
(1989) 04 GUJ CK 0010
In the Gujarat High Court

Nasir Ahmed Noor Ahmed Shaikh

APPELLANT

Vs

P.M. Raichaudhri and Others

RESPONDENT

Date of Decision : 12-04-1989

Acts Referred:

Bombay Police Act, 1951 — Section 56, 59
Penal Code, 1860 (IPC) — Section 114

Citation : (1989) 2 GLR 1047

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; P.M. Chauhan, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—This petition is to quash the order of externment of the petitioner, passed by the Deputy Commissioner of Police, Ahmedabad city, and also the order in Appeal, passed by the Deputy Secretary to the Government of Gujarat.

2. The petitioner was served with a show cause notice dated July 22, 1987, u/s 59 of the Bombay Police Act, 1951 for the activities enumerated u/s 56 of the Act. The show cause notice clearly states that the petitioner is a dangerous and aggressive person and he is indulging in the acts of force and violence. It further states that the petitioner is indulging in such activities with the help of his companions on the Sarkhej High-way Road, near the end of the road going towards Vejalpur, near Haji Bawa's Kui, near Sonal Cinema, in Juhapura, near Juhapura Agro Petrol Pump and near Cemetery besides Sonal Cinema. These areas are situated within the jurisdiction of Satellite Police Station. It is further stated in the notice that such offences were committed from the month of June 1986. It has also been stated that the witnesses are not desirous of coming forward to give their depositions openly against the petitioner because of the fear as regards the safety of their person and properties. The allegations levelled against the petitioner, in the show cause notice, are as under:

1. You are snatching away money from the innocent persons residing in the above stated areas or passing by from there or doing business, by the way of

hitting slap or showing Rampuri knife or threatening as to kill by showing revolver.

2. With the help of your companions, you are hitting to the innocent persons residing in the above stated areas or passing by from there and believing to be informer to the Police.

3. You are playing with modesty of the la thes residing in the above staled areas or passing by from there by showing revolver.

The petitioner examined three witnesses for his defence. The Externment Authority had before it the statements of 17 persons, who are not willing to come forward to depose against the petitioner out of fear for their lives and properties. Considering the explanation and the depositions of the defence witnesses, the Externment Authority has externed the petitioner for a period of two years from Ahmedabad City. Ahmedabad Rural area, Gandhinagar, Kheda and Mehsana Districts. The Externment Authority has also specifically stated that if the petitioner is not externed from the contiguous districts, he will perpetuate, with his companions and agents, in committing such offences from the surrounding Districts also. In Appeal, the Deputy Secretary, Home Department, has confirmed the order of externment. To quash these proceedings, the petitioner has come forward by way of this Special Criminal Application, before this Court.

3. Mr. Bhargav Bhatt for Mr. M.B. Ahuja, learned Counsel appearing for the petitioner, contended that the Externment Authority did not take into consideration the complaint CR. No. 8/88 filed at Karanj Police Station. According to the learned Counsel, on January 9, 1988 at Karanj Police Station CR No. 8/88 was registered for offences u/s 25(1) of the Arms Act and on 23-1-1988 CR No. 58/88 was registered for offences under Sections 366, 387 and 114 of the Indian Penal Code. Learned Counsel for the petitioner submitted that the petitioner was already under detention even at the time of serving of show cause notice for externment and subsequently and as such the authority should not have resorted to the Bombay Police Act for the purpose of externment of the petitioner. It is further contended by the learned Counsel for the petitioner that inasmuch as the above referred offences registered as CR No. 8/88 and CR No. 58/88, have not been taken into consideration, the Externment Authority has mechanically and without application of mind passed the said Externment Order. The second contention taken by the learned Counsel for the petitioner is that the notice u/s 59 was not served personally upon the petitioner and as such the whole externment proceedings are vitiated. It is also contended that the copies of the depositions of the defence witnesses examined by the petitioner, have not been given and the said action on the part of the Externment Authority vitiates the whole proceedings. It is further contended that the allegations made in the notice as to the time and place of occurrence are vague and as such the externment order has to be struck down for its vagueness. It is further stated that no adequate material was placed before the appellate authority and as such confirmation of externment order by the appellate authority has been done

mechanically and deserves to be set aside. Lastly the learned Counsel for the petitioner submitted that when the petitioner is in judicial custody, serving of order of extemment is ab initio void.

4. We have carefully considered all these aspects of the case Section 56(b) of the Bombay Police Act. clearly states that the externment order can be passed when there are reasonable grounds for believing That such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII. XVI or XVII of the Indian Penal Code or in the abetment of any such offence and when in the opinion of such officers witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. The allegations which we have extracted earlier clearly state that the witnesses of the incidents are not willing to come forward openly for giving their deposition against the petitioner by reason of the apprehension as regards the safety of their person and property and that the petitioner is a dangerous and aggressive person. There is a clear mention with regard to the area in which the petitioner is committing such acts. The averments in the show cause notice and the externment order clearly make out that offences punishable under Chapters XII, XVI and XVII and offences involving force and violence have been committed by the petitioner, which clearly come within the purview of Section 56 of the Bombay Police Act.

5. As regards the contention that the failure to give the copies of the depositions of the defence witnesses examined on the petitioner's side vitiates the externment proceedings, learned Counsel for the petitioner relied upon a decision of the Division Bench of this Court, in the case of Kalubhai Rambhai Katariya Vs. The State of Gujarat and Others, . in the said decision the Division Bench of this Court had an occasion to consider as to how far the failure on the part of the extemning authority to permit the externee to look into the depositions of the defence witnesses would vitiate the proceedings. Learned Counsel referred to that portion of the judgment which states that:

... However, though there may not be a strict obligation on the part of the extemning authority to give copies of the evidence of defence witnesses to the proposed externee, in our opinion, it was the duty of the extemning authority to tell the proposed externee that if he so desired he could inspect the record of the evidence of the defence witnesses in order that he might fully apprise himself of what they had deposed. In the instant case, no such opportunity was given to the petitioner. Inasmuch as no such opportunity was given to the petitioner, it can be certainly said that the petitioner was prejudiced in defending himself before the extemning authority. Looking at from that angle, the impugned order of externment indeed suffers from a fatal infirmity.

Reading the whole paragraph wherein this observation is made, it is clear that the externee in that case applied for the certified copies of the evidence of witnesses. Whom he had examined in order to enable himself to effectively

represent his case before the externing authority as well as before the appellate authority. In that case that opportunity was not given to the petitioner and in those circumstances the above cited observations came to be made by the Division Bench of this Court. As far as the present case is concerned, there is no such application by the petitioner nor it can be said that failure to supply the copies of the depositions of the defence witnesses suo motu will vitiate the externment proceedings. We also do not think that there is any merit in the contention of the learned Counsel for the petitioner that the externment order cannot be passed when the petitioner suffered detention either before or at the time of such externment notice. So far as the contention of the learned Counsel for the petitioner that preventive measures cannot be taken when penal measures can be resorted to, we have discussed hereinabove that the preventive measure alone is possible in this case as the petitioner is a dangerous and aggressive person and witnesses are not desirous of coming forward openly to depose against the petitioner on account of fear as regards the safety of their person and property.

6. The contention to the effect that the externment notice was not served upon the petitioner has no basis and the learned Counsel has to accept the fact that the notice was actually served upon the petitioner. Mr G.D. Bhatt, learned A.G.P. appearing for the respondents, has produced the relevant record to this effect and sufficient averments in para 7 of the affidavit-in-reply of the Deputy Commissioner of Police, Ahmedabad City, have been made showing as to how the notice was served and how the externnee made representation to the externing authority before such externment order was passed.

We do not find any substance in any of the submissions of the learned Counsel appearing for the petitioner. This petition is therefore dismissed. Rule discharged.