be concluded within a period of six months and if it is not terminated, it should be deemed that it stood terminated unless special reason has been recorded in writing by the Magistrate. Thus, it has been put forth by her that the proceedings which are pending before the Additional District Magistrate under the said Adhinyam is nothing but to harass the petitioner again and again on the same facts and grounds.

5. By putting a deep dent upon the jurisdiction of the Additional District Magistrate it has been submitted that under the said Adhinyam, the District Magistrate has jurisdiction to initiate the proceedings of externment, therefore, the proceedings which are pending against the petitioner before the Additional District Magistrate, be quashed.

6. On the other hand, Mr. Joglekar, learned Panel Lawyer for the respondents-State submitted that since several cases are pending against the petitioner, the

proceedings have been rightly initiated against him and therefore, if the petitioner is having any grievance, he may raise the same before the authority concerned because no final order is yet passed and the writ petition being premature, it be dismissed.

7. Having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed.

8. During the course of argument it has been submitted by learned Panel Lawyer that the proceeding of externment is pending in the Court of Additional District Magistrate, Bhopal, however, no such provision under the said Adhiniyam has been shown to me under which the Additional District Magistrate can initiate the proceedings of externment. Hence, ex facie the proceedings which are initiated are having inherent lack of jurisdiction. u/s 29 of the said Adhiniyam there is a provision of delegated power and according to this provision, the State Government may by order, direct that any power or duty which is conferred or imposed on the State Government under the said Adhiniyam except the power of imposing collective fines u/s 21 and of framing rules u/s 30, may delegate its power for a specified condition and direction to any officer subordinate to it, not below the rank of a District Magistrate. Thus, according to this section, the power and duty assigned to the State Government can be delegated by assigning such conditions specifically, to be exercised by any person subordinate to it but again it has been legislated that the Authority should not be below the rank of District Magistrate. There is nothing in this section so as to enable the District Magistrate to delegate its power and duty assigned to him to pass an order of externment u/s 3 of the said Adhiniyam. No other provision has been shown to me by learned Panel Lawyer while addressing the matter and therefore, I am of the view that Additional District Magistrate was not having any jurisdiction to initiate the proceedings of externment against the petitioner under this Act. It can be exercised by the District Magistrate only.

9. That apart, on bare perusal of the list (Annexure R-1) which I have quoted hereinabove, it is gathered that Items 1 to 15 relate to the year 1975 to 2010. A Division Bench of this Court in Ashok Kumar Patel (supra) presided by the Chief Justice A.K. Patnaik (as His Lordship then was) in para-8 has categorically held as under:-- The expression "is engaged or is about to be engaged" in the commission of offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or u/s 506 or 509 of the Indian Penal Code, 1860 or in the abetment of any such offence, shows that the commission of the offence or the abetment of such offence by the person must have a very close proximity to the date on which the order is proposed to be passed u/s 5(b) of the Act of 1990. Hence, if a person was engaged in the commission of offence or in abetment of an offence of the type mentioned in section 5(b), several years or several months back, there cannot be any reasonable ground for believing that the person is engaged or is about to be engaged in the commission of such offence.

Thus, according to me, on the basis of the cases which are shown from Items 1

to 15 in the list (Annexure R-1) no action can be taken against the petitioner under the Adhiniyam. That apart, twice earlier the Commissioner in appeal quashed the order of externment of District Magistrate which was based upon these cases. Item No. 16 pertains to externment order but the said order has already been set aside by the Commissioner vide Annexure P-5 dated 7-12-2010 and therefore, it has no legal consequence. The remaining two cases which are mentioned at Items 17 and 18 pertain to section 107 and 116(3), Criminal Procedure Code. At Item No. 18 a case u/s 107 and 116(3), Criminal Procedure Code has been registered at Crime No. 151/12. This Court fails to understand how the said case which was registered later on (Crime No. 151/2012) can be made the basis when the externment proceedings were started in the year 2011. Thus, on its basis the proceedings cannot be initiated. Lastly the case remains at Item No. 17 but there is nothing on record to indicate that any notice of that case has been served upon the petitioner. Looking to the facts and circumstances, merely if one case is pending and that too under sections 107 and 116(3), Criminal Procedure Code, solely on this basis the proceedings of externment cannot be initiated against the petitioner. It is apparent that mala fide again the proceeding under the Adhiniyam in regard to the externment has been initiated.

For the reasons stated hereinabove, this petition succeeds and the proceedings pending before the Additional District Magistrate, Bhopal in Case No. 196/2011 for externment under the Adhiniyam stands quashed. Accordingly, this petition stands allowed.