

(2013) 06 BOM CK 0040

In the Bombay High Court

Case No : Criminal Writ Petition No. 301 of 2013

Mohammed Zakir Mohammed Ghouse

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3399

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : A.N. Ansari, for the Appellant; D.R. Korde, APP for State, for the Respondent

Judgement

T.V. Nalawade, J.—Rule. Rule is made returnable forthwith. With consent of parties, matter is heard for final disposal. The proceeding is filed to challenge the orders made by S.D.M. Degloor and the State Government in externment proceeding. The externment proceeding was started on the basis of report given by Degloor police station. It was informed by police that atleast 5 crimes were registered against the petitioner for offences committed under IPC and Bombay Police Act and he had created terror in society. Police had proposed to keep the petitioner out of 3 districts like Nanded, Latur and Parbhani. Such notice was given u/s 56 of Bombay Police Act to the petitioner. Petitioner gave reply to the notice and denied the allegations. He contended that in C.R. No. 25/2000 mentioned in the show cause notice, he was acquitted in the year 2002 itself. He informed that he was acquitted in other crime like Crime No. 131/01, 11/08 and 56/10. Police had filed copies of FIR alongwith report before S.D.M.

2. The S.D.M. made order of externment and directed to keep the petitioner out of 4 districts like Nanded, Latur, Hingoli and Parbhani. It appears that the S.D.M. directed the S.D.O. of Police, to make enquiry and he collected more information. The enquiry showed that out of 5 crimes mentioned in the first notice, in 4 crimes, the petitioner was already acquitted. It was reported that 4 more crimes like Crime Nos. 180, 181, 183, 184 and 189 of 2012 were registered against the

petitioner during enquiry. On the basis of this record, the order came to be made. These circumstances are mentioned in the decision of the Appeal.

3. Learned counsel for petitioner took this Court through copies of some documents to show that in most of the cases which were shown in show cause notice, the petitioner was already acquitted. In reply filed by State also, there is mention that in all old cases, the petitioner was acquitted. It is surprising that in the past, in show cause notice, 2 cases filed under Bombay Police Act were also mentioned and they were considered by the S.D.M. The record shows that fresh notice was not given in respect of the crimes which were found to be registered during enquiry against the petitioner. It was submitted that all the 5 crimes of the year 2012 were registered in October 2012. In respect of these crimes, no opportunity of having say was given to the petitioner, this circumstance shows the non application of mind by the authorities who made externment order against petitioner. On this point, learned counsel for petitioner relied on the case reported as (1) Ganu Vs. M.V. Chitale and Another, and Barku Chendha Datir Vs. Sub-Divisional Magistrate and Another, . In both these cases, it is observed that there must be some material for passing the order of externment. In the present case also, discussion made above shows that there was no material against the petitioner to show why show cause notice was issued against him. It cannot be said that in respect of newly registered crime, opportunity was given to the petitioner to have his say.

4. In any case, crimes were registered in police station, Degloor which is from Nanded district, but the externment order came to be made in respect of 4 districts like Nanded, Latur, Hingoli and Parbhani. Even in the show cause notice, there was no mention of Hingoli district. This again shows non application of mind. In the case reported as 2000 (3) ALLMR 578 (Bom.) , Bombay High Court has held that if the externment orders suffer from the vice of exercise of excessive jurisdiction the same will have to be set aside. Petition is allowed. The order made by Sub Divisional Magistrate, Degloor in externment proceeding No. 2012/D. 7/BPA/Ext. Pro/Cr-124 dated 21/1/2013 and the order made by State Government in Appeal EXT-2013/12/SPL-3(B) on 22/3/13 are hereby set aside. Rule is made absolute in aforesaid terms.