
(2014) 05 BOM CK 0026

In the Bombay High Court

Case No : Criminal Writ Petition No. 4363 of 2013

Munaf Samshuddin Shaikh

APPELLANT

Vs

The Dy. Commissioner of Police

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Bombay Police Act, 1951 — Section 55, 59, 60

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2014) ALLMR(Cri) 2422

Hon'ble Judges : N.H. Patil, J; Anuja Prabhudesai, J

Bench : Division Bench

Advocate : Deepak K. Girme, Advocate for the Appellant; P.H. Kantharia, APP, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anuja Prabhudesai, J.—Rule. Rule made returnable forthwith. By consent, the petition is taken up for final hearing. The petitioner herein has challenged the Externment Order No. 36 of 2012 passed by the respondent No. 1 u/s 55 of the Bombay Police Act 1951 (hereinafter referred to as the said Act) and the order dated 31st August, 2012 whereby the Appellate Authority has confirmed the order passed by the Respondent No. 1.

2. The brief facts leading to this petition are that by notice dated 2nd February, 2012 the Assistant Commissioner of Police, had conveyed to the petitioner that the senior police inspector Kondhwa had proposed to extern him from Pune City and Pune District for two years and that he was directed by the Deputy Commissioner of Police to inquire into the matter and submit the report. The notice referred to two in-camera statements, Crime no 280 of 2011 registered against the petitioner and some general allegations made against the petitioner and called upon the petitioner to submit his explanation within two days from the receipt of the notice.

3. On receipt of the Inquiry Report submitted by the Assistant Commissioner of

Police, the Deputy Commissioner of the Police Vanvadi, by notice dated 11th August 2012 issued u/s 59 of the Act, directed the petitioner to show cause as to why he should not be externed from Pune City and adjoining districts for a period of 2 years. Subsequently, by order dated 11th August, 2013 issued u/s 55 of the Act, the petitioner was externed from Pune city and adjoining districts for a period of 2 years.

4. The petitioner had challenged the said order dated 11th August 2013 before the Appellate Authority by preferring an Appeal u/s 60 of the said Act. The said Appeal was dismissed by the Appellate Authority by order dated 6th May, 2013.

5. Learned Counsel appearing on behalf of the petitioner submitted that the order u/s 55 was preceded by two show-cause notices and the said procedure invalidates the action of the Externment Authority.

6. Learned APP has argued that the externment order was passed after complying with the requisite mandatory procedure and that the externment order is neither excessive nor illegal.

7. We have perused the records and considered the arguments advanced by the respective Counsel. The impugned order dated 31st August 2012, indicates that the Externment Authority had invoked the powers conferred upon it by section 55 of the Act and had externed the petitioner from Pune city and adjoining Districts for a period of 2 years. Section 55 of the Act authorizes the Externment Authority to direct the members of the gang or body of persons to conduct themselves as shall seem necessary in order to prevent violence or alarm or to order dispersal or removal outside the area when it appears to the Externment Authority that the members of such gang or body of persons are causing or calculating to cause danger or alarm or when there was reasonable suspicion that such gang, body of persons or members thereof entertained unlawful designs. Section 59 of the Act mandates that before an order u/s 55 is passed against any person the officer concerned informs the person in writing the general nature of the material allegations against him and give him reasonable opportunity of tendering explanation regarding them.

8. In the present petition, the petitioner was issued Show Cause Notice dated 2nd February, 2012 which refers to the proposal of the Inspector to extern the petitioner from Pune City and Pune District. The said notice makes reference to the two in-camera statements and Crime No. 280 of 2011 registered against the petitioner at Wanawadi Police Station u/s 302, 143, 147, 148, 149, 324 and 427 of the Indian Penal Code and further states that the petitioner was involved in assaulting, harassing the people and that his criminal activities and the reign of terror created by him has caused danger to the life of the people residing within the jurisdiction of the Wanawadi Police Station. The petitioner was informed that there was likelihood of him committing serious offences if he continued to reside in the said locality hence; it was proposed to extern him from the area of Pune City and Pune District for a period of 2 years. The petitioner was, therefore,

called upon to submit his explanation within two days from the receipt of the notice.

9. Pursuant to the report submitted by the Assistant Commissioner of Police, the Deputy Commissioner of Police, issued notice dated 11th August, 2012, u/s 59 of the Act to the petitioner and the other members of the gang, wherein besides the two in camera statements and crime No. 280 of 2011, the Externment Authority also referred to several other criminal cases stated to have been registered against the members of the gang individually and jointly. The Externment Authority recorded satisfaction that the members of the gang were involved in assaulting, murdering and committing offences under chapter XVI and XVII of IPC and that the criminal activities and the reign of terror created by them has caused danger, harm and alarm to the person and property. The Externment Authority observed that their continued presence could lead to commission of serious crimes. Hence, the petitioner and others were called upon to explain why they should not be externed from Pune City and Pune District for a period of 2 years.

10. The said show cause notice was followed by the impugned externment order dated 31st August, 2012 whereby the petitioner was externed from Pune Commissionerate and Pune District for a period of 2 years. The Externment order records satisfaction that since 2005, a gang has been operating within the jurisdiction of Kondhwa Police Station and that the members of the gang are involved in Criminal activities within the area of Mithanagar, Bhagodayanagar, S. No. 42, Kondhwa Budruk, Tal. Haveli and are causing alarm to the person and property of businessmen, shop owners and the financially weaker section of the people from the said locality. The impugned order further states that the members of the said gang are brutal, dangerous and are engaged in acts of extortion and violence by means of dangerous weapons such as swords, knives etc. due to which the aggrieved persons are not ready to lodge complaint against them. Upon referring to Crime No. 280 of 2011 registered against the petitioner at Haveli Police Station and the other Crimes registered against the members of the gang jointly and individually, the Externment Authority recorded satisfaction that the nature of the crime and continuous criminal activities of the petitioner and the other members of the gang were likely to disturb peace and public order and cause danger and alarm to the person and property. The Ext Ath therefore opined that it is necessary to remove the said persons from the area in order to maintain public order and peace. Consequently the Externment Authority externed the petitioner and other members of the gang from Pune Commissionerate Pune District for a period of 2 years.

11. It is pertinent to note that the Notice dated 2nd February, 2012 does not indicate that the petitioner was a member of a gang and that he was involved in any such activity, which warranted externment u/s 55 of the Act. It is also to be noted that apart from C.R. No. 280 of 2012, the said notice does not refer to any other crimes allegedly committed by the members of the gang. The narration of

in-camera statements is cryptic and lacks material particulars. In the Externment Order, the Externment Authority has recorded satisfaction that the petitioner was a member of a gang which was operating since 2005. However, the Notice dated 11th August 2012 does not state that the gang has been operating since 2005. The said notice neither specifies the area of criminal activities nor gives the details of the criminal activities, which have been detailed in the Externment Order. The notice dated 2nd February, 2012 and notice dated 11th August, 2012 u/s 59 vis-a-vis the Externment Order u/s 55, clearly show that the Externment Authority has relied upon additional and extraneous material, which was not disclosed to the petitioner. The petitioner had no opportunity to offer his explanation in respect of the said material relied upon by the Externment Authority. Hence, the action of the Externment Authority is in violation of the principles of natural justice and vitiates the Externment order. Under the circumstances, we pass the following order.

ORDER

1. The Writ Petition is allowed.
2. The Externment Order No. 36 of 2012, dated 11th August, 2012 passed by the Deputy Commissioner of Police, Zone4, Pune City is quashed and set aside. Rule is made absolute.