

(1985) 12 GUJ CK 0010
In the Gujarat High Court

Rajput Ranjitsing Jatubha

APPELLANT

Vs

Vinay Vyas, Sub-Divisional Magistrate and Others

RESPONDENT

Date of Decision : 04-12-1985

Acts Referred:

Bombay Police Act, 1951 — Section 39, 56, 60, 60
Constitution of India, 1950 — Article 226

Citation : (1986) 1 GLR 478

Hon'ble Judges : S.B. Majmudar, J;I.C. Bhatt, J

Bench : Division Bench

Judgement

S.B. Majmudar, J.—In this petition under Article 226 of the Constitution, the petitioner has challenged the order of externment passed against him by the sub-divisional Magistrate, Palanpur u/s 56 read with Section 39 of the Bombay Police Act and as confirmed in appeal with modification by the Deputy Secretary, Home Department, State of Gujarat.

2. The main grievance made by Mr. Raval for the petitioner is that the show cause notice served on the petitioner is hopelessly vague as it given no idea whatsoever to the petitioner as to which nefarious activities were alleged to have been committed in a given area or locality and for which period such nefarious activities were allegedly committed so that the petitioner could have given effective reply to the same. A copy of the show cause notice was placed for our scrutiny.

It shall be taken on record of these proceedings. The said show cause notice issued u/s 59 of the Act is in Gujarati. When translated into English, the allegations made against him read as under:

1. By your presence or your acts, it is likely that damage may be caused to persons and their properties and it would pose danger to them.

2. You are preparing to commit offences which involve force or violence and which, are covered by chapters 16 and 17 of the I.P. Code or you are preparing

to abet such offences. There are reasonable grounds for believing as aforesaid. To our view, witnesses are not prepared, because of your fear and with a view to safeguarding themselves and their properties, to give evidence against you.

3. You are depriving persons of their properties by force and you are extorting money from them.

4. You are threatening to kill persons who may go as complainants against you and you compel them to withdraw complaints or to compromise.

5. You are misbehaving with ladies and you are trying to molest them and after beating them, you are creating atmosphere of terror.

6. You put on unauthorised dress, try to cheat the people and extort things from them by threatening them.

7. Having consumed liquor, you are misbehaving in open. You threaten people. You are a head-strong, ferocious person. Because of your fear atmosphere of terror is created in the people. There are sufficient reasons for the said belief.

8. You keep ornaments of tribal people on pledge. You involve in money lending but even though they return the money, you refuse to return the ornaments and you quarrel with them.

9. Because of your illegal activities, the following cases have been filed against you:

1. Amirgadh police station Crime Register No. 11/84 Section 170, 114, I.P.C. registered on 27-1-1984.

2. Amirgadh police station Crime Register No. 72/84 Section 454, I.P.C. registered on 7-6-1984.

3. A mere look at the aforesaid allegations shows that they suffer from the vice of vagueness viz. (i) no period is mentioned during which the alleged nefarious activities have been carried on by the petitioner and (ii) no area or location is shown where such activities are carried on. These infirmities must be treated to be fatal infirmities. It must, therefore, be held that the petitioner got no reasonable opportunity to show cause against the proposed externment on the allegations contained in the aforesaid show cause notice. It is true that in the inquiry, the petitioner filed a reply to the show cause notice and that the externing authority passed the externment order on the basis of these allegations which are held proved by him and the appellate authority confirmed that order. However, the fact remains that even from the inception, the show cause notice containing such vague allegations has to be treated as a still born one. Mr. Mehta for the respondents invited our attention to the affidavit-in-reply, para 7, wherein it is stated that the grounds furnished in the show cause notice are clear, just and valid. This is mere ipse dixit on the part of the deponent who filed the affidavit on behalf of the respondents. Mr. Mehta next contended that the petitioner had filed the affidavit-in-reply to the show cause notice. He had

also tried to meet the case put up against him by the externing authority and, therefore, he cannot be said to have been prejudiced by the alleged vagueness of the grounds. This is neither here nor there. Even though the grounds are vague, the petitioner tried to meet them. But if the grounds are inoperative in law on account of vagueness, the entire proceedings emanating from them would fall through. Mr. Mehta next contended that atleast two specific instances are mentioned at the end of the grounds in the show cause notices wherein two criminal cases are mentioned. This is no doubt true. However, nothing is indicated in the grounds themselves that these cases pertained to particular allegations mentioned in the list of allegations from Nos. 1 to 8 in the show cause notice. Merely because two criminal cases have been filed against the petitioner in Amirgadh Police Station, it cannot be held that these recitals gave sufficient indication to the petitioner that the concerned alleged activities as listed at Nos. 1 to 8 in the show cause notice were committed by the petitioner during a particular period and in a given particular locality. It is now high time for the respondent externing authority to put their house in order and to issue appropriate show cause notices as required of them. Law on the question is now well settled. In the case of *State of Gujarat v. Mehbubkhan* AIR 1968, S.C. 1468, Vaidialingam, J., speaking for the Supreme Court in terms laid down how and under what circumstances the show cause notices under the Bombay Police Act can be treated to be according to law. In the case before the Supreme Court, the allegations against the proposed externee clearly indicated the period during which he had committed the concerned alleged nefarious activities and the locality in which they were committed. Having satisfied with this provisions, the Supreme Court, reversing the decision of this court, took the view that these allegations met the requirement of the Bombay Police Act. Unfortunately for the respondents, the grounds in the present show cause notice do not satisfy this test. It must, therefore, be held that the petitioner was not given reasonable opportunity to show cause against the proposed order of externment. That introduced vital infirmity in the entire proceedings. Only on this short ground, the petition has to be allowed. Rule issued in the petition is made absolute. The impugned order of externment passed against the petitioner by the Sub-Divisional Magistrate, Palanpur in externment case No. 9 of 1984, as confirmed with modification by the Deputy Secretary, Home Department, Government of Gujarat in appeal u/s 60 of the Bombay Police Act on 26-8-1985 is quashed and set aside.