
(1955) 02 BOM CK 0020
In the Bombay High Court
Case No : Criminal Appeal No. 80 of 1955

Rameshchandra

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 16-02-1955

Acts Referred:

Bombay Beggars Act, 1945 — Section 9
Bombay Police Act, 1951 — Section 142, 143, 27, 27(2A), 52
Bombay Prevention of Gambling Act, 1887 — Section 12A, 4
City of Bombay Police Act, 1902 — Section 27
Constitution of India, 1950 — Article 20, 20(1)
Preventive Detention Act, 1950 — Section 12

Citation : AIR 1955 Bom 346 : (1955) 57 BOMLR 560 : (1955) CriLJ 1239 : (1955) ILR (Bom) 781

Hon'ble Judges : Shah, J;Gajendragadkar, J

Bench : Division Bench

Advocate : I.C. Dalal, for the Appellant; H.M. Choksi, Govt. Pleader, for the Respondent

Judgement

Gajendragadkar, J.—This is an appeal against the order passed by the learned Presidency Magistrate 16th Court, Esplanade, directing that the appellant should be bound over in the sum of Rs. 100 for six months. This order came to be passed in this way. On 7-7-1954, an order was passed against the appellant externing him from the limits of Greater Bombay. This order was passed u/s 57, Bombay Police Act, 22 of 1951.

Contrary to this order, and in violation of it the appellant returned to Greater Bombay on 4-11-1954. Thereupon he was arrested and for committing the breach of the order he was charged before the learned Magistrate u/s 142 of the main Act. The appellant urged before the learned Magistrate that he had deliberately violated the order because he wanted to test the validity of the externment order.

The validity of the order was challenged by him on several grounds. The learned

Magistrate was not disposed to accept any of those grounds. That is why he convicted the appellant of the offence u/s 143; but in view of the fact that the appellant had returned to Bombay solely for the purpose of testing the validity of the externment order, the learned Magistrate took a lenient view of his conduct and directed that he should be bound over in the sum of Rs. 100 for six months.

2. The main ground on which the validity of this order had been challenged before us by Mr. Dalal on behalf of the appellant is that the order purports to subject the appellant to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence and thus is inconsistent with the provisions of Article 20, Clause (1), of the Constitution of India.

When the present order of externment was passed against the appellant, notice had been issued to him as required by Section 59, Bombay Police Act, 1951, and in this notice his attention was pointedly invited to his eight previous convictions. The last of these convictions was recorded against the appellant on 8-5-1952, and it appears that this conviction was recorded against him in Case General Branch C.I.D. No. 248 of 1950.

Mr. Dalal contends that these dates show that the offence for which he was convicted last had been committed in 1950. In 1950 the City of Bombay Police Act which was in force was Bombay Act 4 of 1902. Section 27 in the said Act corresponds to Section 57 in the present Act, and u/s 27, Sub-section (2A), it was provided that an order of externment could be passed in respect of persons convicted of certain offences.

But the power to pass an order of externment in respect of offenders mentioned in Sub-section (2A) of Section 27 was not available where the offenders happened to be persons who were born in Greater Bombay. In other words, it is clear that, for the offences which have been held proved against the appellant in all the eight cases to which I have just referred, Section 27 of Bombay Act 4 of 1902 could not have been invoked and the appellant could not have been externed from Greater Bombay.

The provision excepting persons born in Greater Bombay from the operation of Section 27 came to be included in Section 27 itself by the amending Act 21 of 1933 and it was in force at the time when the last offence was committed by the appellant in 1950. In 1951, however, the Bombay Police Act 22 of 1951 was enacted and it came into force on 1-8-1951.

Section 57 under which proceedings were taken against the appellant corresponds substantially with Section 27 of the earlier Act; but the distinction which Section 27 of the earlier Act sought to make between persons born in Greater Bombay and others has been removed while enacting Section 57 in the present Act.

The result is that, if a person is convicted of the offences mentioned in Section

57, Sub-sections (a), (b) and (c), and if the further requirements of the said section are satisfied, an order of externment can be passed against him even though he may be born in Greater Bombay. That is how the order of externment was passed against the appellant by the Commissioner of Police, Greater Bombay.

The argument on, which the validity of the externment order is challenged is based on this change of the law. The appellant could not have been externed despite his record of eight previous convictions under the provisions of Section 27(2A) of the earlier Police Act. The penalty of externment could not have been imposed on the appellant under the provisions of the said Act, and if that is so, the said penalty cannot be imposed against him because that would be contrary to the provisions of Article 20, Clause (1), of the Constitution of India.

That, in short, is the nature of the attack against the validity of the order of externment.

3. Article 20, Clause (1), of the Constitution of India, provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

In the present case, we are concerned with the latter part of Clause (1). The learned Magistrate has held that the order of externment cannot be said to constitute a penalty within the meaning of this clause and in support of his conclusion he has referred to the dictionary meaning of the word "penalty" found in Ballentine's Law Dictionary. According to this dictionary, "penalty" has been defined as

"(1) pain or suffering; (2) punishment imposed for breach of law; (3) disability or disability of some kind. Primarily, this denotes punishment corporal or pecuniary imposed by the State for an offence or crime against its laws."

The learned Magistrate has also relied upon the observations made by Bavdekar J. in -- Pralhad Krishna Kurane Vs. The State of Bombay, . It appears that in this case the validity of Section 12, Preventive Detention Act, 1950, as amended by the Preventive Detention (Amendment) Act, 1951, was challenged and one of the grounds on which the challenge was based sought to derive support from the provisions of Article 20, Clause (1) of the Constitution of India.

Dealing with this part of the argument, Bavdekar J. has observed that the argument assumes that the further detention of the party is a penalty and then he has added (p. 9):

".....that in itself is arguable because a penalty obviously envisages the idea of punishment and detention which is preventive is obviously not penal."

With respect, having regard to the view which the learned Judge has expressed on this part of the challenge, it would appear that what the learned Judge

intended to say was that the contention raised that the further detention was a penalty was inarguable; and in all probability printers, devil has been at work in printing the material word. Vyas J. does not appear to have expressed any opinion on this part or the argument.

Mr. Dalai contends that the construction which Bavdekar J. was disposed to put on the word "penalty" is unduly narrow and restricted and he suggests that in the context of Article 20, which is a part of the Constitution, the word "penalty" must receive a more liberal and wider construction. I do not, however, propose to express any opinion on this part of Mr. Dalai's argument.

While dealing with the present appeal I will assume in favour of Mr. Dalai that the order of externment is a penalty within the meaning of Article 20, Clause (J).

4. The challenge to the validity of the externment order based on Article 20, Clause (1) of the Constitution of India must, in my opinion, fail for another reason. Section 57, Bombay Police Act, 1951, provides that, if a person has been convicted "inter alia" of an offence under Chap. XII, XVI or XVII, I.P.C., the Commissioner, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction, by such route and within such time as the said officer may prescribe and not to enter or return to the area from which he was directed to remove himself.

It would be noticed that, before an order of externment is passed against a person u/s 57, two conditions have to be satisfied. It must appear to the Commissioner that the person concerned has committed an offence as mentioned in Clause (a), (b) or (c) of Section 57. He must also have reason to believe that such person is likely again to engage himself in the commission of a similar offence.

The idea underlying the provisions contained in Section 57 obviously is to protect the locality or area concerned from the probable commission of the offence by the extemee. In that sense, the order is more preventive in intention and action than punitive- If that be the real object of the order, it would, I think, be reasonable to hold that the order authorised to be passed u/s 57 is the result of the present tendency of the extemee far more than of his past convictions.

The past history of the extemee is no doubt relevant, and indeed is made a condition precedent by Section 57, for the passing of an order of externment. But, even so, the order of externment is not a penalty imposed for the said history. The scheme of the section clearly indicates that the order of externment was passed against the appellant, not because he was convicted on eight previous occasions or because the offence for which he was convicted fell under Chap. XVII, I.P.C., but because the Commissioner had reason to believe that he was likely again to engage himself in the commission of similar offences.

The direct and immediate cause for the externment of the appellant is the tendency on the part of the appellant, of which the Commissioner was satisfied, to commit offences similar to those of which he had been convicted in the past. It is not as if every person who has committed offences mentioned in Section 57, Clause (a), (b) or (c) is liable to be externed.

Previous convictions of the type and of the categories mentioned in the first part of Section 57 are, no doubt, a condition precedent. But it would be unreasonable to hold that the order of externment is the necessary result of the said convictions alone. The order of externment is more directly and more immediately the result of the tendencies which are noticed in the person concerned and as to which the Commissioner had satisfactory evidence in his possession to justify his conclusion that the person concerned is likely again to engage himself in the commission of similar offences.

The notice which was given to the appellant clearly stated that, on the date when the notice was given, the authority was satisfied that the appellant was likely again to engage himself in the commission of similar offences. In other words, the order of externment is referable principally and substantially to the apprehension reasonably entertained by the externing authority that the appellant was showing a tendency to commit similar offences again, and this happened on 3-7-1954, when the notice was given.

5. If that is the true position with regard to the circumstances under which, and the grounds on which, an order of externment can be passed u/s 57, Bombay Police Act, 1951, the point raised by Mr. Dalal under Article 20, Clause (1), of the Constitution of India would not present much difficulty. What Article 20(1) prohibits is the imposition of a penalty on a person greater than that which might have been inflicted upon him under the law in force at the time of the commission of the offence.

I am assuming for the purpose of dealing with Mr. Dalal's appeal that the order of externment can be regarded as a penalty within the meaning of Article 20(1) of the Constitution of India. But the answer to Mr. Dalal's contention is that the penalty which is being inflicted on his client is not inflicted for the commission of an offence or offences by him only.

If Section 57 had authorised the Commissioner to extern the appellant solely and only for the reason that he had committed a specified category of offences in the past, it might have been urged that the externment was the result of the previous convictions, and since at the time when the orders of conviction were recorded against the appellant the penalty of externment could not have been inflicted upon him, Article 20(1) gives the appellant immunity from the infliction of the said penalty in future.

But the penalty is imposed upon the appellant, not only because of the previous convictions and not even substantially because of those convictions, but principally and substantially because of the tendency, which he showed and as to

which the Commissioner was satisfied,--the tendency to commit similar offences at the date when the notice was issued.

If the order of externment is a penalty, the penalty is imposed on the appellant more directly and more substantially for the tendency which he exhibited on 3-7-1954; and clearly Article 20(1) cannot be said to be offended where the penalty is imposed against the appellant for his tendency on 3-7-1954. Therefore, in my opinion, since the penalty against the imposition of which Mr. Dalal complains cannot reasonably be said to be the result of his previous convictions, it would not be possible to hold that the order of externment offends against the provisions of Article 20(1) and is therefore invalid.

6. The next point which has been urged before us by Mr. Dalai is that the notice served upon his client prior to his externment is a stereotyped notice and does not comply with the requirements of Section 52, Bombay Police Act, 1951. We have looked at the notice and I do not think that there is any substance in the contention raised by Mr. Dalal against the validity of this notice.

Section 59, Sub-section (1), of the Act requires that a notice should be given to the person against whom externment proceedings are intended to be taken, informing the said person in writing the general nature of the material allegations against him and giving him a reasonable opportunity for tendering an explanation regarding them. In the notice which was served upon the appellant his attention was invited to his eight previous convictions. The details about these convictions were given in the notice.

Reference was also made to another criminal case which was pending against him at that time. Besides, the notice stated that, at the time when the appellant was arrested, he was found moving about in a suspicious manner near the "L" Route bus stop near the Metro Cinema and for his being there he could not give a satisfactory account.

This, the notice added, showed that he was there at the time to commit an offence of pick-pocketing. The notice then concluded by saying that it was thought that the appellant was likely again to engage himself in the commission of similar offences. Mr. Dalal's grievance is that this last sentence is printed on the notice. I do not think that the mere fact that the last sentence happens to be printed in the notice makes the notice invalid in any manner.

It appears that forms of notices intended to be issued under Rule 59, Bombay Police Act, 1951, have been printed for the convenience of the Commissioner of Police. The formal details which are expected to be mentioned in such notices have been printed; then there is a column under which the allegations made against the party have to be shown and these allegations have been mentioned in detail in a typed form for the benefit of the appellant. Since the notice u/s 59 is issued only where the Commissioner or his subordinates authorised u/s 59 are satisfied that the person concerned has committed previous offences as mentioned in Section 57 and is showing signs of a tendency to engage himself in

the commission of similar offences, it would not be a valid criticism to make that the sentence that he is likely again to engage himself in the commission of a similar offence is likewise printed on this form.

Besides, after the notice is issued, the party is given a reasonable opportunity to be heard. He is allowed to lead evidence if he so desires and it is in the light of the evidence that he may produce and in the light of the arguments which he may urge that a final decision is taken either to extern him or not to extern him. Therefore, in my opinion, no reason has been shown by Mr. Dalal as to why the notice, issued against his client under, Section 59 can be regarded as invalid.

7. Mr. Dalal then attempted to argue that Section 57, Bombay Police Act, 1951, itself is "ultra vires". We have not heard Mr. Dalai on this point, because in our opinion, this point must be taken to be concluded by a Full Bench decision of this Court in-- Abdul Rahiman Shamsoddin Vs. Emperor, and by the decision of the Supreme Court in -- Gurbachan Singh Vs. The State of Bombay and Another, .

8. In the result, I hold that the learned Magistrate was right in rejecting the contentions raised before him by the appellant that the order of externment was invalid.

Shah, J.

9. On 7-7-1954, an order was passed against the appellant externing him out of the limits of Greater Bombay. The order was passed u/s 57 of the Bombay Police Act, 1951, The appellant committed breach of that order by returning to the area from which he was externed and which he was prohibited from entering for two years, and he was prosecuted and convicted by the Presidency Magistrate, 16th Court, Bombay.

10. Section 142 of the Bombay Police Act, 1951, provides a penalty for entering the area from which a person has been directed to remove himself. The appellant has been convicted for entering the area from which he had been removed and the penalty which has been imposed upon the appellant is that which is contemplated by Section 142, Bombay Police Act. Mr. Dalai, who appears on behalf of the appellant, has, however, sought to challenge the legality of the conviction by relying upon Article 20 of the Constitution of India. Now, that article, in so far as it is material to the present argument, provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

In substance, the provision is aimed against legislation which seeks to penalise acts, which were not offences at the time when they were committed, and also against legislation which imposes more severe penalties than those which were provided by the law in force at the time when the act was done if the act was an offence when done. Evidently the appellant was charged with having committed

a breach of the order, and at the time when the breach was committed the penalty which has been imposed upon him could have been inflicted.

But Mr. Dalal raises a rather ingenious argument in support of his submission. He contends that the order passed on 7-7-1954, was based upon convictions for certain offences committed by the appellant between the years 1947 and 1950. and that when those offences were committed the penalty which could be imposed upon the appellant was the penalty either of imprisonment or of fine or both, and in view of the provisions of S, 27 (2A), City of Bombay Police Act, 1902, a penalty of externment out of the limits of Greater Bombay could not have been imposed upon the appellant who was born within the area of Greater Bombay.

Mr. Dalai submits that, if for commission of offences for which the convictions relied upon were recorded an order of externment could not have been passed when the offences were, committed, the Commissioner has no authority to pass an order of externment u/s 57, Bombay Police Act. In my view, there is nothing in Article 20 of the Constitution which justifies the contention raised by Mr. Dalal.

Article 20 protects offenders from being subjected to penalties greater than those which might have been inflicted under the law in force at the time of the commission of "the" offence. The offence with which the appellant was charged in the present case was that he committed a breach of the order dated 7-7-1954. Of course, if by subsequent legislation penalties which were not contemplated to be inflicted at the time when the offence was committed are liable to be inflicted upon persons who have already been convicted and sentenced, the legislation would contravene Article 20, Clause (1) and may be regarded as void to that extent.

But Section 57, Bombay Police Act, does not provide for the infliction of a penalty upon any offender for the mere commission of an offence or for his conviction in respect of any offence. Section 57 authorises the Commissioner or the District Magistrate to pass an order of externment if he has reason to believe that a person is likely to engage himself in the commission of offences similar to the offences for which he has been previously convicted, the offences being those specified in Clauses (a), (b) and (c) of Section 57.

The order which the Commissioner may pass u/s 57 can only be passed if, at the time of passing the order, the Commissioner has reason to believe that a person is likely to engage himself in the commission of the specified offences. It is true that the jurisdiction to pass the order can only be exercised if the condition precedent is fulfilled; and the condition precedent is that the person against whom the order is contemplated to be passed must have been convicted of offences under Chaps. XII, XVI or XVII, I.P.C., or must have been convicted twice of offences u/s 9, Bombay Beggars Act, 1945, or under the Bombay Prevention of Prostitution Act, 1923, or must have been convicted thrice of an offence within a period of three years u/s 4 or Section 12A, Bombay Prevention of Gambling

Act, 1887, or under the Bombay Prohibition Act, 1949.

Undoubtedly the Commissioner is not authorised to exercise his powers of externment if the condition relating to convictions is not fulfilled. Unless the Commissioner has reason to believe that the person who has been previously convicted is likely to engage himself in the commission of similar offences, the order of externment cannot be passed.

The primary consideration which the Commissioner is required by Section 57 to bear in mind is the present tendency of the person against whom action is proposed to be taken. The mental process which the Commissioner is required by Section 57 to go through is first to ascertain whether there is reason to believe that a person is likely to engage himself in the commission of offences similar to those described in Clauses (a), (b) and (e) of Section 57; then he must ascertain whether the person has been previously convicted of the specified offences.

The order of externment u/s 57 can only be passed having regard to the present tendencies of the proposed externee who has a history of the nature set out therein. Section 57 does not contemplate the passing of an order of externment merely because the offender has been convicted of the offences specified in that section.

It cannot, therefore, be said that Section 57 contemplates imposition of a penalty relying merely upon convictions previously recorded for offences mentioned in Clauses (a), (b) and (c) of Section 57. Once that conclusion is reached, it is difficult to appreciate how the validity of the order passed against the appellant externing him out of the limits of Greater Bombay can be challenged on the ground that it infringes Article 20 of the Constitution.

That order of externment was passed against the appellant in view of the tendencies disclosed by him shortly before the date on which the order was passed, and not because he was previously convicted of offences of theft and cheating.

11. Appeal dismissed.