
(1989) 06 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 298 of 1989

Rajendra Damodar Vaity

APPELLANT

Vs

Hemant Karkare and another

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Bombay Police Act, 1951 — Section 56(1), 59, 60

Citation : (1989) 06 BOM CK 0007

Hon'ble Judges : S.P. Kurdukar, J;Agarwal, J

Bench : Division Bench

Judgement

Kurdukar, J.—This writ petition under Art. 226 of the Constitution of India is filed by Rajendra Damodar Vaity - the petitioner, who has suffered an order of externment under S. 56(1)(b) of the Bombay Police Act.

2. The Deputy Commissioner of Police, Zone-1, Thane, on 19th July 1989, issued a show cause notice under S. 59 of the Bombay Police Act, 1951 (hereinafter referred to as "the Act") to the petitioner as to why proceedings under S. 56(1) (a) and (b) of the Act be not initiated against him on the basis of the criminal activities set out in the said notice. The notice recites that the petitioner resides in the locality behind J.J. Chemical Company which falls within the jurisdiction of Vartak Nagar Police Station, Thane. Chirag Nagar and Laxmi Nagar localities are also situate adjacent to the said J.J. Chemical Company. The petitioner and his associates who possess criminal mentality (Goondas) always move in that locality carrying deadly weapons like swords, guptis and without any fault on the part of the people who reside in that locality, they pick up quarrels on false pretext and assault them. Their activities have created a terror in the said locality and the persons residing in that locality are scared. There is great danger to the public order and the safety of these persons. In the said locality, the petitioner and his associates have assaulted and committed several offences. People are scared to lodge any complaint or give evidence in public against the petitioner. Despite this some people have lodged complaints against the petitioner and those complaints

have been enumerated in the said notice. The notice then recites that in spite of these criminal complaints which are lodged in the Court, the petitioner has not desisted from repeating such criminal activities and there is no improvement in his conduct. The petitioner and his associates are accustomed to repeat such offences. People residing in the locality are very much scared and they are living under constant terror and because of the petitioner's activities they are not prepared to come forward and give evidence in public. In these circumstances the Deputy Commissioner of Police has called upon the petitioner to file his reply as to why he should not be externed for a period of two years from the revenue districts of Thane and Greater Bombay. This notice also called upon the petitioner to give such evidence oral and documentary as he deems fit to defend his case.

3. After holding the enquiry, the Deputy Police Commissioner was subjectively satisfied that the petitioner's criminal activities have created terror in the minds of the people residing in that locality and those people feel insecured because of these criminal activities. The Deputy Commissioner of Police also came to the conclusion on the basis of the material produced before him that the petitioner is likely to continue his criminal activities in future with the aid of his associates and with a view to preventing him from creating situation of terror and insecurity in the minds of the people, residing in those localities, it is necessary to extern the petitioner. The Deputy Commissioner of Police, therefore, passed the order of externment externing the petitioner for a period of two years from the revenue districts of Thane and Greater Bombay. It must be stated that this order was made under S. 56(1)(b) of the Act. It is dated 9th January 1989 and annexed to the petition at Exhibit "D".

4. Aggrieved by the said order, the petitioner preferred an appeal to the Appellate Authority under S. 60 of the Act. The Appellate Authority vide its order dated February 26, 1989, confirmed the order of externment. It is against these orders, the petitioner has filed this writ petition to this Court.

5. Mr. Chitnis, learned counsel appearing in support of this petition urged that the externing authority has taken into consideration the cases pending in the Courts of law in which witnesses are yet to be examined and hence subjective satisfaction that the witnesses are not coming forward to depose against the petitioner is arrived at mechanically and it discloses clear non-application of the mind on the part of the externing authority. Hence, externment order is liable to be set aside. (See Paragraph 8 Ground C of the Petition). In order to examine this argument, we have ourselves gone through the record which was made available by the learned Public Prosecutor. In fairness, we must point out that as far as the cases referred to in tabular form in the order are concerned, statements and/or complaints have been recorded but we do not see therein that they have stated that they are not prepared to come forward to give evidence against the petitioner in public. These cases have been relied upon by the externing authority in order to show the criminal activities and the conduct of the petitioner. In regard to these criminal activities, the victims have in terms stated

that the petitioner has assaulted them without any rhyme or reason and this has created a terror in the locality. The people residing in the locality remain under constant fear. This, in our opinion, is nothing but a preface to criminal activities and the conduct of the petitioner. In addition to these criminal activities, the externing authority relied upon several other statements and after going through their statements, we are satisfied that these witnesses have clearly stated that they are not prepared to lodge complaint against the petitioner in respect of the assaults committed by him and his associates and they are not prepared to give evidence in public. The submission of Mr. Chitnis has to be examined with reference to S. 56(1)(b) of the Act. Section 56(1)(b) provides that whenever the Externing Authority is subjectively satisfied that there are reasonable grounds for believing that a 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 abetment of any such officer 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 safety of their person or property, the Authority may pass order of externment. Mr. Chitnis urged that criminal cases at Sr. Nos. 1 to 3 are the instances of alleged offences punishable under Chapter XII, XVI and XVII of the Indian Penal Code. On perusal of the statement of the complainant Smt. Shaila Rajendra Vaity - the wife of the externee, it is clear that she has stated that the petitioner and his family members have been assaulting her and have at one time removed her out of the house and they did not take her back. She has further stated that the petitioner and his family members were insisting that she (Shaila) must bring some amount from her father to enable him to start grocery shop. Every now and then such demands are made. Some demands are fulfilled, but due to financial condition of her father, it is not possible to meet every demand of the petitioner and whenever such demand is not fulfilled, the petitioner and his family members continue to assault her. She has, therefore, stated that she apprehends such assaults even in future.

There are also various other statements of the witnesses on record to indicate that the petitioner with the help of his associates has assaulted them and threatened them with dire consequences. Statements further indicate that though they were not at fault, the petitioner and his associates without any rhyme and reason, on false pretext assaulted them. They have further stated that the persons residing in the said locality remain under constant fear and tension due to petitioner's criminal activities and they apprehend danger at the hands of the petitioner and his associates to their lives and property. These activities have caused an atmosphere of terror and insecurity in the said locality. Question is whether these criminal activities are covered by S. 56(1)(b) of the Act. Section 56(1)(b) is divided into three clauses :

Clause (i) "There are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence";

Clause (ii) "or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code";

Clause (iii) "or in the abatement of any such offence".

All these clauses operate in different fields and circumstances. They are independent because they are joined with the word "or". In our opinion, activities of the petitioner referred to hereinabove fall in the first clause of S. 56(1)(b) of the Act namely "there are reasonable grounds for believing that such person is engaged or is about to engaged in the commission of an offence involving force or violence". The statements on record clearly spell out that the petitioner and his associates have been engaged and/or are about to be engaged in commission of offence. It is thus clear that if material on record clearly justifies the order of externment under first clause of S. 56(1)(b) of the Act viz. that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence, then we see no difficulty in confirming the order of externment passed by the Authorities below. In a given case, offence involving violence or force may not necessarily fall under Chapter XII, XVI or XVII of the Indian Penal Code, but may be covered by any other statute. It is for this specific reason, in our opinion, separate category of offences involving violence and force has been carved out and if the externing authority is satisfied that criminal activities of the externee are offences involving force and violence, the Externing Authority can take appropriate steps in accordance with law. The interpretation sought to be given by Mr. Chitnis that first part of S. 56(1)(b) regarding commission of the offence involving violence or force are only referable to offences punishable under Chapters XII, XVI and XVII of the Indian Penal Code, cannot be accepted.

6. Except this argument, no other argument has been advanced before us. After going through the impugned order, we are satisfied that there is no error or any illegality in the impugned orders and, therefore, no interference is called for.

7. In the result, writ petition fails and the rule is discharged. There will be no order as to costs. Interim order passed by this Court on 10-4-1989 to stand vacated.

8. Rule discharged.