
(2007) 04 BOM CK 0019
In the Bombay High Court
Case No : Criminal W.P. No. 72 of 2007

Sanjay Pandurang Nagpure	Vs	APPELLANT
State of Maharashtra and another		RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Bombay Police Act, 1951 — Section 56

Citation : (2007) 5 MhLj 436

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : S.A. Jaiswal, for the Appellant; A.M. Deshpande, APP For respondent-State, for the Respondent

Judgement

C.L. Pangarkar, J.—Heard finally with consent of parties.

2. By this petition the petitioner challenges the order of externment passed by the Executive Magistrate u/s 56 of the Bombay Police Act.

3. The facts are as follows:

Petitioner is a permanent resident of Nagpur. It is alleged that he is in habit of committing offences and the people in general are scared of him. He carries firearms etc. with him and gives threats to the witnesses and, therefore, the witnesses are reluctant to appear before the Court. During the period from 1999 to 2004 in all 8 offences were registered against the petitioner. Some of those offences relate to rioting, possession of Arms, uttering indecent language in public place, giving threats causing hurt etc. A show cause notice was issued by the Executive Magistrate on 5-7-2006. In the said notice 8 offences as stated above have been mentioned. It is alleged that due to fear of the petitioner the people do not come forward to depose and, therefore, it is necessary to extern him out of Nagpur City and Nagpur District. After a show cause notice was issued the applicant had initially appeared before the Executive Magistrate. He had sought time for reply and defend. Subsequently, however it is alleged that he did

not appear. The Executive Magistrate, therefore, passed an externment order on 8-12-2006 for a period of 2 years and this order is being challenged.

4. I have heard the learned counsel for the petitioner and respondent. It was contended by the counsel for the petitioner that there are two grounds why the order is vitiated. He submitted that there is no application of mind inasmuch as the cases in which the petitioner was acquitted have been taken into account and the case which is not referred to in a show cause notice has also been taken into account for passing an externment order. Second ground according to learned counsel is that there is no evidence that the witnesses due to terror or fear do not come forward to depose. The total number of cases referred to in the externment order are 9. Applicant contends that he has been acquitted in case No. 5. The copy of judgment in Criminal Case No. 230 of 2002 is filed on record. It shows that he was acquitted by the Court on 24-2-2003. Obviously he was acquitted in this case which is referred in the externment order, much prior to even issuing of show cause notice. Similarly the case No. 9 in externment order is not referred to in the show cause notice. Thus excess material than what was shown in the show cause notice is referred and taken into account. This Court in *Ganu Vs. M.V. Chitale and Another*, observed as follows :

"In our opinion, the impugned order is clearly illegal as the 1st respondent has considered and relied upon the extraneous material which was not referred to in the show cause notice. The impugned orders of externment passed by the authorities below suffer from vice of procedural illegality and cannot be sustained. The impugned orders are quashed and set aside and the rule is made absolute in terms of prayers (i) and(iv)."

This Court in another decision in Criminal Writ Petition 389 of 2006, *Hamid Kha Rahim Kha Pathan vs. State of Maharashtra and another* has observed as follows:

"Therefore, it is clear that the externment order first, was influenced by pendency of three cases in which the petitioner had already been acquitted, and secondly, was issued in excess of the externment proposed in the show cause notice and was therefore bad. Further, when the petitioner was alleged to have been involved in objectionable activities only in Chandur Bazar, he was externed from Amravati, Wardha, Akola, Yavatmal and Nagpur Districts. The order does not show as to why the Sub Divisional Magistrate felt it necessary to extern the petitioner from four other Districts as well. Therefore, since the order is excessive, it cannot be sustained, apart from the fact that it shows non-application of mind inasmuch as it ignores the acquittal of the petitioner in three offences to which the petitioner had drawn the attention of the Sub-Divisional Magistrate by his reply to show cause notice."

It was contended that although it is alleged that due to fear of the applicant they do not come forward to depose against him, there is no evidence to that effect. When it is alleged that the people do not come forward it should be shown that the witnesses though duly served with summonses are not inclined to appear

before the Court or if appear frequently turn hostile due to the threats given by the petitioner. There is nothing of the sort in the externment order. The externment order as pointed out earlier refers to material which is not referred to in the show cause notice and the learned Magistrate has taken into consideration the material which he could not have. Apparently, therefore, there is no application of mind. The order, therefore, suffers from infirmity and is therefore, liable to be quashed. The order of externment is quashed and set aside.