

(1986) 08 BOM CK 0047

In the Bombay High Court

Case No : Criminal Writ Petition No. 332 of 1986

Ratan Singh Ramsingh Rajput

APPELLANT

Vs

M.V. Chitale and Another

RESPONDENT

Date of Decision : 01-08-1986

Acts Referred:

Bombay Police Act, 1951 — Section 57, 59, 66

Citation : (1986) MhLj 879

Hon'ble Judges : P.B. Sawant, J;H.H. Kantharia, J

Bench : Division Bench

Advocate : S.R. Chitnis, for the Appellant; J.A. Bardey, Public Prosecutor, for the Respondent

Judgement

P.B. Sawant, J.—What is challenged in the present petition is an order of externment passed u/s 57(b) read with section 59 of the Bombay Police Act, 1951, hereinafter referred to as "the Act". The notice issued u/s 59 preceding the impugned order and dated 8th October, 1985 states that the externnee had been convicted of offences mentioned in the notice and further that he was likely again to engage himself in the commission of the offence similar to that for which he had been convicted. The externnee was, therefore, called upon to remain present in the enquiry which was to be held under the said section. After the enquiry, the impugned order was passed on 15th November, 1985 externing the petitioner from the districts of Thane and Greater Bombay for a period of two years.

2. The gravamen of the challenge to the impugned order is that it has been passed only on the ground that the externnee had to his record two convictions for the offences u/s 66(b) of the Bombay Prohibition Act. There was no further material available with the externing authority to come to the conclusion that the externnee was likely to indulge in similar activities in future which is a must for passing an order on the grounds mentioned in section 57. Hence the order is bad in law.

3. In order to appreciate this contention, it is necessary to reproduce the

relevant portion of section 57. It is as follows :--

"Section 57. If a person has been convicted--- (a)

(b) twice or more of an offence under the Bombay Prohibition Act, 1949 not being an offence under sections 65, 66-A or 68, or

(ba)

(c)... ..

the Commissioner, the District Magistrate, or the Sub-Divisional Magistrate.....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 notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra.....as the officer may specify and not to enter or return to the area or areas so specified from which he was directed to remove himself."

The aforesaid provisions make it clear that for an externment u/s 57 two requirements have to be fulfilled : (1) there must be a conviction or convictions for an offence mentioned in the relevant clauses of the section, and (2) the externing authority should have reason to believe that the proposed externee is likely again to engage himself in the commission of an offence similar to that for which he was convicted. There is no dispute before us that the present externee had suffered two convictions u/s 66(b) of the Bombay Prohibition Act, 1949 which is the first requirement of Clause (b) of the section. What is, however, contended before us is that the second requirement of section 57 was not fulfilled in the present case, inasmuch as, there was no material before the externing authority to form the belief that the externee was likely again to engage himself in the commission of a similar offence. Although in reply to this contention raised in the petition, the externing authority has stated that he had such material before him, it was admittedly not disclosed in the notice given to the externee u/s 59, nor is there a mention of it in the impugned order. It is unnecessary to emphasise that if there was any such material before the externing authority it was incumbent upon the authority to indicate at least the general nature of the material allegations in the notice served upon the externee. Without such indication, it was impossible for the externee to meet them in the enquiry held u/s 59. The non-disclose of such material in the notice will, therefore, have to be treated as an absence of it so far as the externee is concerned. Since in the present case no indication whatsoever of the material was given in the notice, we must proceed on the basis that in fact no such material was before the externing authority.

4. We have no doubt whatsoever in our mind, nor was it seriously disputed before us on behalf of the State, that for passing an externment order u/s 57 it is not enough that the externee is convicted for the offences mentioned in sub-

section (1) thereof. The externing authority must in addition be in possession of material indicating repetition of activity on the part of the externee, after the conviction or convictions as the case may be, similar to that for which he was convicted. The renewed activity must further be of such nature as should reasonably give rise to the belief that the person concerned is likely again to engage himself in the commission of a similar offence. Without this further material and the reasonable belief based on such material, the externing authority cannot pass and is not empowered to pass an order of externment under the said section. This is evident from the provisions of section 57(1) itself. This interpretation of section 57(1) is also reinforced by the provisions of section 59 of the Act, which require the externing authority or the Police Officer authorised by the externing authority as the case may be, to inform the proposed externee in writing of the general nature of the material allegations against him and to give him a reasonable opportunity of tendering an explanation regarding them, before passing an externment order. If the person concerned makes an application for the examination of any witness on his behalf, the authority or the officer has to grant the application and examine such witness unless for reasons to be recorded in writing the authority or the officer is of opinion that such application is made for the purpose of vexation or delay. In addition to the examination of a witness or witnesses, the proposed externee has also a right to put in his written statement in defence which is to be a part of the record of the case. The proposed externee is further entitled to appear in the enquiry by an Advocate or attorney for the purpose of tendering his explanation and examining the witnesses produced by him. It will thus be apparent from the provisions of section 59 that before an externment order is passed on the grounds mentioned in section 57, the externing authority or the officer authorised by the authority has to hold an enquiry in which the proposed externee is to be afforded a reasonable opportunity to show cause against the ground or grounds on which he is sought to be externed. If the conviction or convictions already suffered were the only ground for passing an order of externment u/s 57, the exercise of an inquiry u/s 59 is obviously uncalled for. Thus the provisions of section 57(1) as well as the provisions of section 59 make it abundantly clear that the externing authority must have in its possession material with regard to the activities of the proposed externee after the convictions in question, on the basis of which the authority will have reason to believe that the person concerned is likely to engage himself in the commission of an offence similar to that for which he was convicted. Without such material, the authority has no power to pass an externment order.

5. It is not disputed before us that the notice preceding the impugned order disclosed no such material. It merely recited the fact that the externee had suffered two convictions u/s 66(b) of the Bombay Prohibition Act. As pointed out above, even the order which followed the notice only stated that the petitioner had continued similar activity even after the conviction. The order also did not indicate even the general nature of the material allegations with regard to the

alleged activities. In view of the same, the impugned order is prima facie contrary to the provisions of section 57 of the Act and, therefore, bad in law. The result, therefore, is that the petition succeeds. The impugned order is quashed and the rule is made absolute.