

(2018) 07 BOM CK 0007

In the Bombay High Court

Case No : CRIMINAL WRIT PETITION NO.737, 738, 739 OF 2018

SAMEER JAFAR KHAN AND OTHER

APPELLANT

Vs

STATE OF MAHARASHTRA AND OTHERS

RESPONDENT

Date of Decision : 03-07-2018

Acts Referred:

Maharashtra Police Act, 1951 — Section 55, 56(1)(a)(b)

Citation : (2018) 07 BOM CK 0007

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

Bench : Division Bench

Advocate : Vijay Sharma, K.S. Hoke Patil

Final Decision : Disposed Of

Judgement

S.S. SHINDE, J

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

2. The facts in all these Petitions are common, so also the orders under challenge are common, hence all these Petitions were heard together and are

being disposed of by this common Judgment.

3. These Petitions are filed by the Petitioners praying therein to quash and set aside the order of externment passed by Respondent No.2 Â?

Superintendent of Police, Ahmednagar, externing them from the boundaries of Ahmednagar District for the period of one year, which is confirmed by

Respondent No.3 Â? Divisional Commissioner, Nashik.

4. It is the case of the Petitioners that initially, on 21st June, 2017, Assistant Superintendent of Police, City Division, Ahmednagar had issued notices to

the Petitioners under Section 56(1)(a)(b) of the Maharashtra Police Act, 1951

(for short "the Act of 1951"), thereby proposing to extern them from the boundaries of Ahmednagar District for the period of two years. Again on 4th September, 2017, Respondent No.2 had issued notices to the Petitioners, under Section 55 of the Act of 1951, stating therein that, all the three Petitioners were operating as a gang and their activities have caused fear in the minds of common people and nobody is coming forward to depose against them. By the said notice, Respondent No.2 called upon the explanation from the Petitioners. Pursuant to the said notice, the Petitioners submitted their explanations.

5. It is further the case of the Petitioners that on 2nd January, 2018, Respondent No.2 has passed impugned order of externment, thereby externing the Petitioners from the boundaries of Ahmednagar District for the period of one year. Being aggrieved by the said order, the Petitioners have filed appeals before Respondent No.3. On 28th March, 2018, Respondent No.3 the Divisional Commissioner passed separate orders confirming the order passed by Respondent No.2. Hence these Petitions.

6. Learned counsel appearing for the Petitioners submits that the impugned orders passed by the authorities below are perverse, arbitrary, and suffers from non-application of mind. The action taken against the Petitioners is politically motivated as the maternal uncle of the Petitioners is a Corporator in Municipal Corporation, Ahmednagar. It is submitted that Respondent No.2 has termed the Petitioners as a gang, however, there is absolutely no evidence on record to show that the Petitioners have collectively committed any crime as a gang. Therefore, the provisions of Section 55 of the Act of 1951, are not at all attracted.

7. Learned counsel further submitted that from the impugned order passed by Respondent No.2 it reveals that there is only a single offence i.e. Crime No.164 of 2015 wherein all the Petitioners are shown as accused. Except the said offence, no other offence is registered against all the Petitioners collectively and therefore the allegations that the Petitioners operate as a gang is absolutely false. It is submitted that in said Crime No.164 of 2015, there were in all five accused and all the accused were acquitted of the said offence, including the Petitioners. The said aspect has not been considered by Respondent No.3 while passing the impugned orders. The Assistant Superintendent of Police, has conducted enquiry under the

provisions of Section 56(1)(a)(b) of the Act of 1951, and issued notices to the Petitioners. However, the impugned orders were passed under Section

55 of the Act of 1951, therefore there is total non-application of mind by both the Respondent authorities. Respondent Nos.2 and 3 have not recorded

the subjective satisfaction that the Petitioners have formed a gang and thereafter committed the offences.

8. Learned counsel further submitted that there is no live link between the registration of the offences and initiation of present externment proceedings,

in as much as the offences registered in the year 2008, 2009, 2010 and 2011 have also been relied upon while initiating the externment proceedings in

the year 2017. Learned counsel submits that though it is alleged by the Respondent authorities that a gang of five to six persons, including the

Petitioners is operating, the action of externment is initiated against the present Petitioners only. In support of his submissions, learned counsel placed

reliance upon the exposition of law in the cases of Vijay Lalso Jadhav V/s State of Maharashtra and others¹, Ahammad Mainuddin Shaikh V/s The

State of Maharashtra and another², and Shri Rajwardhan Babaso Patil V/s Shri Vijaysinha Jadhav and another³.

9. On other hand, learned A.P.P. appearing for the State, relying upon the averments in the affidavit⁴ in reply and the reasons assigned by

Respondent Nos.2 and 3 in the impugned orders, submits that the authorities, after adhering to the provisions of Section 55 of the Act of 1951, have

rightly externed the Petitioners from the boundaries of Ahmednagar District. It is submitted that the Petitioners have formed a gang and thereafter

committed the crimes. The collective activities of the Petitioners are causing danger to the person and property of the common people. Hence it is

prayed that, the Petitions are liable to be rejected.

10. We have heard learned counsel appearing for the Petitioners and learned A.P.P. appearing for the Respondent⁵ at length. With their able

assistance, we have carefully perused the grounds taken in the Petitions, annexures thereto, replies filed by the Respondents, and the original record of

the case maintained by the office of the Respondents. Upon careful perusal of the notice dated 21st June, 2017, issued by Assistant Superintendent of

Police, it is crystal clear that, the said notice was issued under the provisions of Section 56(1)(a)(b) of the Act of 1951. Original record shows that, in

the same proceedings, again on 4th September, 2017, the Superintendent of Police, Ahmednagar has issued the notice under the provisions of Section 55 of the Act of 1951. Thereafter, the order of externment has been passed against the Petitioners by Respondent No.2 under the provisions of section 55 of the Act of 1951, and the Appellate Authority, after considering the provisions of Section 55 of the Act of 1951, has confirmed the order passed by Respondent No.2. Therefore, we find considerable force in the argument advanced by learned counsel appearing for the Petitioners that there is complete non-application of mind by the authorities while passing the impugned orders. While initiating the proceedings and passing impugned orders, the authorities were not sure, under which provisions the action was being taken. In one proceeding of externment, the authorities have issued two notices, one under the provisions of Section 56(1)(a)(b) and another under the provisions of Section 55 of the Act of 1951.

11. 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 2008, 2009, 2010 and 2011 are also taken into consideration by the Respondent authorities. Therefore, there is no live link between the registration of the offences and initiation of present externment proceedings. It is pertinent to note that, in all four crimes mentioned herein above, all the accused persons including the Petitioners have already been acquitted by the Competent Courts, and still the Respondent authorities have relied upon the said offences while initiating the present externment proceedings.

12. The proceedings are initiated against the Petitioners alleging that they are operating as a gang. Perusal of the record shows that, in all seven offences are relied upon by the authorities while initiating the externment proceedings against the present Petitioners. However, the original record shows that in only one crime i.e. Crime No.164/2015 registered with Bhingar Police Station, all the three Petitioners are made accused. In remaining six offences mentioned in the impugned orders, all the three Petitioners are not made accused in any of the offence. Therefore, it is difficult to accept that the Petitioners have formed a gang and thereafter they have committed the offences. It is pertinent to note that in the only offence being Crime No.164 of 2015 wherein all the three Petitioners were made accused, all the Petitioners have been acquitted by the competent Court on 3rd January,

2018, much before passing the impugned orders by the appellate authority. This aspect has not been considered by the appellate authority while

passing the impugned orders. While passing the impugned orders, Respondent Nos.2 and 3 have not recorded the subjective satisfaction that the

Petitioners have formed a gang and thereafter committed the offences.

13. It appears from the original record that the allegations are made that gang of five to six persons including the Petitioners, is operating. However,

the action is initiated only against the present Petitioners and not against all the members of the alleged gang. Therefore, while initiating the action, the

respondent authorities have adopted the method of pick and choose. The Division Bench of this Court in the case of Vijay Jadhav (supra) in 8 of the

order observed as under:Â?

8. Section 55 of the Bombay Police Act contemplates collective action against the gang or body of persons and therefore, the final direction which is

required to be issued in terms of the said Section, will have to be necessarily against each of the members of the gang and not against one or a few of

them on selective basis. It is therefore, apparent that an illegality has been committed by both the Authorities, i.e. the Competent authority and the

Appellate Authority by passing the externment order and confirming the same only qua the petitioners and not against the other members of the

alleged gang.

. As already observed, in the present matters also the action is taken against the Petitioners only. Therefore, it is apparent that an illegality has been

committed by both the Authorities, i.e. the Competent authority and the Appellate Authority by passing the externment order and confirming the same

only qua the Petitioners and not against the other members of the alleged gang.

14. In view of the discussion made herein above, we are of the considered view that the impugned orders passed by Respondent No.2 and

Respondent No.3 cannot legally sustain. Hence the impugned orders passed by Respondent No.2, and confirmed by Respondent No.3, are quashed

and set aside. Rule is made absolute in terms of prayer clause ""B)"" of the Petitions. All the three Writ Petitions stand disposed of accordingly.