

(2001) 03 BOM CK 0133

In the Bombay High Court

Case No : Criminal Writ Petition No. 33 of 2001

Punjaji Dagdu Gaikwad

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

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

Citation : (2001) 4 BOMLR 197 : (2001) 3 MhLj 926

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : Abhay Sambre, for the Appellant; D.B. Yengal, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—Rule. With the consent of the learned Advocates of the parties. Rule is made returnable forthwith. With the consent of the parties, heard forthwith.

2. The petitioner was externed u/s 56(1) and u/s 59 of the Bombay Police Act, 1951. by order dated 23-3-2000 of respondent No. 2. By the said order, the petitioner, was externed for one year from Buldana district and nearby districts of Akola, Washim, Jalna, Parbhani and Jalgaon. The petitioner challenged the said externment order before the respondent No. 3 in appeal, and respondent No. 3 vide order dated 11th December, 2000 rejected the appeal and confirmed the externment order. The petitioner ; challenges the externment order on the ground that in the show cause notice, there is no averment that witnesses are not coming forward to depose or that they have not lodged the complaint against the petitioner due to fear as also on the ground that though the activity of the petitioner is stated to be restricted in village district Buldana. yet by impugned order, the petitioner has been externed from not only district Buldana but also five other districts namely Akola, Washim, Jalna, Parbhani and Jalgaon. It is in excess of the power conferred under Sections 56 and 59 of the Bombay Police

Act. Besides this, there are other grounds on which the externment order is challenged.

3. In respect of the ground that the externment order is in excess of the jurisdiction vested in the authorities, reliance has been placed on Division Bench judgment of the Bombay High Court in Umar Mohamed Malbari v. K. P. Gaikwad, Dy. Commissioner of Police and another, In this case the activities reported to be indulged by the petitioner therein were restricted within the Taluka of Bhiwandi within the Thane Commissionerate, yet the petitioner was also externed from Raigad and Nasik districts, the externment order was challenged before the High Court. Relying upon Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, , it was held that the externment of the petitioner in respect of districts Raigad and Nasik was in excess of the activities complained of which were restricted within the Taluka of Bhiwandi within the Thane Commissionerate. 4. In Balu Shivling Dombre v. The Divisional Magistrate (supra), the activities of the externee were confined to the city of Pandharpur and yet the externment order had covered an area as extensive as the districts of Sholapur, Satara and Poona which areas were far widely removed from the locality in which the externee had committed his illegal acts. It was, therefore, held that the exercise of the power was arbitrary and excessive and the order having been passed without reference to the purpose of the externment was quashed.

5 In Umar Mohamed Malbari v. K.P. Gaikwad, Dy. Commissioner of Police and another, (supra), the learned Public Prosecutor also contended that entire order of externment was not liable to be struck down merely because it covered areas which were excessive than what was justified and the appropriate areas of externment can be substituted. This contention was rejected on the ground that if the authority had acted in excess, then the jurisdiction of this Court is to quash the order passed in excess of the jurisdiction and there the power of the High Court stops. It was pointed out that the High Court has no power to go further and to correct an excessive order passed by the Authority concerned.

6. In Pandharinath Shridhar Rangnekar v. Dy. Commissioner of Police, State of Maharashtra, upon which reliance was placed by learned A.P.P., it was held that it is the externment authority which must decide the period for which the order is to operate and the territories to which it should extend. Nevertheless, it is pertinent to note that the Apex Court had observed that it depends upon the nature of data collected in each case and no general formulation is possible, but there should not be greater restraint on personal liberty than is reasonable in the circumstances of the case. The Apex Court had referred to judgment of this Court in Balu Shivling Dombre v. The Divisional Magistrate and held that an excessive order can undoubtedly be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. Nevertheless, it was pointed out that the larger area may conceivably have to be comprised within the externment order so as to isolate the externee from

his moorings. However, for that purpose data is required. In the case under consideration, there does not appear to be any such data with relation to the five districts from where also the petitioner has been externed along with the area of the activities i.e. district Buldana. Therefore, the impugned order suffers from the vice of excessive externment from the five districts in respect of which no data was placed and the entire externment order is liable to be quashed.

7. In view of the above, the Writ Petition is allowed. Order dated 23-3-2000 of respondent No. 2 and order dated 11th December, 2000 of respondent No. 3 are hereby quashed and set aside. The petitioner/extreme shall be set at liberty in case he is not required in any other matter. Rule, is accordingly made absolute in aforesaid terms.