
(1986) 09 BOM CK 0022

In the Bombay High Court

Case No : Criminal Writ Petition No. 655 of 1986

Ram Narayan Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-09-1986

Acts Referred:

Bombay Police Act, 1951 — Section 56(1)

Citation : (1987) 1 BomCR 471

Hon'ble Judges : P.B. Sawant, J;B.G. Kolse-Patil, J

Bench : Division Bench

Advocate : Vikram Pai, for the Appellant; N.M. Kachare, Public Prosecutor, for the Respondent

Judgement

P.B. Sawant, J.—The impugned order of externment was passed on 3rd March, 1986 u/s 56(1)(a) and (b) of the Bombay Police Act, 1951, (hereinafter referred to as "the Act"). Under the said order the petitioner was externed for two years from the Districts of Thane, Raigad and Greater Bombay. In appeal the State Government by its order dated 22nd May, 1986 modified the impugned order by restricting the externment to the Districts of Thane and Raigad. Being aggrieved by the appellate order, the petitioner has preferred this writ petition.

2. The grievance made before us is that in the first instance the two criminal cases which were filed against the petitioner arose out of the Civil disputes between the villagers and amongst the brothers inter se. The charge-sheets filed in the said criminal cases named the witnesses and also gave their addresses. The cases are still pending in the Criminal Courts. The Externing Authority has not shown as to how the witnesses were not willing to come forward to give testimony against the petitioner which is an essential requirement for passing an externment order on grounds mentioned in section 56(1)(a) and (b) of the Act.

3. The second contention is that the third Criminal Case which is made the basis of the Externment Order is in fact filed by the petitioner against the complainant in the first Criminal Case and yet it is held out against the petitioner and it is also

averred that the witnesses in the said case are not coming forward to give evidence against the petitioner. The order is, therefore, prima facie bad in law.

4. Before us, charge-sheets in the first two Criminal Cases viz. C.R. No. 76 of 1985 and C.R. No. 153 of 1984 were produced. In C.R. No. 76 of 1985, there are in all ten accused and the substance of the charge against the accused is that witness No. 4, who is the step son of the complainant was taking water from the public tank as usual and to this the accused objected and started beating the witnesses with sticks. As many as nine witness have been mentioned in that Criminal Case. In the second Criminal Case which is C.R. No. 153 of 1984, there are as many as ten accused and the petitioner is one of them. The substance of the charge is that the accused had prevented a girl who was serving with the complainant from filling water. Hence, the accused had assaulted the complainant with fists and blows and had also abused and threatened him. As many as eight witnesses have been cited in support of the prosecution case. It is thus obvious from the charge-sheet that the disputes are between specified persons of the village and the petitioner is only one of the accused in the said dispute. Secondly, the witnesses have been specifically named and there is no grievance that these witnesses are not coming forward to give testimony against the petitioner in the said cases. These cases are still pending the Criminal courts. It is, therefore, difficult to understand the allegation of the Externing Authority that the petitioner was indulging in goondaism against people in general and further that no witnesses were coming forward to despose against the petitioner in the said cases.

5. As regards the third Criminal Case which is C.R. No. 75 of 1985, the petitioner states that this is the case which was actually filed by him, and as a counterblast to this case, the other side had filed the first Criminal Case, viz. C.R. No. 76 of 1985. In the case filed by the petitioner, the charge is u/s 307 of the Indian Penal Code against the accused in that case. Yet strongly enough, this case is also made the basis of an allegation against the petitioner that it was he who was indulging in goondaism and further that the witnesses were not coming forward to despose against him in that case.

6. Shri Kachare, the learned Public Prosecutor stated that as the Investigating Officer was absent, he did not get an opportunity to peruse the relevant papers to find out whether as contended by the petitioner, the said C.R. No. 75 of 1985 was registered at his instance. There is no reason why the Investigating Officer should not have remained present in the Court. We are, therefore, not inclined to adjourn this matter to enable Shri Kachare to take the necessary instructions from the said officer or to peruse the relevant record, in the absence of any satisfactory explanation as to why the said officer could not remain present in the Court to give instructions to Shri Kachare. We, therefore, proceed on the basis that the allegations made by the petitioner are correct. Even otherwise, as pointed out earlier, as far as the first two offences are concerned. Shri Kachare could not satisfy us as to how the allegation that the witnesses were not coming

forward to dispose against the petitioner in those cases can be justified in the circumstances narrated above.

7. Hence, this petition must succeed since the Externment Order passed against the petitioner does not comply with the requirements of section 56(1)(a) & (b) of the Act. The Externment Order is hereby set aside. The rule is made absolute accordingly.

Rule made absolute.