

(2016) 10 BOM CK 0040

In the Bombay High Court

Case No : Criminal Writ Petition No. 835 of 2016

Rahul Sahebrao Chabukswar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Police Act, 1951 — Section 56, Section 59, Section 60

Citation : (2016) 3 AIRBomRCri 862 : (2017) CriLJ 814

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. H.H. Padalkar, i/b. Mr. S.B. Rajebhosale, Advocates, for the Petitioner; Mr. D.R. Kale, A.P.P, for the Respondent nos. 1 to 6

Final Decision : Dismissed

Judgement

Sangitrao S. Patil, J. - Heard. Rule, made returnable forthwith. With the consent of the learned Counsel for the petitioner and the learned A.P.P. for the respondents, heard finally.

2. The petitioner has assailed the order dated 29.06.2016 passed by respondent no. 6 - Divisional Commissioner, Aurangabad under subsection (3) of Section 60 of the Maharashtra Police Act ("the Act" for short), whereby respondent no. 6 partly allowed the appeal preferred by the petitioner against the order dated 09.04.2016 passed by respondent no. 4 - Deputy Commissioner of Police, Zone-2, Aurangabad City, under Section 56(1)(a) and (b) of the Act, as a result whereof the petitioner has been externed from the local limits of the Aurangabad Police Commissionerate only, for a period of two years.

3. It is alleged that the petitioner has been prosecuted for the following crimes :-

Sr. No.

Name of Police Station

Crime Register No.

Sections

Status

1.

Jawahar Nagar

27/2012

307, 147, 148, 149, 114, 120(B) 201 I.P.C.

Pending

2.

Mukundwadi

219/2012

395, 427, 507, 279 I.P.C.

Pending

3.

M. CIDCO

188/2014

395 I.P.C.

Pending

It is further alleged that from the in-camera statements of the witnesses A and B, it was noticed that the petitioner is indulging in the offences against the persons and properties, however, because of his alarming and dangerous behaviour, the witnesses did not disclose the offending acts of the petitioner to anybody including the police. It is alleged that the acts of the petitioner are causing or calculated to cause alarm, danger or harm to the persons and properties and that there are reasonable grounds for believing that the petitioner is engaged or is about to be engaged in the commission of the offences involving force or violence or the offences punishable under Chapters XVI and XVII of the Indian Penal Code ("I.P.C.", for short) or in the abetment of any such offences and that the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or properties.

4. Notice dated 22.05.2015 was served on the petitioner vide Section 59(1) of the Act containing all the details of the offences registered against him and also the in-camera statements of the witnesses. The petitioner was called upon to show cause as to why he should not be externed from Aurangabad city as well as

the districts of Aurangabad and Jalna for a period of two years.

5. The petitioner appeared before the Assistant Commissioner of Police, CIDCO Region, Aurangabad (City) and opposed the action of externment proposed to be taken against him by giving oral reply to the show cause notice on 29.05.2015. The Assistant Commissioner of Police found sufficient grounds to proceed against the petitioner for his externment. He, therefore, submitted the proposal for externment of the petitioner before respondent no. 4.

6. Respondent no. 4 conducted further enquiry. He verified the in-camera statements of the witnesses A and B. He further collected the copies of the Charge Sheet filed against the petitioner in the above-referred crimes. He found sufficient evidence to take action against the petitioner for his externment. He, therefore, called upon the petitioner vide notice dated 25.02.2016 to furnish further explanation as to why the order for his externment should not be passed. Accordingly, the petitioner appeared before respondent no. 4 on 12.03.2016 and furnished his written reply denying all the allegations made against him. After considering the evidence on record as well as the replies of the petitioner, respondent no. 4 passed the order dated 09.04.2016 externing the petitioner from the local limits of the Aurangabad Police Commissionerate and the entire Aurangabad District for a period of two years.

7. The petitioner challenged the order dated 09.04.2016 passed by respondent no. 4 before respondent no. 6 by filing appeal. Respondent no. 6 extended the petitioner an opportunity of hearing. After considering the grounds of objections raised by the petitioner, respondent no. 6 allowed the appeal partly and maintained the externment order passed against the petitioner to the extent of the local limits of the Aurangabad Police Commissionerate, for a period of two years.

8. The learned Counsel for the petitioner submits that the impugned order of externment passed against the petitioner is not legal, proper and correct. It has been passed by respondent no. 6 without application of mind. Respondent no. 6 was not empowered to modify the order dated 09.04.2016 passed by respondent no. 4 and reduce its application to the local limits of the Aurangabad Police Commissionerate only. He submits that when respondent no. 6 found that the order dated 09.04.2016 was excessive, he should have quashed and set aside the same in its entirety. He submits that the order of externment against the petitioner has not been passed after recording the subjective satisfaction by respondent nos. 4 and 6. The said order is harsh and excessive. He submits that one of the criminal cases registered against the petitioner has ended in acquittal. He further submits that the in-camera statements of the witnesses produced on record are very vague and general. They do not contain any date, time and place of commission of offences by the petitioner. According to him, by passing the impugned order of externment, respondent nos. 4 and 6 have imposed unreasonable restrictions on the petitioner, which amounts to infringement of his fundamental rights under Article 19 of the Constitution of India. He submits that

the impugned order is illegal and arbitrary. He, therefore, prays that the impugned order of externment passed against the petitioner may be quashed and set aside.

9. As against this, the learned A.P.P. submits that there are serious offences alleged against the petitioner. He is a terror in the city. The witnesses are not coming forward to depose against him. He pointed out the judgment dated 11.04.2016 delivered in S.C. No. 132 of 2014, arising out of Crime No. I-219/2012 registered in Police Station, Mukundwadi for the offences punishable under Sections 395, 279, 427, 506 and 201 of the I.P.C., whereby the petitioner and his companion have been acquitted merely because the witnesses turned hostile. He submits that this fact itself is sufficient to show as to how the witnesses are wandering under the threat and alarm of the petitioner, which makes it difficult for them to depose against the petitioner before the Court. The learned A.P.P. submits that respondent nos. 4 and 6 have followed the requisite procedure laid down under Sections 56 and 59 of the Act. Respondent nos. 4 and 6 have given fair and reasonable opportunity of being heard to the petitioner. They have followed the principles of natural justice. After their subjective satisfaction based on the material produced before them and considering the replies given by the petitioner, both of them rightly decided to extern the petitioner. He submits that respondent no. 6 was empowered under Section 60 of the Act to confirm, vary, cancel or set aside the order of externment challenged before him in appeal. He submits that since respondent no. 6 found that it was not necessary to make applicable the externment order for the entire district of Aurangabad, he rightly reduced its application to the extent of the local limits of the Aurangabad Police Commissionerate. He supports the impugned order and prays that the petition may be dismissed.

10. It is well settled that it is primarily for the externing authority to decide how best the externment order can be made effective, so as to sub-serve its real purpose. How long, within the statutory limit of two years fixed by Section 58 of the Act, the order shall operate and to what territories, within the statutory limitations of Section 56 of the Act, it should extend, are the matters which must depend for his decision on the nature of the data which the authority is able to collect in the externment proceedings. No general formulation can be made that the order of externment must always be restricted to the area to which the illegal activities of the externnee extend. Primarily, the satisfaction has to be of the authority passing the order. If the satisfaction recorded by the authority is objective and is based on material on record, then the Court would not interfere with the order passed by the authority only because another view possibly can be taken. Interference in the order can be made only if the satisfaction recorded is either demonstratively perverse, based on no evidence, misreading of evidence or which a reasonable person could not form opinion or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act. Keeping in mind this settled legal position governing the externment proceedings, we propose to consider the legality, propriety and correctness of the

impugned orders.

11. There is no dispute that the petitioner was served with the notice dated 22.05.2015 issued by the Assistant Commissioner of Police, calling upon him to show cause as to why the order for his externment should not be passed vide Section 56(1) (a) and (b) of the Act. The said notice contains the details of the three crimes registered against the petitioner. Crime No. I-219 of 2012 was registered in Mukundwadi Police Station, Aurangabad for the offences punishable under Sections 395, 427, 507, 279, 201 of I.P.C., on the basis of which Sessions Case No. 132 of 2014 was registered against him and others. When the said notice was issued, the said Case was pending before the Sessions Court, Aurangabad. It seems that after recording evidence of the witnesses, the learned Addl. Sessions Judge-5, Aurangabad acquitted the petitioner and others of the above mentioned offences as per the judgment and order dated 11.04.2016. The certified copy of the judgment of the said Sessions Case was not produced by the petitioner before respondent no. 4 when he passed the impugned order of externment on 09.04.2016. However, respondent no. 6, while passing the impugned order on 29.06.2016, took into consideration that judgment of acquittal. He noted that the petitioner came to be acquitted because the witnesses did not support the prosecution. He, therefore, inferred, and rightly so, that because of the Gundaizm, terror and fear of the petitioner, the witnesses did not come forward against him and therefore, the offence charged against him could not be proved.

12. There are other two crimes registered against the petitioner and his companions in Jawaharnagar and M.CIDCO Police Stations respectively for the offences punishable under Sections 307 and 395 of the I.P.C., respectively. The details of those offences have been mentioned in the show cause notice dated 22.05.2015.

13. There is a reference of the in-camera statements of the witnesses A and B in the show cause notice dated 22.05.2015. The witness A states that in the first week of October-2014, when he was proceeding from near Gajanan Maharaj temple, the petitioner and two of his companions stopped him and forcibly took out an amount of Rs. 1,000/- from him on the pretext of celebrating birthday party and threatened him of dire consequences in case he disclosed that fact to anybody. Therefore, the said witness did not inform about that incident to anybody and did not lodge report to the police station. Witness B states that in the month of October-2014, when he was proceeding on the motorcycle from Gajanan Maharaj temple to Pundliknagar, the petitioner restrained him near Shivaji statue, removed the ignition key of his motorcycle, threatened him that he should not either purchase or sell the plots in Garkheda, Aurangabad area, on the say that the said area belonged to him. The said witness got frightened and did not inform about that incident to anybody and did not lodge report to the police station against the petitioner.

14. The above contents of the show-cause notice issued under Section 59 of the

Act are quite clear, speaking, exhaustive and giving correct idea to the petitioner as to what case he was supposed to meet in the externment proceedings. The petitioner did not file any written reply to that notice. He gave a statement before the Assistant Police Commissioner on 29.05.2015 and denied the allegations made in the show-cause notice. According to him, he has been falsely involved in the above-numbered crimes. He denied that he ever threatened or used criminal force against anybody or committed theft of any property, as alleged. It is his case that the contents of the notice are vague, general or insufficient and that he would be unable to furnish explanation on the basis of the said contents.

15. After considering the in-camera statements of the witnesses A and B as well as the contents of the Charge Sheets filed against the petitioner in the above-numbered crimes, respondent no. 4 found sufficient and dependable grounds to pass an order externing the petitioner. Therefore, he issued one more notice dated 25.02.2016 prior to passing of the final order calling upon the petitioner to appear before him on 08.03.2016 to furnish further explanation as to why he should not be externed from Aurangabad city and Aurangabad district for a period of two years. The petitioner filed written explanation to that notice on 12.03.2016 denying all the adverse allegations made against him. After considering the material on record as well as the explanation of the petitioner, respondent no. 4 passed the order on 09.04.2016 for externment of the petitioner from the city of Aurangabad as well as Aurangabad district for a period of two years. The said order is quite speaking and exhaustive and shows that respondent no. 4 applied his mind to the evidence that was produced before him and after recording his satisfaction, passed the order of externment.

16. The petitioner filed Appeal before respondent no. 6 under Section 60 of the Act. The impugned order passed by respondent no. 6 on 29.06.2016 shows that the petitioner was given a fair and reasonable opportunity of being heard. Respondent no. 6 considered the grounds of objections raised by the petitioner against the order of externment dated 09.04.2016 passed by respondent no. 4. After evaluating the evidence on record, respondent no. 6 partly allowed the Appeal to the extent of reducing the area of operation of the externment order limited to the local limits of the Aurangabad Police Commissionerate. The order passed by respondent no. 6 exhibits application of mind. It is quite speaking order. We do not find any flaw in the said order.

17. As stated above, the impugned orders of externment have been passed by respondent nos.4 and 6 after following the due procedure as laid down under Section 59 Act. They are not at all perverse. The contention of the learned Counsel for the petitioner that respondent no. 6 was not empowered to reduce the area of operation of the externment order passed by respondent no. 4 and he should have quashed the said order in its entirety, cannot at all be accepted. As per subsection (3) of Section 60 of the Act, respondent no. 6 was empowered to confirm, vary or set aside the order passed by respondent no. 4. Accordingly,

he has considered the facts of the case and reduced the area of operation of the order of externment passed by respondent no. 4 to the extent of the local limits of Aurangabad Police Commissionerate. We do not find anything wrong in the order passed by respondent no. 6.

18. The learned Counsel for the petitioner relied on the decisions in the cases of (i) Syed Noman Hussaini Kausar s/o. Syed Usman Hussaini v. State of Maharashtra and anr., 2015 (4) LJSOFT 101, (ii) Ashraf s/o. Shamsheer Ali Jagirdar v. State of Maharashtra and ors., 2015 (10) LJSOFT 54, (iii) Amjad Afjal Hussein Sheikh v. State of Maharashtra and ors., 2014 (2) Bom. C.R.(Cri.) 482, (iv) Sanket Balkrushna Jadhav v. State of Maharashtra and anr., 2013 (12) LJSOFT 248, and (v) Ajit Champatrao Bhapkar v. State of Maharashtra and ors., 2007 (11) LJSOFT 93, wherein it has been observed that the externment order directing the externnee to keep himself away, not only from the city or the district where his alleged prejudicial activities are confined, but also one or more districts adjoining thereto, would be excessive and harsh and, therefore, would be liable to be quashed and set aside in its entirety. It is held in these cases that the High Court has no powers to correct an excessive order by reducing the area of operation of the externment. In the present case, the petitioner has been externed from the local limits of the Aurangabad Police Commissionerate i.e. from the Aurangabad city only, where the petitioner's prejudicial activities are stated to have been done by him. The impugned order of externment is not at all harsh or excessive. Therefore, the above rulings would be of no help to the petitioner to seek quashment of the order of externment.

19. The learned Counsel for the petitioner further relied on the judgment in the case of Bajrang Sidaram Jadhav v. State of Maharashtra and ors., 2013 (10) LJSOFT 23, wherein the show-cause notice issued under Section 59 of the Act was lacking in the particulars about the material allegations and was violative of the principles of natural justice. Therefore, it was held that the externment proceedings were liable to be quashed and set aside. In the present case, the show-cause notices referred to above, issued against the petitioner were containing all the material particulars on the basis of which, the externment of the petitioner was proposed. The principles of natural justice have been followed by the externing authorities. Therefore, this ruling would not be applicable to the facts of the present case.

20. In the case of Chandar Dayaldas Sindhi v. M.W. Chitale, Dy. Commissioner of Police, Zone II, Kalyan, 1984 (1) LJSOFT 150 cited on behalf of the petitioner, the allegations mentioned in the notice were blissfully vague. There was no indication of material against the petitioner therein, to enable him to exercise his right of tendering explanation. The general nature of the material against the petitioner was not disclosed in that notice. Therefore, it was held that the notice under Section 59 of the Act was bad and the impugned order of externment passed on the basis of that notice was set aside. In the present case, the show-cause notices given to the petitioner, as stated above, were quite speaking,

exhaustive and giving clear idea to the petitioner about the allegations made against him to which he was supposed to give plausible explanation. Since the show-cause notices in the present case are quite valid, the above-mentioned judgment would not assist the petitioner in claiming quashment of the impugned order of his externment.

21. In the above circumstances, we are of the considered view that respondent nos. 4 and 6 have followed the due procedure as laid down under Section 59 of the Act before passing the impugned orders of externment. The said orders are based on the concrete material on record. The order passed by Respondent No. 4 has been rightly modified by respondent no. 6 thereby confirming the area of operation thereof within the local limits of Aurangabad Police Commissionerate. The impugned order passed by respondent no. 6 is not at all harsh or excessive. We do not find any reason to interfere in the said order. In the result, we pass the following order :-

ORDER

- (i) Criminal Writ Petition stands dismissed.
- (ii) Rule is discharged accordingly.