
(2021) 07 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 2093 Of 2021

Mohseen Mohammed Sallem Nadaf	Vs	APPELLANT
D.C.P. Zone Solapur City And Others		RESPONDENT

Date of Decision : 06-07-2021

Acts Referred:

Maharashtra Police Act, 1951 — Section 56(1)(a)(b), 60

Citation : (2021) 07 BOM CK 0024

Hon'ble Judges : S.S. Shinde, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : Jayshree Tripathi, J. P. Yagnik

Final Decision : Allowed

Judgement

N. J. Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.

2. The challenge in this petition is to the judgment and order dated 6th April, 2021 in Appeal No.EA-61/2020 passed by the Divisional Commissioner, Pune Division, Pune, under Section 60 of the Maharashtra Police Act, 1951 ('the Act, 1951'), whereby the order of externment passed against the petitioner by the Deputy Commissioner of Police, Solapur, on 20th June, 2020, CRIWP2093-2021.DOC externing the petitioner for the period of two years from Solapur city and district, came to be modified by restricting the area of externment to Police Commissionerate, Solapur and the Tahsils of North Solapur, South Solapur and Akkalkot (in Solapur district) and curtailing the duration to one year.

3. Background facts leading to this petition can be summarised as under:

(a) An externment proceeding was initiated against the petitioner at the instance of the Senior Police Inspector, Sadar Bazar Police Station, Solapur. It was

reported that the petitioner had indulged in unlawful and violent acts within the limits of Sadar Bazar Police Station right through 2005 to 2019. The acts and conduct of the petitioner had caused and were calculated to cause alarm, danger or harm to the persons residing in Keshav Nagar, Saat Rasta, Shastri Nagar, Maulali Chowk, Lodhi Galli and the adjoining areas, and their properties. On account of such violent acts, the victims and witnesses were not willing to come forward to give evidence in public against the petitioner for the fear of retaliation. During the course inquiry, the jurisdictional police recorded in-camera statements of two witnesses.

(b) A show cause notice was issued on 21 st January, 2020. In addition to the crimes which were registered against the petitioner during the period 2015 - 2019, gist of the in- camera statements of the witnesses was furnished therein. The petitioner gave reply to the show cause notice. After completion of inquiry, the Deputy Commissioner of Police, (Zone), Solapur, recorded the satisfaction that the movements and acts of the petitioner were calculated to cause alarm, danger or harm to the persons and property and the victims and the witnesses were not willing to come forward to give evidence in public for fear of reprisal. Hence the petitioner was ordered to remove himself from the limits of Commissionerate Solapur, Solapur city and district for the period of two years, by order dated 20 th June, 2020.

(c) In the appeal, being Appeal No.EA-61/2020, the Appellate Authority was persuaded to partly allow the appeal and modify the order of externment as indicated above.

(d) Being aggrieved, the petitioner has invoked writ jurisdiction of this Court.

4. We have heard Ms. Tripathi, the learned Counsel for the petitioner and Mr. Yagnik, the learned APP for the CRIWP2093-2021.DOC State/respondents, at length. With the assistance of the learned Counsels we have perused the material on record.

5. Ms. Tripathi took a slew for exceptions to the original order of externment and the order passed by the Appellate Authority. First and foremost, according to Ms. Tripathi, the externing authority had considered old and stale cases registered against the petitioner from the year 2005 to 2017. In two of the cases, the petitioner was acquitted by the competent court. Three of the crimes were not for the offences punishable under Chapter XII, XVI or XVII of the Indian Penal Code ('IPC'). The decision of the externing authority was thus based on extraneous and irrelevant material. Secondly, the date of the recording of in-camera statements of the witnesses was not mentioned either in the show cause notice or in the order passed by the externing authority. Nor the fact that the statements were verified by the competent authority is reflected therein. Thirdly, there was considerable delay in passing the externment order from the date of the last incident attributed to the petitioner. Thus, the live-link between the alleged violent acts, attributed to the petitioner, and the purpose for which the

externment order came to be passed stood snapped. Lastly, the appellate authority, according to Ms. Tripathi, decided the CRIWP2093-2021.DOC appeal preferred by the petitioner belatedly and thereby deprived the petitioner the right to speedy remedy to secure his personal liberty. The appeal was preferred on 5 th July, 2020. It was decided on 6th April, 2021, to the grave prejudice of the petitioner, urged Ms.Tripathi.

6. Mr. Yagnik, the learned APP, would urge that the period of externment, as modified by the Appellate Authority, having come to an end, the petition is practically rendered infructuous. He, however, fairly submitted that the petitioner can pursue this petition for the purpose of the removal of the stigma of externment. On merits, according to Mr. Yagnik, none of the grounds urged on behalf of the petitioner is worthy of acceptance. The externing authority took note of the offences registered against the petitioner from the period 2005 to 2019 to record the satisfaction that there was a continual course of unlawful and violent acts on the part of the petitioner. The fact that the petitioner was acquitted in two of the cases is, thus, not decisive, urged Mr. Yagnik. The petitioner cannot be heard to urge the ground of delay in passing the externment order as the delay is primarily attributable to the petitioner.

7. Ms. Tripathi joined the issue by canvassing a submission that the petitioner, who is a social worker, is constrained to CRIWP2093-2021.DOC pursue this petition despite the expiry of the period of externment as the order of externment was wholly arbitrary and unjustifiable. The petitioner would not like to live with the stigma of externment.

8. The externing authority had taken into account the following crimes registered against the petitioner:

Sr No.

Police Station

CR No.

Sections

1

Sadar Bazar

312/2005

337, 324, 452, 34 IPC

2

Sadar Bazar

3005/2010

294, 323, 504 IPC

3

Sadar Bazar

98/2012

143, 506, 323, 336, 427 IPC

4

Sadar Bazar

171/2012

307, 143, 149, 323, 325 IPC and 135 Mumbai Police Act.

5

Sadar Bazar

237/2012

224 IPC.

6

Sadar Bazar

3002/2015

186 IPC and 135 Mumbai Police Act

7

Sadar Bazar

08/2017

188 IPC and 135 Mumbai Police Act.

8

Sadar Bazar

813/2019

332, 353, 336, 337, 143, 147, 149, 188 IPC., Section 7 of Criminal Law Amendment Act and 135 Mumbai Police Act.

9. Evidently, the crime which was proximate in point of time was registered against the petitioner on 21 st October, 2019 (Sr. No.8). The petitioner was acquitted in two of the cases registered against him in the year 2012 (Sr.Nos.4 and 5). The crimes registered against the petitioner, at item nos.6 and 7, were not for the offences punishable under Chapter XII, XVI or CRIWP2093-2021.DOC XVII of the IPC. Whereas, the crimes at item nos.1 to 3 were registered against the petitioner during the period of 2005 to 2012.

10. Ms. Tripathi, the learned Counsel for the petitioner, in the aforesaid backdrop, would urge that the consideration of old and stale matters and failure to give due weight to the fact that in two of the cases the petitioner was acquitted rendered the order of externment unsustainable. To lend support to this submission Ms. Tripathi placed reliance on the judgments of this Court in the cases of Shri. Perumal Arsan Madrasi vs. Deputy Commissioner of Police, Zone-IV, Ulhasnagar, Dist. Thane & Anr. 12011 ALL MR (Cri.) 2261 and Ganesh Balasaheb Changle vs. They Dy. Commissioner of Police & ors. 22014 ALL MR (Cri.) 2530.

11. In the case of Ganesh Changle (Supra), the Division Bench observed that, "we are at a loss to understand how, if the petitioner had been acquitted, a reference to those two cases could be of any possible value or assistance in justifying any order of externment. This goes beyond a mere non-application of mind. This is sheer perversity in administrative and quasi- judicial action."

12. From the perusal of the material arrayed against the petitioner, it becomes abundantly clear that the externing authority misdirected itself in being influenced by the stale and old crimes registered against the petitioner and also the matters in which the petitioner was duly acquitted. It is pertinent to note that the Appellate Authority noted the aforesaid infirmities in the order of the externing authority. It was in terms recorded that the grounds urged on behalf of the petitioner - appellant carried conviction, and, conversely, the objections on behalf of the sponsoring authority thereto, were devoid of substance. Yet, the Appellate Authority dithered. Having found that the challenges to the order of externment merited acceptance, the Appellate Authority ought to have quashed and set aside the order in its entirety. Instead, the Appellate Authority chose to modify the externment order by restricting the area of externment and reducing the duration thereof. In the process, the Appellate Authority lost sight of the fact that the modified order of externment was untenable for the very reasons which weighted with the Appellate Authority to interfere with the order of the externing authority. The infirmities in the externment order were such that the order could not have been sustained at all.

13. The ground of delay in passing the order of externment is also not without substance. The first notice was issued on 21 st January, 2020. It was followed by another show cause notice dated 26th March, 2020. The petitioner was heard on 13th April, 2020. However, the order of externment was passed on 20 th June, 2020. If considered in juxtaposition with the last incident, which allegedly occurred on 21 st October, 2019, the time-lag cannot be said to be reasonable. The delay had the propensity to snap the live-link between the last incident and the purpose for which the externment order was eventually passed.

14. The very initiation of the externment proceeding against the petitioner, in the context of the last incident dated 21 st October, 2019, is fraught with infirmity. A bare perusal of the narration of the allegations, in the context of Crime No.813/2019, makes it crystal clear that the incident had its genesis in the general elections to the Maharashtra Legislative Assembly, for which votes being

polled on 21 st October, 2019. The fracas occurred as the supporters of two rival candidates came face to face and raised slogans. In the context of the dispute, the role of leading one group, attributed to the petitioner, by no stretch of imagination, can be said to have the CRIWP2093-2021.DOC potentiality to cause alarm, danger or harm to the persons and property in the vicinity. Having regard to the nature of the last incident, which arose out of rival political affiliations, the restraint on the personal liberty of the petitioner by invoking the provisions contained under Section 56(1)(a)(b) of the Act, 1951, was completely uncalled for.

15. We hasten to clarify that the aforesaid observations as regards the Crime No.813 of 2019 have been made only for the purpose of determining the justifiability of the externment order. This may not be construed as an expression of opinion on the merits of the prosecution, which may arise out of C.R.No.813 of 2019. The Competent Court shall decide the said proceedings uninfluenced by the aforesaid observations, on its own merits.

16. Undoubtedly, the period of externment has come to an end. Having arrived at the conclusion that the order of externment is bad in law, we would not be justified in not declaring it void and non-est for the only reason that the period of externment is over. A useful reference in this context can be made to the judgment of the Supreme Court in the case of Nawabkhan Abbaskhan vs. The State of Gujarat 31974(2) SCC 121. , wherein Justice Krishna Iyer observed as under:

A determination is no determination if it is contrary to the constitutional mandate of Art.19. On this footing the externment order is of no effect and its violation is no offence."

17. The observations in paragraphs 19 and 20 are also instructive and hence extracted below:

"19. In the present case, a fundamental right of the petitioner has been encroached upon by the police commissioner without due hearing. So the Court quashed it - not killed it then but performed the formal obsequies of the order which had died at birth. The legal result is that the accused was never guilty of fouting an order which never legally existed.

20. We express no fnal opinion on the many wide-ranging problems in public law of illegal orders and violations thereof by citizens, grave though some of them may be. But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings. An order is null and void if the statute clothing the administrative tribunal with power conditions it with the obligation to hear, expressly or by implication. Beyond doubt, an order which infringes a fundamental freedom passed in violation of the audi alteram partem rule is a nullity. When a competent court holds such official act or order invalid, or sets it aside, it operates from nativity, i.e., the impugned act or order was never valid. The French jurists call it L'inexistence or outlawed order (Brown and

Garner : French Administrative Law, p.127) and could not found the ground for a prosecution. On this limited ratio the appellant is entitled to an acquittal. We allow his appeal."

(emphasis supplied)

18. The conspectus of aforesaid consideration is that, despite the fact that the period of externment had come to an end, we are persuaded to allow the petition so that the order of externment does not entail prejudicial consequences to the petitioner. Hence, the following order:

: ORDER :

(i) The petition stands allowed.

(ii) The order of externment dated 20 th June, 2020, passed by the Deputy Commissioner of Police, Solapur, as modified by the order dated 6th April, 2021, in Appeal No.EA-61/2020, passed by the Divisional Commissioner, Pune, stands quashed and set aside.

19. Rule made absolute in aforesaid terms.