

(2018) 07 BOM CK 0012

In the Bombay High Court

Case No : CRIMINAL WRIT PETITION NO. 41 OF 2018

SACHIN BHASKAR BADGUJAR

APPELLANT

Vs

STATE OF MAHARASHTRA AND ANR

RESPONDENT

Date of Decision : 04-07-2018

Acts Referred:

Maharashtra Police Act, 1951 — Section 55

Citation : (2018) 07 BOM CK 0012

Hon'ble Judges : S.S.SHINDE, J;V.K.JADHAV, J

Bench : Division Bench

Advocate : P.B. Pawar, K.S.Hoke Patil

Final Decision : Disposed Of

Judgement

S.S.Shinde, J

1. This Petition is filed praying therein to quash and set aside the order of externment passed by the Divisional Commissioner, Nashik Division, Nashik

in the month of December, 2017 in Externment Appeal No.70/2017, rejecting the appeal and confirming the order of externment dated 27.10.2017

passed by Respondent No.2.

2. It is the case of the petitioner that, he is a shopkeeper and running the business of selling Bags at Dhule. Earlier on 26th May, 2015, the proposal

for externment of the petitioner was submitted. However, as the Sub-Divisional Magistrate, Dhule did not find any substance in the said proposal, the

externment proceedings were dropped.

3. It is the case of the petitioner that, on 2nd September, 2017 the Police Authorities recorded the statements of the witnesses, which were politically

motivated. Thereafter, again the proposal for externment of the petitioner along

with six other persons was submitted and on 12th September, 2017, the show-cause notice was issued to the petitioner. The petitioner filed reply to the said show-cause notice. However, without considering the reply submitted by the petitioner, Respondent No.2 has passed the impugned order dated 27th October, 2017, thereby externing the petitioner along with other four persons, from Dhule district for a period of two years. Being aggrieved by the said order, the petitioner has filed Externment Appeal No. 70/2017 before the Divisional Commissioner, Nashik, who in turn dismissed the said appeal in the month of December, 2017 and confirmed the order of externment passed by Respondent No.2. Hence this Writ Petition.Â Â

4. This matter was heard finally on 22nd June, 2018 and the matter was closed for orders. However, on 28th June, 2018 learned counsel for the petitioner has tendered across the Bar pursis, placing on record the copy of the order dated 17.05.2018 passed by the Divisional Commissioner, Nashik thereby quashing and setting aside the orders dated 27.10.2017 and 16.11.2017 passed by the Superintendent of Police, Dhule, externing the other five persons along with petitioner.

The same is taken on record.

5. Learned counsel appearing for the petitioner invites our attention to the earlier externment proceedings, which were dropped against petitioner, and submits that the offences which were considered while initiating earlier externment proceedings, are again taken into consideration while passing the impugned order. He submits that, there is no live link between the offences registered and initiation of the present externment proceedings. In support of aforesaid contentions, learned counsel pressed into service the exposition of law in the cases of Sanjay Pandurang Nagpure V/s State of Maharashtra and another 2007 All MR (Cri) 3147, Imran Suleman Shaikh V/s State of Maharashtra and another 2010 All MR (Cri) 2490, Imran Abdul Wahid Husmi V/s Dy. Commissioner of Police and others 2016(5) Mh.L.J. (Cri) 167 and Mallu Tikaram Varma V/s State of Maharashtra and others 2017(2) Mh.L.J. (Cri) 608.

6. On the other hand, the learned A.P.P. appearing for respondent/State, relying upon the averments in the affidavit in reply and the reasons assigned by authorities in the impugned orders, submits that, the authorities after adhering to the procedure prescribed under the provisions of Section 55 of the

Maharashtra Police Act, 1951 (Hereinafter referred to as "Act of 1951"), have rightly externed the petitioner from the boundaries of Dhule

district. He invites our attention to the reasons assigned in the impugned orders and also original record in relation to an externment proceedings and

submits that the Petition may be rejected.

7. We have considered the submissions of learned counsel appearing for the petitioner, and learned APP appearing for the respondent "State. With

their able assistance, we have carefully perused the grounds taken in the petition, annexures thereto, the reasons assigned by authorities in the

impugned orders and also the original record maintained by the office of Respondents.

8. Upon perusal of the record, it appears that, earlier in the year 2015, proposal for externment of the petitioner was sent by the police authorities.

However, after considering the facts of the case, the proposal was dropped by the Sub-Divisional Magistrate, Dhule. Perusal of impugned order

passed by Respondent No.2 reveals that, the offences, which were considered while initiating earlier externment proceedings, are again taken into

consideration while passing the impugned order.

9. As rightly contended by learned counsel appearing for the petitioner that, there is no live link between the offences registered and initiation of the

present externment proceedings against the petitioner. It appears from the perusal of the original record that while initiating the externment

proceedings in the year 2017, the offences registered in the year 2011, 2012, 2013, 2014 and 2015 are also taken into consideration by the Respondent

authorities. Therefore, there is no live link and proximity between the registration of the said offences and initiation of the present externment

proceedings.

10. Upon perusal of the original record, it reveals that, the Superintendent of Police has passed the externment order on 27.10.2017 against the

petitioner along with other four persons namely, Devendra @ Deva Chandrakant Sonar, Bhushan Chandrakant Sonar, Vijay @ Ladya Bapu Jadhav

and Bhushan Rajendra Mali, observing that, all of them were operating as a Gang. Against the said order, the petitioner has filed the appeal before the

Divisional Commissioner, Nashik, which came to be rejected by observing that, the petitioner was operating as a member of the gang. It is pertinent to

note that, other four persons whose names have been mentioned above, against whom an externment order was passed along with the petitioner

mentioning the same offences which have been considered while externing the petitioner, have filed appeal before the Divisional Commissioner,

Nashik. The Divisional Commissioner has allowed the said appeal by observing that, the appellants therein were not operating as members of the

Gang. Thus it appears that, there is total non-application of mind by the Divisional Commissioner while passing the order in the appeal filed by the

petitioner and the another appeal filed by the members of the alleged gang.

11. In view of the discussion made hereinabove, we are of the considered view that, the impugned order passed by respondent no.2 and confirmed by

the Divisional Commissioner, Dhule cannot legally sustain, hence both the impugned orders are quashed and set aside. Rule is made absolute in terms

of prayer clause â??Câ??. The petition stands disposed of accordingly. No order as to costs.