
(1991) 04 BOM CK 0065

In the Bombay High Court

Case No : Criminal Writ Petition No. 15 of 1991

Prakash Supdu Chaudhari

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-04-1991

Acts Referred:

Bombay Police Act, 1951 — Section 56(1), 59

Citation : (1992) 1 BomCR 588

Hon'ble Judges : N.P. Chapalgaonkar, J

Bench : Single Bench

Advocate : S.R. Palnitkar, for R.G. Karmarker, for the Appellant; S.K. Barlota, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

N.P. Chapalgaonkar, J.—On 28-8-1990 and 11-9-1990, identical notices were served on the petitioner purporting to be u/s 59 of the Bombay Police Act, 1951, intimating protest action u/s 56 of the said Act on the ground that he is facing trial in two Criminal Cases arising out of Crime No. 157 of 1987 and 105 of 1989 registered at Yawal Police Station and is likely to commit similar offences again and, therefore, he should show cause as to why he should not be externed from the limits of districts of Jalgaon, Dhule, Nashik, Buldhana and Ahmednagar. On the basis of these contentions an externment order came to be passed by the learned Sub-Divisional Magistrate, Jalgaon on 4-10-1990 directing the petitioner to remove himself from the districts of Jalgaon, Dhule, Nashik, Ahmednagar and Buldhana for a period of one year. This order was challenged in an appeal u/s 60 before the State Government but the State Government was pleased to dismiss this appeal while limiting the area externment to Jalgaon district only by its order dated 12-12-1990. Both these orders have been challenged in this writ petition.

2. Shri S.R. Palnitkar, learned Counsel for the petitioner, submitted that since the notice issued to the petitioner u/s 59 does not say that the witnesses are unwilling to depose against the petitioner, the order of externment is without

jurisdiction. He further submitted that merely because two offences have been registered against the petitioner, it cannot be said that the petitioner is likely to cause alarm, danger or harm to the residents of the locality in which the petitioner is residing. Shri S.K. Barlota, learned Additional Public Prosecutor representing respondent State, relied on the affidavit-in-reply filed by the Sub-Divisional Magistrate, Jalgaon, and supported the impugned order.

3. Section 56 of the Bombay Police Act gives an extra-ordinary power to the authority empowered under the Act to extern any person if they are satisfied about existence of any of the pre-conditions for the exercise of this power. 4 Clauses - (a), (b), (bb) and (c) in section 56 of the Act of 1951 mention reasons existence of which authorise externment of any individual. Clause (a) speaks about the movements or acts of any person which are causing or calculated to cause alarm, danger or harm to person or property, (b) speaks about reasonable grounds to believe 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 Chapter XII, XVI or XVII of the Indian Penal Code, or in the abatement of any such offence and when in the opinion of such officer 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; (bb) speaks about reasonable grounds for believing that such person is acting or is about to act in any manner prejudicial to the maintenance of supplies of essential commodities and (c) speaks about the possibility of an out-break of epidemic disease as a result of continued residence of an immigrant. Unless any of these four conditions exist, Magistrate shall have no power to extern a person in exercise of powers u/s 56. So far as sub-clause (b) is concerned, it speaks about the commission of certain offences punishable under Chapter XII, XVI or XVII of the Indian Penal Code. When a person commits an offence which is punishable under Chapter XII, XVI or XVII of the Indian Penal Code, he can be dealt with normal criminal law and can be punished under the provisions of the Indian Penal Code, 1860. But for proving the guilt of the accused, it is necessary that some witnesses should depose before the Court and only when the Court is satisfied about the truth of those depositions narrating the guilt, he can be punished. Difficulty may arise in some cases where witnesses are not willing to come forward to depose against offenders. Some offenders create a terror in the mind of persons who would in a normal course be witnesses, so that they should not come forward to depose against them. Such a terror created by offender further encourages them to commit similar offences again. Clause (b) of sub-section (1) of section 56 deals with such situations and authorise Magistrate acting under the provisions of the Bombay Police Act, 1951 to extern such person in order to relieve the society from menacing presence of such miscreant in the locality for a temporary period. Therefore, sine qua non in exercise of powers is that the witnesses should be unwilling to come forward. If the witnesses are willing to come forward, then such persons can be dealt with under the Indian Penal Code and recourse to Bombay Police Act is not necessary.

4. Shri Barlota submitted that it is not necessary that all the witnesses should be willing to come forward and in support of this contention, he relied on the judgement of the Supreme Court in the case of Bhagubhai Dullabhabhai Bhandari Vs. The District Magistrate, Thana and Others, . It is true that the words "witnesses are not willing to come forward" occurring in sub-section (1) of section 56 does not mean that each and every witness should be unwilling to come forward. Even if some witnesses are unwilling to come forward, power u/s 56 can be exercised. But a person against whom externment proceedings are instituted, is entitled to know as to why, he is sought to be dealt under exceptional provisions and the essence of the right of the State to invoke exceptional power is that the witnesses are unwilling to come forward to depose against him. When the ground for externment is that a person is engaged in or is about to be engaged in commission of offences under Chapter XII, XVI or XVII of the Indian Penal Code, notice u/s 59 would be bad if it does not say that witnesses are unwilling to come forward to depose against him. In the instant case, neither of the 2 notices served on the petitioner by the Sub-Divisional Magistrate even whisper about the unwillingness of the witnesses to come forward and depose against the petitioner and the return sworn by the Sub-Division Magistrate does not allege that this was communicated to the petitioner. It is not the case of the State that any other notice is served on the petitioner than the two notices dated 20-8-1990 and 11-9-1990 as are reproduced at pages 19 and 21 of the compilation of this writ petition. Though the order of externment does mention that Magistrate passing the order is of the opinion that witnesses are unwilling to come forward to give evidence in public against the said person by reason of apprehension on their part as regards the safety of their person and property, this was not communicated to petitioner. Therefore, the exercise of the power u/s 56 on the ground under Clause (b) was without jurisdiction and no other ground which can be said to be covered by Clause (a), (bb), or (c) is available to justify action against the petitioner.

5. In the result, this Criminal Writ Petition is allowed. The order of externment passed by the Sub-Divisional Magistrate, Jalgaon dated 4-10-1990 directing petitioner to remove himself from the districts of Jalgaon, Dhule, Nashik, Ahmednagar and Buldhana as modified by the State Government vide order dated 12-12-1990 is hereby quashed. Rule made absolute in the above terms.