
(2011) 08 BOM CK 0109

In the Bombay High Court

Case No : Criminal Writ Petition No. 335 of 2011

Radhakisan Patol

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Bombay Police Act, 1951 — Section 142, 56, 59, 60
Constitution of India, 1950 — Article 227

Citation : (2012) BomCR(Cri) 465

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : V.S. Borkar, for the Appellant; V.D. Rakh, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Shrihari P. Davare, J.

1 Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, taken up for final hearing.

2 The Petitioner filed present petition under Article 227 of the Constitution of India and prayed that the externment order, dated 22.10.2010, passed by the Deputy Commissioner of Police, Aurangabad and the judgment and order, dated 24.2.2011, passed by Respondent No. 3 in appeal be quashed and set aside.

3 The Petitioner claims to be the resident of Wadgaon (Kolhati), Taluka and District Aurangabad; whereas Respondent No. 1 is the State of Maharashtra represented through the Secretary, Home Department, Mantralaya, Mumbai and Respondent No. 2 is the Deputy Commissioner of Police, Zone, Aurangabad; whereas Respondent No. 3 is the Principal Secretary (Appeal and Security), Mantralaya, Mumbai.

4 The Assistant Commissioner of Police, Chhawani Division, Aurangabad slapped a show cause notice, dated 14.8.2010 and the copy of said show cause notice is

produced at Exh."A" (Page14) upon the Petitioner u/s 59 of the Bombay Police Act, 1951 and called upon the Petitioner why he should not be externed from Aurangabad and Ahmednagar districts for a period of two years in accordance with Section 56(1)(a)(b) of the Bombay Police Act, considering his criminal activities in the said area and also specifying the offences registered and pending against him. The Petitioner replied to the said notice by reply, dated 17.8.2010 and the copy of the said reply is produced at Exh."B" (Page 17) and denied the allegations made in the said notice and submitted that false offences have been registered against him and he has no concern with the same and also considering that the police personnel and the Society have made various efforts to brand him as seasoned criminal. By the said reply, he further stated that he has not committed any offence and undertook not to commit any offence further more.

5 In pursuance to the above referred show cause notice and reply, audience was given to the Petitioner and considering the contents of the above referred show cause notice and the reply filed by the Petitioner and also considering the submissions advanced by the Petitioner in person, the Deputy Commissioner of Police, Aurangabad passed the externment order on 22.10.2010 and thereby externed the Petitioner from Aurangabad city and District for the period of two years and imposed the conditions upon him, as stated therein and the order was communicated to the Petitioner along with the covering letter, dated 22.10.2010 and the copies of the said covering letter and the order are produced at Exh. "C" (Page 21).

6 Being aggrieved and dissatisfied by the said order of externment, the Petitioner herein preferred appeal u/s 60 of the Bombay Police Act before the Principal Secretary (Appeal and Security) on 27.11.2010 and the copy of the said appeal is produced at Exh. "D" (Page 25), contending that the order passed by the Deputy Commissioner of Police, Aurangabad is erroneous and unsustainable and it suffers from legal and procedural infirmities and is based upon omnibus statements and false cases registered against the Petitioner. Accordingly, the Appellant as well as Respondent therein were heard and the Principal Secretary (Appeal and Security), passed an order on 24.2.2011 and dismissed the said appeal, since no interference was warranted in the order passed by the Deputy Commissioner of Police, Aurangabad. The said order of dismissal was communicated to the Petitioner by covering letter, dated 24.2.2011, and the copies of the said covering letter and the order are produced at Exh. "E" (Pages 32 and 33). Hence, the Petitioner has preferred the present petition by approaching this Court under Article 227 of the Constitution of India.

7 Learned Counsel for the Petitioner canvassed that in all four cases have been pending against the Petitioner as stated in the impugned order, dated 22.10.2010, but all the said cases are pending before the court, and therefore, issuance of the externment order by the learned District Judge, Aurangabad on the basis of pendency of said cases in court, is buse of process of law and same is erroneous and unsustainable .It is also argued by the learned Counsel for the

Petitioner that the list of witnesses, to whom allegedly threats were given by the Petitioner, was not supplied to him, which is the lacuna in the present matter, which ultimately culminated into injustice upon the Petitioner, since he could not get opportunity to meet the same.

8 According to the learned Counsel for the Petitioner, the alleged criminal activities against the Petitioner pertained to Waluj police station, but the Petitioner has been externed by order, dated 22.10.2010 from the City and District Aurangabad, which is excessive order and same deserves to be quashed and set aside. Accordingly, the learned Counsel for the Petitioner submits that the impugned order has been passed by the Deputy Commissioner of Police, Aurangabad, without application of any mind, as well as the order passed by the Principal Secretary (Appeal and Security) in the appeal also simply followed the said order and did not apply mind to the present case independently, and hence, it is urged that both the said orders deserve to be quashed and set aside.

9 Learned Additional Public Prosecutor countered the said argument and opposed the present petition vehemently and submitted that the Respondents have followed due procedure of law and issued show cause notice to the Petitioner, and accordingly, opportunity was given to the Petitioner to meet with the allegations and contentions against him. Pursuant to the said show cause notice, the Petitioner filed the reply. Thereafter, considering the contents of the said show cause notice as well as considering the contents of the reply and after giving due audience to the Petitioner and further considering criminal activities of the Petitioner, the Deputy Commissioner of Police, Aurangabad, passed the externment order, dated 22.10.2010 and thereby externed the Petitioner from the City and District of Aurangabad for the period of two years and the said order has been passed after following the principles of natural justice and after due application of mind.

10 It is also canvassed by the learned Additional Public Prosecutor that considering the offences registered against the Petitioner, which are four in number and from the Sections applied in the said offences, it appears that the said offences are of serious in nature, the details whereof are as under:-

Sr.

No.

1

2

3

4

Police Station

MIDC, Waluj

MIDC,Waluj

MIDC,Waluj

MIDC,Waluj

C.R.No.

54/07

166/07

79/08

209/08

Sections

341, 323, 504, 506, 34 IPC

452, 323, 504, 506, 427, 34 IPC

457, 380 IPC

302, 201 IPC

Date of Registration

3.2.2007

28.6.2007

22.3.2008

10.8.2008

Case No. Remarks

854/05

Pending

2059/07

Pending

1988/08

Pending

1872/08

Pending

Hence, considering the criminal activities of the Petitioner, the Deputy Commissioner of Police, Aurangabad, has passed the impugned order of externment of the Petitioner rightly. It is also canvassed by the learned Additional Public Prosecutor that the said externment order has not at all been

excessive, since the Petitioner has been externed from the jurisdiction of City and District of Aurangabad, considering his criminal activities as per offences registered at Waluj police station and it is submitted that there is no substance in the argument canvassed by the learned Counsel for the Petitioner in that respect.

11 It is also pointed out by the learned Additional Public Prosecutor that even after passing the impugned order of externment on 22.10.2010, the Petitioner committed breach of the conditions thereof and the offence u/s 142 of the Bombay Police Act has been registered against him on 21.6.2011, which itself indicates the conduct of the Petitioner. It is further submitted that the Principal Secretary (Appeal and Security) also gave hearing to the Petitioner and after considering the entire criminal activities of the Petitioner and after application of mind, dismissed the appeal preferred by the Petitioner herein rightly and no interference is warranted under the writ jurisdiction of this Court therein. Accordingly, learned Additional Public Prosecutor urged that the present petition bears no substance and same is devoid of any merits and same be dismissed.

12 Considering the contents of the present petition and annextures thereto and the contents of the affidavit in reply filed by the Respondent Kishor Sonyabapu Navale, presently working as Police Inspector, M.I.D.C., Waluj police station, Aurangabad and the annexure therewith and also considering the rival submissions advanced by the learned Counsel for the parties, there cannot be any dispute that due show cause notice was issued by the Assistant Commissioner of Police, Aurangabad to the Petitioner on 14.8.2010 making detailed averments against the Petitioner in respect of his criminal activities specifying the C. Rs. and four cognizable offences registered under Chapters 16 and 17 of the Indian Penal Code and pending against him. It was pointed out in the said show cause notice that there was apprehension of disturbance of public peace and damage to the public property due to the criminal activities of the Petitioner, and hence, he was called upon to explain why he should not be externed from the City and Districts of Aurangabad and Ahmednagar for a period of two years. Admittedly, the said notice was replied by the Petitioner by reply, dated 17.8.2010 Exh."B" and denied the allegations made against him therein.

13 Accordingly, considering the contentions of the Respondents in the show cause notice, as well as the case put forth by the Petitioner in his reply, the Deputy Commissioner of Police, Aurangabad passed the impugned order, dated 22.10.2010 and thereby externed the Petitioner from the City and District of Aurangabad for the period of two years.

14 On perusal of the said impugned order, dated 22.10.2010, it is apparent that before passing the said order, the Respondents have followed due procedure of law by giving show cause notice to the Petitioner. Moreover, audience was given to the Petitioner before passing the said order. So also, it was stated in the impugned order that in all four offences were registered against the Petitioner as afore stated, which are the offences of serious nature. However, it was canvassed by the learned Counsel for the Petitioner that those offences were pending before

the court and it was not in the hands of the Petitioner to decide the same. However, there is no substance in the said argument advanced by the learned Counsel for the Petitioner and although the said cases are pending before the respective courts, the fact remains that the said offences are pending against the Petitioner and he cannot take the shelter of the aspect that the cases pertaining to the said offences are pending before the court. Apart from that, the said four offences registered against the Petitioner exhibit the criminal activities of the Petitioner in the concerned areas and the said offences are under Chapters 16 and 17 of the Indian Penal Code and the apprehension posed by the Respondents that there was every possibility of disturbance of public peace and property due to the criminal activities of the Petitioner, is not out of place and same cannot be faulted with. Moreover, there is also no flaw in the apprehension posed by the Respondents that the witnesses do not come forward to give evidence against the Petitioner considering his criminal activities, and terrorizing nature.

15 An argument was advanced by the learned Counsel for the Petitioner that although the said offences were registered at Waluj police station i.e. only one police station, the Petitioner was externed from the City and District of Aurangabad and the said order is excessive. However, I am not impressed by the said argument, since four cases were registered against the Petitioner at Waluj police station under the serious charges as mentioned herein above and same are still pending. Moreover, since his criminal activities are spread over the entire District, he was externed from the City and District of Aurangabad. Besides, although notice was issued to him for externment from Ahmednagar District also, he was not externed from Ahmednagar District, but was externed only from the City and District of Aurangabad and his externment order is restricted to City and District of Aurangabad only and not beyond that, and hence, the said order cannot be construed as excessive and the argument canvassed by the learned Counsel for the Petitioner bears no substance.

16 As regards the further argument advanced by the learned Counsel for the Petitioner that the externment order, dated 22.10.2010 was passed without application of mind and the impugned order, dated 24.2.2011 passed by the Principal Secretary (Appeal and Security) was passed mechanically, on perusal of both the said orders, it is apparent that the reply filed by the Petitioner was considered while passing the order, dated 22.10.2010 by the Deputy Commissioner of Police, Aurangabad and even audience was given to the Petitioner before passing the said order, as well as considering the contents in the appeal the Petitioner was heard before passing the impugned order, dated 24.2.2011 and due opportunity was given to the Petitioner as well as principles of natural justice were followed by both the said authorities and thereafter the impugned orders, dated 22.10.2010 and 24.2.2011 were passed by Respondent Nos. 2 and 3 respectively, which are the quasi-judicial authorities, and hence, there is no substance in the argument canvassed by the learned Counsel for the Petitioner in that respect and, and therefore, same deserves to be discarded.

17 In the circumstances, considering the substratum of the material produced on record before Respondent Nos. 2 and 3 and also considering the criminal and terrorizing activities of the Petitioner, which come under the purview of Chapters XVI and XVII of the Indian Penal Code, and also considering the disturbance of public peace and property by the criminal activities of the Petitioner, Respondent Nos. 2 and 3, which are the quasi-judicial authorities, have rightly passed the impugned orders with a view to maintain public peace and harmony, and hence, no interference therein is called for under extraordinary writ jurisdiction of this Court, and hence, present petition lacks merits and deserves to be rejected.

18 In the result, present petition, which is sans merits, stands dismissed. Rule stands discharged accordingly.