

(2013) 09 BOM CK 0221

In the Bombay High Court

Case No : Criminal Writ Petition No. 2950 of 2013

Mohammed Sagir Idris Ansari @ Raju Ansari

APPELLANT

Vs

Vineet Agarwal and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3882

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Patel, J

Bench : Division Bench

Advocate : Husen Shaikh, for the Appellant; A.S. Pai, APP, for the Respondent

Final Decision : Allowed

Judgement

G.S. Patel, J.—Rule, returnable forthwith. Mrs. Pai, Learned APP, waives service. By consent, taken up for hearing and final disposal. The 3rd Respondent issued a notice dated 29th January 2013 to the Petitioner, calling upon him to show cause why he should not, under the provisions of Sn. 56(1)(a)(b) of the Bombay Police Act, be externed from the limits of Thane, Mumbai, Mumbai Suburban and Raigad Districts for two years. The Petitioner appeared before the 3rd Respondent and was heard. The 3rd Respondent closed the case and sent it on to the 2nd Respondent who passed an externment order on 2nd May 2013 externing the Petitioner from the limits of Thane District for a period of six months. The Petitioner filed an Appeal to the 1st Respondent. The Appeal was dismissed on 4th July 2013. The Externment Order of 2nd May 2013 and the Appellate Order of 4th July 2013 are the subject matter of challenge in this Writ Petition under Article 226 of the Constitution of India.

2. Mr. Shaikh, Learned Advocate for the Petitioner, placed his grounds of challenge under four heads:

(a) That the material on which the impugned orders are based is stale and not proximate to the externment order;

(b) That although the Petitioner was interdicted from entering the jurisdiction of the Mumbra Police Station by a judicial order, there was no material justifying his externment from the whole of the Thane District;

(c) That there is no material or finding that witnesses are unwilling to step forward to depose against the Petitioner in public, apprehending danger to their lives and property at the hands of the Petitioner; and

(d) That none of the material relied on by the authorities points to the Petitioner being a danger to the public at large.

3. We find that these submissions are all well-taken. From the stage of the show cause notice onwards, reliance was placed on three criminal cases. The first of these, CR No. 241 of 2012 is about a public agitation protesting repeated power outages and load-shedding around Mumbra. The Petitioner is a real estate developer with some political aspirations. In that capacity, he says, he was part of the agitation and courted arrest. How this could ever constitute "criminal" activity justifying externment defies comprehension. The second criminal case, CR No. 540 of 2012, is even more peculiar. It seems that on 11th September 2012, an employee of the power supply and distribution company or board, MSEB, attempted to disconnect an unauthorised electricity connection. He was obstructed by a person named Raju Ansari. Section 353 of the Indian Penal Code was invoked against Ansari. Some 37 days later, the Petitioner was arrested for the same incident though, he claims, he was in no way involved and this was entirely attributable to certain political machinations. The third incident, of 23rd September 2012, involves an altercation with a one Majid Kamruddin who, apparently, abused the Petitioner's mother because Kamruddin and the Petitioner were at loggerheads for some altogether different reason. An altercation between Kamruddin and the Petitioner, in which other members of the Petitioner's family were involved, seems to have followed. The Petitioner obtained anticipatory bail on 3rd November 2012 in relation to this incident. One of the conditions of bail was that he would not enter the jurisdiction of the Mumbra Police Station except to have his attendance noted at the Police Station every Saturday between 3:00 pm and 5:00 pm.

4. The impugned externment order notes that persons are unwilling to be a witness in public against the Petitioner or to file complaints against him. The second of these, the unwillingness to file complaints, is entirely irrelevant to the considerations demanded under S. 56(1)(a)(b) of the Bombay Police Act, 1951. The first finding, that persons are unwilling to depose in public against the Petitioner (presumably fearing for their lives or property, though the externment order does not say so explicitly) is demonstrably incorrect. In the second criminal case noted by the authorities, CR No. 540 of 2012, the final report (Ex. "C" to the Petition) specifically notes the names of two panchas and four additional witnesses sought to be called against the Petitioner.

5. The show-cause notice mentions two in-camera witnesses. Their somewhat

rambling and diffuse statements are, at best, trifling and seem to stem more from a local political animosity than anything else. What is, however, odd, is that all consideration of these in-camera statements is excised from the externment order. We believe this to be a fatal flaw, since, absent these statements, there is no material whatever to indicate a general unwillingness to depose against the Petitioner in public for fear of safety to life and property, an essential element of any order u/s 56(1)(a)(b) of the Bombay Police Act, 1951. *Yeshwant Damodar Patil Vs. Hemant Karkar, Dy. Commissioner of Police and Another*, .

6. From the externment order to the appellate order is a Kafkaesque journey from the merely strange to the decidedly bizarre. In paragraph 5(e) of the appellate order, the 1st Respondent does not dispute the elision of the in-camera statements from the externment order. All he says, instead, is that the Externment Authority in para 4 of his order has recorded the subjective satisfaction regarding the danger to the people and property felt by witnesses. The Externment Authority has mentioned that he has formed this opinion on the basis of confidential statements. Hence the claim of the Appellant does not hold here.

We do not even pretend to understand what this is supposed to mean. If the in-camera statements are not mentioned in the Externment Order, there was no question of the 2nd Respondent arriving at any "subjective satisfaction" as to those statements. Any such satisfaction has to be on the basis of material and that material must be shown in the order itself to have been considered. Apparently undeterred by this internal inconsistency, the 1st Respondent carries on regardless and proceeds to make comments in paragraph 5(f) about the in-camera witness statements that appeared only in the show cause notice, as if their exclusion from the externment order was necessary to protect them. Then there follows a sentence about the Petitioner's activities causing "disturbance in the public peace and order", a wholly irrelevant factor for the strait-jacketed requirements of Section 56(1)(a)(b). A more abject failure of a proper application of mind is hard to conceive.

Inevitably, the Petition succeeds. Rule is made absolute in terms of prayer clause (a). The Externment Order of 2nd May 2013 and the Appellate Order of 4th July 2013 are both quashed and set aside. No costs.