

(2021) 09 BOM CK 0043

In the Bombay High Court

Case No : Criminal Writ Petition No.2744 Of 2021

Satyawan Pandurang Thale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-09-2021

Acts Referred:

Maharashtra Police Act, 1951 — Section 56, 56(a), 56(b), 56 (1) (a)(b), 57(1)(a), 59, 60
Indian Penal Code, 1860 — Section 34, 323, 332, 336, 353, 392, 504, 506, 527
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s)

Citation : (2021) 09 BOM CK 0043

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

Bench : Division Bench

Final Decision : Disposed Of

Judgement

S.S. Shinde, J

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

2. This Writ Petition is filed seeking directions with the following substantive prayer:

"(b) That this Hon'ble Authority be pleased to call for the records and proceedings of Externment Appeal No.22 of 2021 from the file of the learned Divisional Commissioner, Konkan Division, Mumbai as well as Externment Proceedings No.3 of 2019 from the file of the Respondent No.2 - Sub- Divisional Police Officer, Shrivardhan Division, Shrivardhan, District Raigad and after examining the legality, validity and propriety thereof, the Order dated 23 rd March 2021 passed by the learned Appellate Authority i.e. the learned Divisional Commissioner, Konkan Division, Mumbai in Externment Appeal No.22 of 2021 as well as the impugned Order of externment dated 28th January 2021 (Exhibit "D" hereto) passed in Externment Proceedings No.3 of 2019 by the Respondent -

Sub-Divisional Police Officer, Shrivardhan Division, Shrivardhan against the Appellant, be quashed and set aside."

3. The brief facts leading to the filing of this petition are as under:

It is the case of the petitioner that he was served with a notice dated 9th December, 2019 under section 59 of the Maharashtra Police Act, 1951 by Respondent No.2 i.e., Sub- Divisional Police Officer, Shrivardhan Division, Raigad, whereby the petitioner was called upon to show cause as to why action under Section 56(a)(b) of the Maharashtra Police Act (for short, 'the Act') be not initiated to extern the petitioner from the Districts of Raigad, Mumbai, Palghar, Thane, Ratnagiri, Sindhudurg and Pune under section 57(1)(a) of the Act. The allegations against the petitioner contained in the notice were that the petitioner had endangered the lives of persons living within the jurisdiction of Shrivardhan Police Station, District Raigad and nearby vicinity as also their properties. The petitioner had replied to the said notice by filing his reply on various grounds. However, on 28th January, 2021, Respondent No.2 issued the externment order under section 57(1)(a) of the Act externing the petitioner from the limits of Shrivardhan, Mhasala, Tala, Mahad, Poladpur and Murud Talukas in District Raigad for a period of one year. The petitioner filed an Appeal before the Divisional Commissioner, Konkan Division, Mumbai under section 60 of the Act being Externment Appeal No.22 of 2021. The said Appeal was rejected by the Appellate Authority vide its order dated 23rd March, 2021. Being aggrieved with the said order, the petitioner has filed the present petition praying for the aforesaid substantive relief.

4. Mr.Sejpal, learned Counsel appearing for the petitioner, submitted that the impugned orders are based on matters extraneous to the show-cause notice and is, therefore, liable to be set aside. He submitted that the show-cause notice falls short of reasonable grounds to extern the petitioner. He submitted that the said show-cause notice does not satisfy the requirements of section 56 of the Act and it does not set out the material allegations against the petitioner. He submitted that it is the requirement of law that the proposed externee should be given a reasonable opportunity of tendering explanation regarding the material allegations against him. He submitted that in the said show-cause notice issued to the petitioner, the activities mentioned are general in nature and they are not sufficiently clear or precise so as to enable the petitioner to explain them in detail.

The learned Counsel has also submitted that the externing authority after issuing notice on 19th December, 2019, passed the externment order on 28th January, 2021, without giving an opportunity of being heard to the petitioner in respect of the offences relied upon by the externing authority, which has caused grave prejudice to the petitioner. It is also submitted by the learned Counsel for the petitioner that the externment order is without any application of mind and is delayed as the show-cause notice was issued on 9th December 2019 and the externment order was passed on 28th January, 2021, wherein the externing

authority had considered the alleged offences registered against the petitioner in the years 2008, 2011, 2012, 2013, 2016 and 2018 so as to extern the petitioner. He has also submitted that the externing authority has taken more than 1½ year to arrive at subjective satisfaction on the basis of the incident in question, which was an isolated incident of year 2018 to extern him from the aforesaid six Talukas of Raigad district.

The externment order is excessive inasmuch it externs the petitioner from six Talukas of District Raigad. He has submitted that the proposal to extern the petitioner from the externment order is on the basis of alleged complaints lodged with one police station i.e., Shrivardhan Police Station, which is against the provisions of law. The alleged offences are either private disputes and have nothing to do with the public at large or have been registered years ago prior to the issuance of the show-cause notice. He also submitted that there is no subjective satisfaction by the externing Authority that the activities of the petitioner have endangered lives of the public and there is possibility of the petitioner committing cognizable and non-bailable offences in the areas specified. The learned Counsel for the petitioner has submitted that there is no live link between the alleged incidents, issuance of show-cause notice in December, 2019 and the Order of Externment in the month of January, 2021.

5. In support of his arguments, the learned Counsel for the petitioner has relied on the following judgements:

i) Shri Mallu Tikaram Varma Vs. State of Maharashtra & others, reported in 2017 ALL MR (Cri.) 4403

ii) Rahul @ Pintu @ Kalu s/o. Laxman Nikose vs. State of Maharashtra & another reported in 020 ALL MR (Cri.) 872

iii) Santosh s/o. Bapurao Gujjar & others vs. The State of Maharashtra & ors reported in 2019 ALL MR (Cri.) 4294

iv) Sunil Yyadavrao Beedkar vs. The Divisional Commissioner, Aurangabad &ors. Reported in 2020 ALL MR (Cri.) 2902

v) Rajesh s/o. Jiwan Jangle vs. State of Maharashtra & others reported in 2017 ALL MR (Cri.) 5320

vi) Kishor Rambhaoji Narad vs. The State of Maharashtra & anr reported in 2017 ALL MR (Cri.) 4898

vii) Sumit s/o. Ramkrishna Maraskolhe vs. Deputy Commissioner of Police, Nagpur & another reported in 2019 ALL MR (Cri.) 1961 (FB)

viii) Ajay @ Golu Shyam Solanki vs. State of Maharashtra & another reported in 2019 ALL MR (Cri.) 702

ix) Dnyaneshwar s/o. Sopan Gite vs. State of Maharashtra & others. Reported in 2020 ALL MR (Cri.) 3353

x) Sachin Bhaskar Badgular vs. State of Maharashtra & another reported in 2018 AL MR (Cri.) 4888

xi) Umesh Ashok Pawar vs. Deputy Commissioner of Police, Zone-I, Amravati & Anr. Reported in 2019 ALL MR (Cri.) 4710

xii) Mahesh Bajrang Dalvi vs. State of Maharashtra reported in 2017 ALL MR (Cri.) 777

6. The learned Counsel has, therefore, prayed that the petition needs to be allowed and the impugned orders quashed and set aside.

7. Learned APP appearing for the Respondent - State has opposed the petition and relying upon the reasons recorded in the impugned order of externment and also by the appellate authority, submitted that the petition is devoid of any merit and the same may be dismissed.

8. We have given a careful consideration to the rival submissions of the parties. With the able assistance of the learned Counsel appearing for the petitioner and the learned APP appearing for the Respondent - State, we have carefully perused the pleadings and the grounds taken in the petition, the annexures thereto and the reasons assigned by the respondent - authorities while passing the impugned externment order and while dismissing the appeal filed by the petitioner. It appears that the following offences registered against the petitioner are taken into consideration:

Sr. No

FIR/Case No

Offences alleged

Registered on

1.

19/2019 (Shrivardhan Police Station)

Sections 353, 392, 332, 323, 504, 506, 34 IPC and Sections 3(1)(r), 1(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989..

21.7.2018

2.

51/2016 (Shrivardhan Police Station)

Sections 353, 354, 323, 504, 506, 34 of IPC

18.6.2016

3.

3/2016 (Shrivardhan Police Station)

Sections 509, 504, 34 IPC

15.1.2016

4.

2/2016 (Shrivardhan Police Station)

Sections 324, 504, 506, 34 IPC

15.1.2016

5.

46/2013 (Shrivardhan Police Station)

Sections 341, 323, 504, 506, 34 IPC

25.11.2013

6.

8/2012 (Shrivardhan Police Station)

Sections 182, 186, 228, 332, 417, 419, 465, 468, 469, 471, 500 IPC

31.3.2012

7.

21/2011 (Shrivardhan Police Station)

Sections 353, 506 IPC

21.7.2011

8.

21/2018 (Shrivardhan Police Station)

Sections 182, 193, 211, 471, 34 IPC

23.5.2008

9.

Chapter Case No.21 of 2018

Section 110 of CRPC

29.8.2011

9. We have carefully perused the impugned order dated 28th January, 2021 passed by Respondent No.2 - Sub-Divisional Police Officer, Shrivardhan Division, Shrivardhan, District Raigad as also the order in Appeal dated 23rd March 2021 passed by the Appellate Authority i.e., the Divisional Commissioner, Konkan Division, Mumbai and find that there is no proper discussion about live link

between the registration of those offences and initiation of the externment proceedings against the petitioner. In the aforesaid offences, the first offence was registered in the year 2011 and the last i.e., the ninth offence was registered in the year 2018. The impugned order of externment is passed in the year 2021. In the absence of discussion showing that there is a live link between the externment proceedings initiated by the respondent-authority and registration of the said offences and in particular, last offence, the impugned order cannot legally be sustained on the basis of registration of the said offences.

10. We have carefully perused the externment order and find that there is a casual reference to the statements of alleged witnesses, however, neither any date nor any specific instance has been mentioned in the impugned order. There is only a general discussion. It appears that the petitioner has been externed from six Talukas of Raigad District. No doubt, the respondent - authority has jurisdiction to extern the proposed externee from the said Talukas, however, it is necessary to give reasons for such externment from the adjoining Talukas or Districts, where there is no offence registered against the proposed externee. However, in the impugned order, there is no discussion to that effect as all the offences are registered with Shrivardhan Police Station alone.

11. It appears that the petitioner has been acquitted from C.R. No.21 of 2011 registered for the offences punishable under sections 353 and 506 of the Indian Penal Code, however, in the impugned orders, during the course of discussion, it is not mentioned that the petitioner has been acquitted from the aforesaid offence and the externing authority has not placed reliance upon the said offence while passing the impugned externment order.

While passing the impugned externment order, the externing authority has placed reliance upon FIR No.19 of 2019 registered with Shrivardhan Police Station for the offences punishable under sections 353, 392, 332, 323, 504, 506, 527 read with 34 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989, and FIR No.32 of 2019 registered with Shrivardhan Police Station under sections 336, 504 and 506 of the Indian Penal Code, however, upon perusal of the show-cause notice issued to the petitioner, the externing authority has not mentioned about these two FIRs. However, the externing authority has relied upon the aforesaid two offences while passing the impugned order of externment.

12. The Division Bench (Coram:- A.S. Oka & S.S. Shinde, JJ.) of this Court in an unreported judgment in the case of Iqbal Munnaf Sayyed vs. Assistant Commissioner of Police & another (Writ Petition No.3163 of 2012 decided on 27.11.2012), in paragraph 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.

13. Another Division Bench (Coram:- S.S.Shinde & V.L. Achliya,JJ.) in the case of Krishna Vijay Lalbegi Vs. The State of Maharashtra & Ors, (Writ Petition No.539 of 2014 decided on 9. 9.2014) in paragraph 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 Externinig 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." It appears that the externing authority has also not kept in view that in most of the offences, the petitioner has been enlarged on bail. The show-cause notice was issued on 9.12.2019 and the impugned order is passed on 28.01.2021. There is a considerable delay between issuance of show-cause notice and passing of the impugned order. Such a considerable delay creates doubt about seriousness of the authority to initiate externment proceedings against the petitioner.

It is also important to note that the petitioner was in custody in FIR No.32 of 2019 registered with Shrivardhan Police Station for the offences punishable under sections 336, 506 and 506 of the Indian Penal Code. The Petitioner was enlarged on bail by the learned Additional Sessions Judge, Mangaon, District - Raigad, vide order dated 24th June, 2020. The learned Additional Session Judge was pleased to impose a condition upon the petitioner, not to enter into the jurisdiction of Shrivardhan Police Station for a period of six months from the date of passing of the order. The Petitioner had subsequently approached the learned Additional Sessions Judge by filing Criminal Miscellaneous Application No.79 of 2020 for modification of the conditions imposed upon him that he should not enter into the jurisdiction of Shrivardhan Police Station. However, the said application was rejected by an order dated 28th July, 2020. Being aggrieved, the petitioner approached the High Court. However, this Court did not interfere with the order passed by the Sessions Court and as a result, the petitioner, during the period, mentioned in the conditions granting bail, did not enter into the

jurisdiction of Shrivardhan Police Station.

The Division Bench of this Court (Coram:- S.S. Shinde & V.K. Jadhav, JJ.), of this Court in the case of Santosh s/o. Bapurao Gujjar & Ors Vs. The State of Maharashtra & Ors. (2019 ALL MR (Cri) 4294) held that though the petitioners therein were acquitted from four crimes mentioned in the notice, while passing the impugned order of externment in the said case, the externing authority relied upon the said orders of acquittal and, therefore, there was non-application of mind on the part of externing authority and accordingly allowed the petition filed by the externee.

This Court (Coram: Anoop Mohta & M.G. Giratkar, JJ.), in the case of Kishor Rambhaoji Narad Vs. The State of Maharashtra & Anr. (2017 ALL MR (Cri) 4898), has held that if old offences are pending against the petitioner and in case, the live link is not established between the initiation of externment proceedings and said pending old offences, in that case, the order of externment is liable to be interfered with.

14. In the light of the discussion in the foregoing paragraphs, after a careful perusal of the order passed by the appellate authority, we have noticed that the appellate authority has mechanically endorsed the findings recorded by the Sub-Divisional Police Officer, Shrivardhan Division, Shrivardhan. In that view of the matter, for the reasons aforesaid, the impugned order of externment dated 28.1.2021 bearing No.03/2019, passed by the Respondent No.2 - Sub-Divisional Police Officer, Shrivardhan Division, Shrivardhan, confirmed in Appeal by order dated 23rd March, 2021 passed by the Appellate Authority - Divisional Commissioner, Konkan Division, Mumbai in Externment/Appeal No.22/2021 are quashed and set aside.

15. Rule is made absolute and the Writ Petition stands disposed off accordingly.