
(2016) 12 BOM CK 0058

In the Bombay High Court

Case No : Criminal Writ Petition No. 23 of 2016

Pappu@Akhilesh Shivshankar Mishra

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Constitution of India, 1950 — Article 19

Maharashtra Police Act, 1951 — Section 55, Section 56

Citation : (2017) 1 AIRBomRCri 377 : (2017) ALLMRCri 1 : (2017) 1 BomCR(Cri) 392 : (2017) CriLJ 1586 : (2017) 2 Crimes 497 : (2017) 1 MhLJCri 87

Hon'ble Judges : Mr. B.P. Dharmadhikari and Kum Indra Jain JJ.

Bench : Division Bench

Advocate : Mrs. B.H. Dangre, P.P. with Shri V.A. Thakare, Mrs. M.H. Deshmukh, Shri M.J. Khan, Shri T.A. Mirza, Shri R.S. Nayak, Shri S.S. Doifode, Shri A.D. Sonak and Mrs. K.S. Joshi, APP, for the Respondents; S/Shri R.M. Patwardhan, R.R. Vyas, Mir Nagman Ali, S.V.

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J. - In all these matters orders of externment passed under Section 56 of the Maharashtra Police Act, 1951 (hereinafter referred to as "the 1951 Act" for short), are questioned. Only in two matters i.e. Criminal Writ Petition Nos. 779 and 784 of 2016 orders of externment are under Section 55 of the 1951 Act.

2. In all these matters one of the contentions canvassed by the learned counsel for petitioners is, common. Petitioners state that they have been externed out of large area or at times from several districts when the alleged activities (offences) are restricted to only one police station. By placing reliance upon various judgments they urge that the selection of area from which a person is to be externed, calls for application of mind to the relevant factors. Effort of the respondents is to persuade us to take other view of the matter. As there are several judgments of this Court accepting this contention, at the request of

learned Public Prosecutor, we have taken up all matters together so as to find out what is the correct position in law. Learned A.P.P. has relied upon the judgments of the Hon''ble Supreme Court to urge that when areas from which externment is ordered are intimately connected with each other, geographical jurisdiction of any particular police station ceases to be a relevant factor.

3. It is in this background, that we have heard the respective counsel only on the question of determination of extent of area from which the respective petitioner has been ousted.

4. S/Shri. R.M. Patwardhan, R.R. Vyas, Mir Nagman Ali, S.V. Sirpurkar, D.U. Thakare, T.U. Tathod, S.S. Shinde, P.R. Agrawal, M.V. Rai, P.V. Navlani, A.B. Mirza, I.N. Choudhari and M.P. Kariya, learned Counsel have supported the non - Permissibility of externment from larger area and bearing of the need of externment with area out of which the externment is ordered.

5. Mrs. B.H. Dangre, learned Public Prosecutor with Shri V.A. Thakare, Mrs. M.H. Deshmukh, Shri M.J. Khan, Shri T.A. Mirza, Shri R.S. Nayak, Shri S.S. Doifode, Shri A.D. Sonak and Mrs. K.S. Joshi, APP for Respondents in respective criminal writ petitions/ criminal applications have defended the action. Learned Public Prosecutor/ Additional Public Prosecutors appearing for the respondent State Government have stated that in few matters where orders are found to be excessive i.e. externment is from larger area without demonstrating any application of mind, respondents have sought leave to withdraw the orders and to pass fresh one.

6. Petitioners urge that externment of a person is violation of his fundamental right guaranteed under Article 19(1) read with Article 21 of the Constitution of India, and therefore, while selecting area from which a person is to be ousted, there has to be a proper consideration of relevant factors. They oppose leave sought by the respondents to pass fresh orders, as according to them once non application of mind is demonstrated, order of externment must fall to ground and passing of fresh orders has to be in accordance with law i.e. with reference to appropriate material becoming available thereafter possessing live link with the externment. They submit that in writ jurisdiction, there cannot be any remand as writ jurisdiction is essentially different from Appellate Jurisdiction. They have relied upon various judgments reported and unreported to which we may make reference at appropriate juncture.

7. Learned Public Prosecutor has invited our attention to the legislative developments to urge that law laid down by this Court prior to 1981 is not relevant for consideration of the present controversy. In 1981, provisions of Section 56(1) have been amended and the competent authority is permitted to order externment, not only from his local limits of jurisdiction, but, from other area also, whether such other area is contagious or not. Our attention is invited to statement of object and reasons to Maharashtra Amendment Act No. 8 of 1981 to substantiate said contention. Various judgments are also relied upon to

submit that this Court has taken judicial note of the adjacent/larger areas being intimately connected with the area in which an externee operates. It is submitted that ousting of a person from area of one police station, and permitting him to stay in vicinity in jurisdiction of other police station within the same city, will defeat the object of the externment order. Judgment of Constitution Bench reported at AIR 1952 SC 221 (Gurbachan Singh v. State of Bombay), is pressed into service to show that the constitutional validity of said provision has been upheld by the Hon"ble Supreme Court. He has strongly relied upon the judgment of Hon"ble Supreme Court reported at AIR 1973 SC 630 (Pandharinath Shridhar Rangnekar v. Dy. Commissioner of Police). Again we will refer to these judgments at appropriate juncture.

8. As limited controversy is to be looked into, perusal of other specific grounds raised by the petitioners to assail the orders is not necessary. The office of the Public Prosecutor has prepared a case wise Chart pointing out the area of activity of a particular petitioner and area from which he is externed. Data there in is verified by the respective learned counsel appearing for the petitioners and found to be correct. We reproduce that chart below for ready reference.

Sr. No

Case No

Name of Petitioner

Area of Activity

Area and period of Externment

1

Criminal Writ Petition No.23/2016

Pappu @ Akhilesh Mishra

Police Station, Gittikhadan

City & Rural Nagpur. 2 years

2

Criminal Writ Petition No.597/2016

Dhiraj Arun Bamborde

Police Station, Ambazari

Nagpur City . 1 year

3

Criminal Writ Petition No.39/2016

Amol Meher

Police Station, Gittikhadan, Ajni and Sonegaon

City & Rural Nagpur. 2 years

4

Criminal Writ Petition No.285/2016

Sandip Samudre

Police Station, Umred

Nagpur City & Rural, Wardha, Chandrapur and Bhandara. 2 years

5

Criminal Writ Petition No.474/2016

Ashok Roy Parsoya

Police Station, Pandharkawada

Yavatmal, Chandrapur, Wardha, Amravati and Nanded. 1 year

6

Criminal Writ Petition No.490/2016

Pramod Wanare

Police Station

Akot. Akola District. 2 years.

7

Criminal Writ Petition No.491/2016

Sayyad Rizwan Sayyad

Police Station, Dattapur

Amravati District, Yavatmal, Washim and Wardha. 2 years.

8

Criminal Writ Petition No.586/2016

Akash Yadav

Police Station, karanja

Nagpur City & Rural. 2 years.

9

Criminal Writ Petition No.718/2016

Mohd. Salim Mohd. Ismile

Police Station, Karanja City

Akola, Buldhana, Yavatmal, Amravati and Washim. 2 years.

10

Criminal Writ Petition No.763/2016

Sandip Iratkar

Police Station, Risod

Washim, Akola, Buldhana, Hingoli, Amravati and Yavatmal. 3 months.

11

Criminal Writ Petition No.764/2016

Ishwar Bariyekar

Police Station, Tiroda

Gondia District. 2 years.

12

Criminal Writ Petition No.779/2016

Ganesh Bais

Police Station, Kharangana

Wardha district. 1 year.

13

Criminal Writ Petition No.784/2016

Shubham Ganjare

Police Station, Kharangana

Wardha District. 1 year.

14

Criminal Writ Petition No.796/2016

Mohd. Washim Mohd. Kalim

Police Station, Gittikhadan

Nagput City. 2 years.

15

Criminal Writ Petition No.809/2016

Javed Khan Dilawar Khan Pathan

Police Station, Malegaon

Washim, Akola and Buldhana.

16

Criminal Writ Petition No.829/2016

Arun Ingle

Police Station, Kholapuri Gate

Amravati City & District. 1 year.

17

Criminal Writ Petition No.831/2016

Rajesh @ Khanna Barve

Police Station, Tiroda

Gondia, Bhandara, Gadchiroli, Chandrapur and Nagpur. 2 years.

18

Criminal Writ Petition No.833/2016

Firoz Khan Gulam Mustafa Khan

Police Station, Kotwali and Frezarpura

Amravati City & Rural. 1 year.

19

Criminal Writ No.866/2016

Rajkumar @ Baba Pawar

Police Station, Wadgaon Road, Yavatmal City

Yavatmal City Wardha, Washim and Amravati. 2 Months.

20

Criminal Application No. 214/2016

Kunal @ Goldi Sheshrao Akkalwar

Police Station Sadar and Ambazari

Nagpur City and Rural. 2 years.

21

Criminal Application No.714/2016

Chandu Pundilkrao Aathwale

Police Station, Kholapuri Gate

Amravati City & Rural. 1 year.

9. Perusal of data given in chart itself shows that the petitioner Chandu Aathawale in Criminal Application No.714/2016 was already externed from Amravati District for a period of two years between 2012 to 2014. His area of activity is only one police station. By the impugned order he has been externed on second occasion only for one year from Amravati City and Amravati Rural area. Petitioner in Criminal Writ Petition No. 829/2016 (Arjun Ingole) has also very same police station as area of activity. He has been externed from Amravati City and Rural area also for one year.

10. In the externment order passed against petitioner ? Chandu for 8 offences, he was externed for a period from 11.09.2012 to 10.09.2014. Impugned order mentions that he violated that order and committed three offences when that order was in force. After expiry of period of externment in said order, he has committed offence on 02.05.2015. Restraining / Preventive action taken against him is on two occasions, after expiry of earlier externment order.

11. Petitioner ? Arjun in Criminal Writ Petition No. 829/2016 is externed by the order dated 19.09.2016. Offences under Indian Penal Code committed by him are between 2012 to 2014. After last offence dated 03.01.2014, he has committed an offence under Sections 302, 143, 147, 148, 149, 341 and 323 of Indian Penal Code on 17.10.2015. Preventive action has been taken against him on 13.04.2012 and 09.01.2014. Thus, very same officer has found it sufficient to extern him for a period of one year from Amravati City and Amravati Rural area.

12. We do not find it necessary to multiply the instances as appreciation of various judgments delivered by this Court and its use by the respective learned Counsel itself shows the aptness behind the request of learned Public Prosecutor to hear all the matters together.

13. Perusal of judgment in case of Pandharinath Shridhar Rangnekar v. Dy. Commissioner of Police (supra), reveals that there the Constitution Bench judgment upholding the validity of pari materia provisions i.e. Section 27(1) of the City of Bombay Police Act, 1902 is taken note of. Appellant Pandharinath, approached Hon"ble Supreme Court challenging the order of externment. He had earlier approached High Court under Articles 226 and 227 of the Constitution of India. One of his contentions was that his illegal activities, as alleged, were confined to specific localities within the jurisdiction of Vile Parle Police Station, and therefore, order asking him to remove himself from the limits of districts of Greater Bombay and Thane was excessive and unreasonable. The Division Bench of High Court upheld the order. Hon"ble Supreme Court in paragraph no.15 of the judgment holds that it is primarily for the externing authority to decide how best the externment order can be made effective. It depends upon nature of data collected by that authority and no general propositions that such an order always should be restricted to areas of illegal activities can be made. A larger area may

be required to be stipulated in externment order to isolate externee from his moorings. The decision of Bombay High Court reported at AIR 1969 Bom. 351 (Balu Shivling Dombé v. Divisional Magistrate, Pandharpur) relied upon by the petitioner is looked into in its paragraph no.16, and the Hon''ble Apex Court finds that in the said matter, activities of externee were confined to city of Pandharpur, but, the area of externment covered districts of Solapur, Satara and Pune, which were widely removed from the said locality. It found that in the matter before it, if order of externment was to be restricted to Vile Parle Police Station only and its periphery, that order would not serve its purpose. It is observed that rather than solving the problem of law and order, it would create one more problem. In paragraph no.18, unreported Division Bench judgment of Bombay High Court ordering externment from adjacent area because those areas were connected by several means of communication, including suburban trains, has been referred to. The fact that Special Leave Petition No.487/1972 preferred against the said order of the High Court was dismissed by the Hon''ble Supreme Court is taken note of in paragraph no.19. Discussion in paragraph no.20 shows that the very object of the externment would be defeated, if it was not made cumbersome for externee to return to the field of his activities. Greater Bombay and Thane Districts are found to be intimately connected. The Hon''ble Supreme Court says that in matters of local colour and conditions, the view so consistently expressed by the learned Judges of the High Court needed to be accepted as correct.

14. In 2005 (3) Mh.L.J. 463 (Gafoor Dastagir Sheikh v. State of Maharashtra), the learned single Judge of this Court has upheld the order of externment from City of Mumbai, Mumbai Suburban, Thane and Raigadh Districts for a period of two years. The above mentioned judgment of Hon''ble Supreme Court in case of Pandharinath (supra), along with other judgments are looked into, while accepting the externment. Thus there is already a finding by the Hon. Apex Court that these areas being intimately connected, may constitute one zone out of which externment may be warranted.

15. In 2014 All MR (Cri) 443 (Imtiyaz Afzal Hussain Shaikh v. Asstt. Commissioner of Police and others), the Division Bench of this Court has found that the areas from which externment was ordered i.e. Pune city and Pune district, were in intimately connected. The discussion in paragraph no.11 shows that the law laid down by the Hon''ble Supreme Court in the case of Pandharinath (supra), continues to bind the High Court.

16. This Court in 2014 All MR (Cri) 2181 (Satish Sagun Korgaonkar v. The State of Maharashtra) has considered the order of externment from area of Greater Mumbai, Thane and Raigadh for a period of two years. It has looked into the judgment of Hon''ble Supreme Court in case of Pandharinath (supra) and other judgments. In paragraph no.24, it has found that show cause notice did not propose externment from Raigadh district and the order was therefore found to be in violation of principles of natural justice. Apart from this, facts specific to said case are also looked into.

17. In 2014 All MR (Cri) 4537 (Manik Ramchandra Gupta v. State of Maharashtra), the Division Bench of this Court refers to the judgment of Hon''ble Supreme Court in Pandharinath (supra), and to judgment of Division Bench of this Court in case of Balu Dombé (supra). It has concluded in paragraph no.16 that there was nothing on record to show that it was necessary to extend the order of externment beyond Thane District to Brihan Mumbai, Mumbai Suburban, Pune and Nashik districts. Order was found not containing any application of mind for extending the area of externment beyond Thane. Division Bench also mentions that in the impugned order, except for stating the geographical proximity of Thane district to other districts and the means of transport available between the districts, objectionable activities of externnee in districts of Pune, Nashik, Brihan Mumbai and Mumbai Suburban were not referred. Thus area selected was larger than the area already judicially found to be intimately connected.

18. In 1988 Mh.L.J. 1034 (Umar Mohamed Malbari v. K.P. Gaikwad and another), the Division Bench of this Court has considered the challenge to an excessive order. In paragraph nos. 7 and 8, it is found that the areas were not contiguous. Activities of petitioner there were restricted to taluq of Bhivandi, while the petitioner was externed out of Raigadh and Nashik districts. The Division Bench has taken note of the fact that these districts had within them taluq places situated at a distance of more than 100 miles. The impugned order was therefore found excessive. In paragraph no.8, the Division Bench found that once the order is found to be excessive, it cannot be read down and restricted only to the area of activities. The Division Bench has found that it was exercising writ jurisdiction and not appellate jurisdiction. It therefore, could have examined the question, whether the authority ordering externment had or had not acted without jurisdiction or then did act in excess of jurisdiction. It held that there the power of High Court as writ court stopped. It can not go further and correct the excessive order passed by the Authority concerned.

19. In 2013 All MR (Cri) 1268 (Mahavir Saremal Jain v. The State of Maharashtra and others), the Division Bench of this Court has found the externment order defective, as record did not indicate adequate and tangible material to support externment of petitioner from multiple districts.

20. In 2015 SCC Online Bom 6803 (Sayeed firoz Sayeed Noor v. State of Maharashtra), Division Bench of this Court has applied the same analogy and found the order of externment excessive. There the externment was from city and rural limits while the area of activity was found to be only one police station. Two writ petitions i.e. one in relation to Nagpur and other in relation to Amravati have been decided together. Discussion on what "subjective satisfaction" implies in case of Yakum Ismail Chippa v. The District Magistrate, reported at (1996) 1 GLR 4, is looked into in this judgment. One of us (B.P. Dharmadhikari, J) is party to it.

21. In 2013 (4) Mh.L.J. (Cri) 655 [2013 All MR (Cri)3843](Sanket Balkrushna

Jadhav v. State of Maharashtra and others), Division Bench of this Court has quashed and set aside the order of externment from entire Satara district when the offences were alleged to be only in one police station.

22. In 2016 (1) Mh.L.J. (Cri) 192 [2016 ALL MR (Cri) 1268 (Ravindra @ Ravi Harisingh Jadhav v. State of Maharashtra and another), externment order from Jalna and Aurangabad districts when offences were registered in only one police station, was found excessive.

23. Shri Ali, learned counsel has pointed out identical view taken at Aurangabad and at Bombay in few other matters.

24. In 2013 All MR (Cri) 122 (Nisar @ Nigro Bashir Ahmed Khan v. Dy. Commissioner of Police and others), the Division Bench has considered the challenge to an order of externment from Bombay city, Suburban area, New Bombay, Thane and Raigadh districts. Activities of the externee were confined to Shivaji Nagar Police Station within Greater Bombay. Judgment of Hon''ble Supreme Court in case of Pandharinath (supra), and various other judgments of this Court are looked into.

25. Judgment of Hon''ble Supreme Court in case of Pandharinath (supra), after noticing that the provisions of Section 56 are found to be constitutionally valid, in paragraph no.10 adds that care must be taken to ensure that terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer must be made available to the externee. If the impugned order amounts to infringement of fundamental rights guaranteed under Article 19 of the Constitution of India, it cannot be sustained.

26. It appears that before amendment to Section 56(1) by Act No.8/1981, externment was possible from local limits of jurisdiction of respective authority and contiguous area. Statement of object and reasons/SOR of Amendment Act reveals that there was improvement in transport facilities and means of communications which consequently reduced efficacy of the provisions. By said amendment, the Authority is now empowered to order externment from areas falling not only within the local limits of its jurisdiction, but, also from other areas, even if such other areas are not contiguous to its jurisdictional area. There is no challenge to this provision. The amendment therefore gives teeth to the Authority ordering externment and may effectively check return of the externed person to the area of his influence. Thus, facts & factors looked into by the Authority for reaching subjective satisfaction as envisaged under Section 56(1) must be capable of supporting the need of ordering externment beyond the area of jurisdiction of such authority. If larger area is being selected, need thereof must also be evaluated by that authority, and such an evaluation which constitutes the "application of mind", has to surface in the impugned order. Externment is a measure which operates against the fundamental right and therefore, order of externment must be a reasonable order. It has to demonstrate that externment has been ordered only from the area which is

necessary to give effect to it and not from unnecessarily larger area. Precedents looked into by us show that this application of mind, qua the extent of area also constitutes one of the essential ingredients of a test used to uphold the provisions of externment as a reasonable restriction on fundamental right of the externnee. Various precedents looked into by us show that where order of externment is found not to contain any material for ordering externment from a larger area, the same have been quashed and set aside.

27. The Hon"ble Supreme Court in case of Pandharinath (supra), has found that the local colour and condition consistently noted by the learned Judges of High Court needed to be accepted as correct. In present matters, no judicial pronouncements holding any City areas/urban area and rural areas with which we are concerned, to be intimately connected with each other, has been pressed into service before us. Where more districts than one are involved, no view taken by any Court that said areas are intimately connected due to improved or common means of transport, is pointed out. Impugned order also does not show that these cities/urban and rural areas are intimately connected or otherwise. The material in the chart reproduced above, does not show any consistent approach in this respect. The authority ordering externment has nowhere mentioned local limits of its jurisdiction. There is nothing on record to show that it was alive to the fact that it was ordering externment from adjacent/ contagious areas not ordinarily falling in its jurisdiction. Need for selecting such additional areas is also not apparent in any order. In absence of any such application of mind, this Court in writ jurisdiction cannot for the first time appreciate the need to extern a person from a larger area. Facts warranting externment from larger area are absent in the impugned order & are not presented to us in any manner by the respondents.

28. The orders of externment are already passed and those orders are not stayed by this Court. The externnee is, therefore, out of the area from which the externment has been ordered by the respective impugned orders. Impugned orders show various offences committed by them. But, then, as there is non application of mind while selecting area of externment, any of the orders of externment assailed before us, cannot be sustained.

29. We are aware that the petitioners have raised some other grounds to assail their externment. However, in this view of matter, we cannot sustain the order of externment only on first ground, which is common in all matters. Hence, leaving all other contentions open, we quash and set aside the impugned order of externment. Needless to mention that respondents are at liberty to pass fresh orders in appropriate cases in accordance with law, if they find it necessary.

30. Accordingly the order of externment ? (1) dated 25.11.2015 in Writ Petition No. 23/2016 passed by respondent no.2 (2) dated 08.06.2016 in Writ Petition No. 597/2016 passed by respondent no.2 (3) dated 30.11.2015 in Writ Petition No. 39/2016 passed by respondent no.2 (4) dated 23.09.2016 in Writ Petition No. 285/2016 passed by respondent no.1 (5) dated 01.06.2016 in Writ Petition No.

474/2016 passed by respondent no.2 (6) dated 24.09.2015 in Writ Petition No. 490/2016 passed by respondent no.1 (7) dated 06.11.2015 in Writ Petition No. 491/2016 passed by respondent no.1 (8) dated 28.07.2015 in Writ Petition No.586/2016 passed by respondent no.1 and order dated 03.03.2016 passed by respondent no.2 (9) dated 16.08.2016 in Writ Petition No. 718/2016 passed by respondent no.1 (10) dated 06.09.2016 in Writ Petition No. 763/2016 passed by respondent no.2 (11) dated 20.09.2016 passed by respondent no.2 and order dated 18.07.2016 passed by respondent no.3 in Writ Petition No. 764/2016; (12) dated 06.09.2016 in Writ Petition No. 779/2016 passed by respondent no.2; (13) dated 06.09.2016 in Writ Petition No. 784/2016 passed by respondent no.2; (14) dated 05.04.2016 passed by respondent no.1 and order 20.09.2016 passed by respondent no.3 in Writ Petition No. 796/2016 (15) dated 31.08.2016 in Writ Petition No. 809/2016 passed by respondent no.2 (16) dated 19.09.2016 in Writ Petition No. 829/2016 passed by respondent no.1 (17) dated 06.09.2016 in Writ Petition No. 831/2016 passed by respondent no.4 (18) dated 10.10.2016 in Writ Petition No. 833/2016 passed by respondent no.1 (19) dated 10.11.2016 in Writ Petition No. 886/2016 passed by respondent no.1 (20) dated 25.11.2015 in Criminal Application No. 214/2016 passed by respondent no.1 and (21) dated 30.09.2016 in Criminal Application No. 714/2016 passed by respondent no.2 are quashed and set aside.

31. Criminal Writ Petitions and Criminal Applications are accordingly allowed. Rule is made absolute in all the matters, in the aforesaid terms with no order as to costs.