

(2013) 10 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition Nos. 664 and 665 of 2013

Rama

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-10-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 938

Hon'ble Judges : K.U. Chandiwal, J;A.I.S. Cheema, J

Bench : Division Bench

Judgement

K.U. Chandiwal, J.—Heard. Rule. Rule made returnable forthwith and heard finally by consent of parties. The writ petitioners question order of externment dated 27th September, 2012, passed by Superintendent of Police, Parbhani, confirmed in appeal by the Appellate Authority by order dated 7th March, 2013.

2. The writ petitioners are residents of Parbhani. Petitioner - Rama is a Municipal Councilor of Nagarparishad, Parbhani, while petitioner Santosh deals in agriculture.

3. As many as 13 cases have been registered against the petitioner -- Rama, out of which, in 8 cases, he is acquitted and in two cases, he has been discharged while 3 cases are still pending against him.

4. Petitioner - Santosh claims that he is brother of Rama. They belonged to backward community as Vimukta Jati.

5. There are 13 cases lodged against the petitioner - Santosh in different police stations in Parbhani district. He has also a chapter case to his discredit.

6. Both the petitioners were externed for a period of two years. A preliminary inquiry was caused by Deputy Superintendent of Police, Parbhani, in which, both the petitioners were heard and the Deputy Superintendent of Police submitted his report dated 20th September, 2012 to the Respondent No. 2 - Superintendent of Police, Parbhani.

7. It is curious, we have perused the record of learned Superintendent of Police and find that no personal hearing was given to the petitioners - Rama and Santosh, which was mandatory to have been complied with.

8. The petitioners are externed u/s 55 of the Bombay Police Act, 1951. Section 55 of the Act conceives as under,-

55. Dispersal of gangs and body of persons. - Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed under Sec. 7 to the Commissioner and in a district to the District Magistrate the Sub-Divisional Magistrate or the Superintendent empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction [or such area and any district, or districts or any part thereof, contiguous thereto] within such time as such officer shall prescribe, and not to enter the area for the areas and such contiguous districts, or part thereof, as the case may be], or return to the place from which each of them was directed to remove himself.

9. The principal theme, u/s 55 of the Act is, there should be a subjective satisfaction of the Competent Authority (i.e. Superintendent of police) that the movement/s of each of such members of the gang or body of persons is/are calculated to cause danger or alarm or reasonable suspicion with unlawful design are entertained by such gang.

10. The cases attributed against the petitioners are mostly of individual characteristics, concerning the offences relating to human body. There is no common thread in activities of petitioners as a conjoint act and action to deter the public at large by forming a gang, which is an essence in Section 55 of the Act. Thus, effect of Section 55 emerges only in the event of the person acting as member of the gang. The cases against the petitioner - Rama are concluded; while cases against the petitioner - Santosh are still pending. They collectively do not form to believe that there was a common design to form a gang to terrorize the public at large or create an alarming situation in the city. Coupled with this, as a duty to act fairly and duty to act reasonably, being back-bone of a State, we find, opportunity of hearing to each of the writ petitioners was required to be extended by the Deputy Superintendent of Police, but they were never called by the learned Superintendent of Police and they are not afforded an opportunity. Consequently, we are unable to gauge as to what was the material weighed with the learned Superintendent of Police while passing the impugned order of externment. The subjective satisfaction expected of the learned Superintendent

of Police should equally emerge from hearing to be afforded to the affected/aggrieved person. However, record illustrate, no such hearing was given to the petitioners. On these two counts, the impugned order of externment, in so far it relates to the present petitioners only, calls for interference. It is accordingly quashed and set aside to the extent of the petitioners herein. Both the writ petitions are allowed. Rule made absolute in the aforesaid terms.