

(2021) 08 BOM CK 0005

In the Bombay High Court

Case No : Criminal Writ Petition No. 2559 Of 2021

Ravindra Sudam Adhikari

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

Maharashtra Police Act, 1951 — Section 56, 56 (1) (a)(b), 59, 60

Citation : (2021) 08 BOM CK 0005

Hon'ble Judges : S.S. Shinde, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : Vrishali Raje, S.D. Shinde

Final Decision : Allowed

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

2. This writ petition is filed with the following substantive prayer:-

A) This Honâ??ble court be pleased to quash and set aside the order dated 26/3/2021 passed by the Sub Divisional Magistrate Palghar Division,

Palghar the Respondent no. 3 herein in the externment proceedings bearing no. 08/2019 and the order dated 29/6/2021 passed by Respondent no. 2 in

Externment Appeal No. 36 of 2021.

3. It is the case of the petitioner that, in the month of November, 2019, the petitioner was served with a notice bearing no. POV /Ravindraadhikari/

Externment/ Notice/ 2775/ 2019 under Section 59 of the Maharashtra Police Act issued by Respondent No.

3. Pursuant to the said notice the petitioner attended the office of Respondent

No. 3 and gave his reply and also examined witnesses in his support.

After considering the reply and submissions on behalf of the petitioner, the Respondent No. 3 concluded that there is no threat or alarm caused at the instance of the petitioner and he recommended that the proceedings as against the petitioner be dropped/cancelled.

On 18th September, 2020, the Respondent No. 3 communicated his recommendation to Respondent No. 2. Respondent No. 2 without considering the recommendations of the Respondent No. 3, on the same set of allegations, issued another show cause notice dated 21/12/2020 and thereafter, the

Respondent No. 2 by his order dated 26th March, 2021, externed the petitioner for period of six months from revenue boundaries of Palghar district.

On 6th April, 2021, the petitioner preferred appeal under section 60 of the Maharashtra Police Act, being Externment Appeal No. 36 of 2021 before

the Divisional Commissioner (Revenue) Kokan Bhavan Mumbai, Respondent No. 1. However, due to the lockdown restrictions imposed through out

the state of Maharashtra and reduction in the attendance at the Government offices, the appeal of the petitioner was not heard. Therefore, petitioner

filed Writ Petition No. 2089 of 2021 before this Court. On 19th June, 2021, this Court directed the appellate authority to decide the appeal of the

petitioner expeditiously. On 25th June, 2021, the appellate authority heard the appeal. On 29th June, 2021 the appellate authority dismissed the appeal

filed by the petitioner. Hence, this petition.

4. Learned counsel for the petitioner submits that Respondent No. 2 has however, failed to mention the general nature of material allegations made

against the petitioner in the show cause notice. Therefore, Petitioner is deprived of his right to make effective representation. On this ground alone the

impugned order deserves to be set aside. In support of aforesaid contention, the learned counsel for the petitioner has relied upon following judgments.

1. Isac Santan Fernandes Vs. K.P. Raghuvanshi, Dy. Comm of Police & Anr1987(3) BCR 323.

2. Kishor Rajaram Durge Vs. Dy Comm of Police & Anr 2004 (Supp) BCR 481.

3. Iqbal Munnaf Sayyed Vs. Assistant Commissioner of Police & Anr Writ Petition No. 3163 of 2012, decided on 27th November, 2012.

5. It is further urged that the impugned order is based on extraneous material as the externing authority has relied upon statements of witness B

recorded in-camera, however, no such statement is reflected in either of the two notices issued to the petitioner. It is further submitted that the

externing authority did not arrive at subjective satisfaction that the witnesses are unwilling to come forward in public to give evidence against the

proposed externee i.e. the petitioner herein by reason of apprehension to safety of their part, persona and property. According to the petitioner, though

he was acquitted in two cases, the Respondent No. 3 failed to consider the said aspect and relied upon the said two cases while passing the impugned

order. The externing authority arrived at erroneous conclusion that the alleged activities of the petitioner are causing disturbance to the public order.

The alleged action against the petitioner is politically motivated.

6. On the other hand, the learned APP appearing for respondents relying upon the reasons assigned in the impugned order and also original record in

relation to the externment proceedings initiated against petitioner would urge that both the authorities have concurrently arrived at the conclusion and

held that the petitioner needs to be externed from the revenue boundaries of Palghar district.

7. We have given careful consideration to the rival submissions. With the able assistance of learned counsel for the petitioner and learned APP for

State, perused the pleadings and grounds taken in the petition, annexures thereto, original record pertaining to the externment proceedings of the

petitioner and reasons assigned in the impugned order by Respondent No. 3. Upon perusal of the order passed by the Sub Divisional Magistrate it is

crystal clear that that the Sub District Officer who inquired into the alleged activities of the petitioner and examined the witnesses, made

recommendation to cancel the proposal of externment of the petitioner from the revenue boundaries of Palghar district, however, the District

Superintendent of Police granted approval for externing the petitioner from Palghar district. In fact, the Sub Divisional Officer, Palghar, who was the

inquiry officer, after adverting to the material collected during the course of the inquiry, recommended not to extern the petitioner from the revenue

boundaries of Palghar district. Therefore, in our opinion once such opinion was expressed by the officer who actually made inquiry into the allegations

about alleged activities of the petitioner, the approval by the higher authority to extern the petitioner was not proper.

8. We have carefully perused the reasons assigned in the impugned order by Respondent No. 3, and find that there is no discussion about alleged in-

camera statement of witnesses recorded by the concerned authority. It is only mentioned in the order that the in-charge officer of Manor Police

Station has sent in-camera statements of three witnesses with the proposal and witnesses have stated that there is danger to their person and property

from the petitioner. It was incumbent upon the said authority to make a reference to the individual statement of witnesses recorded in-camera. As

rightly contended by the learned counsel for the petitioner that, if ultimately the externment order rests upon in-camera statements and other material,

in that case law mandates that the general nature of allegations by the said witnesses deserves to be mentioned in the notice issued to the proposed

externnee, so as to enable the proposed externnee to reply said allegations. As already observed, neither in the notice there is reference to the general

nature of allegations by the said witnesses nor in the order of externment there is individual reference to the statement of witnesses and brief

discussion mentioning gist of said statements.

9. The Division bench (Coram:- A.S. Oka & S.S. Shinde, JJ.) of this Court, in the unreported judgment in the case of Iqbal Munnaf Sayyed (supra), in

Para 6 held as under-

6. This Court in the case of Mrs. Marry Kutty Thomas Vs. The State of Maharashtra & Ors, 1987(2) Bom.C.R. 196, in the facts of that case, held

that the issuance of notice under Section 59, the provisions of the said Section are mandatory, notice must not only state the general nature of material

allegation against the person concerned, but also the precise nature of action proposed to be taken against him.

10. Another Division Bench (Coram:- S.S. Shinde & V.L. Achliya, JJ.) in the case of Krishna Vijay Lalbegi Vs. The State of Maharashtra & Ors, in

para 10 held as under:-

10] According to the petitioner, the impugned externment order passed by the Competent Authority and does not record subjective satisfaction of the

fact that witnesses were not willing to come forward to depose against the petitioner out of fear, which is one of the cardinal requirement to invoke

section 56 of the Act. This position is no more res integra. The Apex Court in the case of [Pandharinath Shridhar Rangnekar Vs. Dy.Commissioner of

Police, State of Maharashtra] 2, reported in AIR 1973 S.C. 630 has observed that an order of externment can be passed under Clause (a) or (b) of

section 56 if, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the

proposed externnee by reason of apprehension of their part as regards the safety of their persona and property. This subjective satisfaction is

conspicuously absent in the order passed by the Externing Authority. In paragraphs 4, the Division Bench held that what is stated in show cause notice

cannot be the basis to assume that the concerned authority was subjectively satisfied about the existence of the aforesaid fact and in absence of such

subjective satisfaction of the fact, the Externinig Authority would not acquire jurisdiction to invoke section 56 (1) (a)(b) of the said Act.

11. In the light of discussion in foregoing paragraphs, we are of the opinion that, because of externing the petitioner from Palghar district, by the

impugned order, the fundamental right of the petitioner to reside at the place of his choice or move from one place to another has been curtailed and

taken away for the period mentioned in the said order. Therefore, this is a fit case wherein interference under writ jurisdiction is warranted. Hence,

we are of the considered view that the impugned order passed by the externing authority, thereby externing the petitioner from the revenue boundaries

of Palghar district, cannot legally sustained and same deserves to be quashed and set aside. Hence, the following order.

ORDER

1. The writ petition is allowed.

2. The order dated 26.03.2021 passed by the Respondent No. 3 in the externment proceedings bearing no. 08/2019 and order dated 29.06.2021 passed by Respondent No. 2 in Externment Appeal No. 36 of 2021, are quashed and set aside.

3. Rule is made absolute to above extent.

4. The writ petition stands disposed of.

5. Parties to act upon an authenticated copy of this order.