
(1986) 06 GUJ CK 0003
In the Gujarat High Court

Pravin Narayan Luhar

APPELLANT

Vs

Deputy Police Commissioner and Another

RESPONDENT

Date of Decision : 24-06-1986

Acts Referred:

Gujarat Police Act, 1951 — Section 56, 59, 60
Penal Code, 1860 (IPC) — Section 16, 17

Citation : (1988) CriLJ 1339

Hon'ble Judges : P.R. Gokulkrishnan, C.J; R.M. Mehta, J

Bench : Division Bench

Judgement

P.R. Gokulkrishnan, C.J.—Rule,

2. Mr. G.D. Bhatt waives service of rule.

3. This is a petition which requires the order passed by the Government of Gujarat u/s 60 of the Bombay Police Act to be quashed and set aside. The short facts of the case are that the petitioner was extorted by the Deputy Commissioner of Police, Surat City, u/s 56 of the Bombay Police Act from the limits of the City of Surat, the area under the jurisdiction of Surat Police Commissioner, Surat Rural, Bharuch and Bulsar Districts for a period of two years. The allegations are as follows:

1. He is a terrific and fanatical man, and he commits terrific offences like robbery, rape and black-marketing of cinema tickets either he himself or with the help of his associates.

2. He commits the offences punishable under Sections 16 and 17 of the IPC and the offences wherein the force and violence are used and he is preparing for that.

3. He kidnaps forcibly the innocent persons passing on the road and beats them locks them and robs them.

4. He openly exercises molestation on the ladies passing on the road and kidnaps them and threatens them of violence and outrages their modesty.

5. Under the guise of outrageous behaviour and violence he uses the rickshaw and does not give the legal fare thereof and on the contrary he beats the persons demanding the amount.

6. On account of his behaviour and activity fear, danger and damages are caused to the individuals; and there is all possibility of the same being done;

7. He openly commits breach of the declaration of prohibition of keeping the weapons and he has been caught with deadly weapons. And he is proved guilty for the same.

8. He commits the aforesaid acts in the area of the City of Surat-Varachha Road, Gitanjali talkies, Darpan cinema, Railway underground passage, near Sadadivala compound etc.

9. He is doing the aforesaid terrific acts. Now his companions, on account of fear of their lives, person and property, from him do not desire to give evidence against him in public.

4. Against the order of the Deputy Police Commissioner, Surat City, the petitioner preferred appeal to the Home Department, Government of Gujarat, u/s 60 of the Bombay Police Act. The Government of Gujarat, under the powers conferred upon it under Sub-section (3) of Section 60, modified the order of externment and decided that the petitioner should not do any criminal or violent act during the period of two years from the date of the said order and should behave in good manner and for that, bail of Rs. 5000/- and surety for good behaviour for two years and personal recognition be given. It is as against this order, the present Special Criminal Application has been filed.

5. Mr. R.R. Marshall, learned Counsel appearing for the petitioner, apart from various other allegations, specifically pointed out that no period of the said offences alleged against the petitioner has been given either in the show cause notice or in the externment order. We have carefully gone through the show cause notice and the externment order placed before us. Nowhere in the externment order it has been stated that the petitioner has committed offences alleged against him during a particular period. The Supreme Court in State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc., had an occasion to consider as to the effect if the authorities fail to give the area and the period of commission of offences by the party concerned. In that case, no doubt the period during which the acts alleged were committed was mentioned, but the Supreme Court observed that:

Considering it from the point of view of the party against whom an order of externment is proposed to be passed, it must be emphasized that when he has to tender an" explanation to a notice u/s 59, he can only give an explanation which can be of a general nature. It may be open to him to take a defence of the action being taken, due to mala fide, malice or mistaken identity or he may be able to tender proof of his general good conduct, or alibi, during the period

covered by the notice and the like.

6. Thus, it is clear that if the period is not generally mentioned in the notice, the substantial defence a party can take regarding the plea of alibi is lost. Following the very same decision of the Supreme Court, this Court in the case of Kathi Harsur Rukhad Vs. State of Gujarat and Others, , has stated that:

In view of the authoritative pronouncement of the Supreme Court in State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc., , it is obvious that even though notice issued u/s 59 is to refer to allegations of general nature containing material particulars, at least such allegations in order to meet the requirement of the law, must indicate the area or locality where such alleged activities were said to have been committed by the proposed externee and the allegations should also indicate as to within what period he did it so that his defence about alibi if at all can be reasonably put forward for consideration of the externing authority. On the facts of the present case, in the light of the allegations contained in the impugned show cause notices, there is no doubt that these notices have failed to satisfy the test for being treated to be, valid show cause notices u/s 59 of the Act. Merely because the petitioners filed their replies as they were kept guessing about the period during which and the localities in which they were alleged to have undertaken the alleged activities, this fact would not improve the position for the respondents.

7. It is clear that if the period within which such offences alleged against a party is not mentioned, it will definitely vitiate the proceeding u/s 56 of the Bombay Police Act. As far as the present case is concerned, the learned P.P. has absolutely no answer for the argument put forward by the learned Counsel appearing for the petitioner to the effect that the period of such offences has not been given. This goes to the root of the matter and vitiates the whole proceedings as correctly laid down by the decisions cited above.

8. For all these reasons, we are of the view that the orders passed by the externing and appellate authority cannot be sustained in the facts and circumstances of this case.

9. For all these reasons this Special Criminal Application is allowed and the orders passed by the externing authority and the appellate authority are quashed and set aside.