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**(2013) 08 BOM CK 0092**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 439 of 2013**

Randhir

APPELLANT

Vs

Secretary (Special) Home Department, Sub Divisional  
Magistrate and Sub Divisional Police Officer

RESPONDENT

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**Date of Decision : 27-08-2013**

**Acts Referred:**

Bombay Police Act, 1951 — Section 56

**Citation : (2013) 08 BOM CK 0092**

**Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J**

**Bench : Division Bench**

**Advocate : S.D. Chopde, for the Appellant; M.K. Pathan, Additional Public  
Prosecutor for the State, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Z.A. Haq, J.—Heard Shri S.D. Chopde, learned Counsel for the petitioner and Shri M.K. Pathan, learned Additional Public Prosecutor for the respondent/State. Rule. Rule is made returnable forthwith.

2. The petitioner has challenged the order passed by the Secretary (Special), Home Department, Government of Maharashtra, Mumbai on 3rd of December, 2012, dismissing the appeal filed by the petitioner and confirming the order passed by the Sub-Divisional Magistrate, Wardha on 7th of July, 2012, by which the petitioner has been externed from the area of Wardha, Amravati and Yavatmal districts for the period of two years. Apart from the other grounds, the challenge of the petitioner is that while passing the impugned orders, the Authorities have taken into consideration the prosecutions which were filed under the Bombay Prohibition Act and most of the prosecutions are stale.

3. With the assistance of the learned Advocates appearing for the parties, we have gone through the impugned orders. The learned Sub-Divisional Magistrate in the order passed by him on 7th of July, 2012 has given the details of the

prosecutions against the petitioner. The prosecutions from Sr. Nos. 2 to 10 in the Chart given in the impugned order were under the Bombay Prohibition Act. It is the settled law that an externment order u/s 56 of the Bombay Police Act, 1951 cannot be passed on the basis of the prosecutions under the Bombay Prohibition Act. The prosecution at Sr. No. 1 in the above referred Chart is of 1995 and is stale prosecution. Moreover, all the crimes have been registered with the Police Station Sevagram which is in Wardha District or with the Police Station, Wardha. The above referred facts show that there is no nexus of the externment with the order passed by the Authorities. Shri Chopde, learned counsel for the petitioner, has also submitted that the petitioner has been acquitted in nine cases out of the ten cases considered by the Authorities for passing the externment order. In view of the above, we find that the impugned orders are not sustainable in law and have to be quashed. The petition is allowed.

The impugned orders are quashed.

Rule is made absolute in terms of prayer clause "(a)" of the petition.

In the circumstances the parties to bear their own costs.