
(2014) 02 GUJ CK 0036

In the Gujarat High Court

Case No : Special Criminal Application No. 285 of 2014

Shabbir Haji Kasam Bajariya

APPELLANT

Vs

State of Gujarat and 2 Ors.

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Bombay Police Act, 1951 — Section 56, 60
Constitution of India, 1950 — Article 21, 226

Citation : (2014) 02 GUJ CK 0036

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : M.M. Tirmizi, Advocate for the Applicant No. 1, Advocate for the Appellant; Jirga Jhaveri, Addl. Public Prosecutor for Respondent No. 1, Advocate for the Respondent

Final Decision : Allowed

Judgement

S.H. Vora, J.—Challenge in the present petition preferred under Articles 21 and 226 of the Constitution of India is the order dated 29.4.2013 passed by the respondent No. 3 in Hadpari Case No. 64 of 2013 as well as order dated 7.12.2013 passed by the respondent No. 2 in Appeal No. 317 of 2013 u/s 60 of the Bombay Police Act, 1951 (for short "the Act").

2. Heard the submissions of learned advocates appearing for the petitioner and learned APP for the respondent State.

3. The petitioner challenged the impugned order on various grounds that the externment order is passed without application of mind. According to the petitioner, the show cause notice issued to the petitioner is without application of mind, wherein the externing authority has mentioned that the petitioner should be externed from districts of Panchmahal, Kheda, Vadodara and Sabarkantha. No reason has been given in the show cause notice why externment from these districts was proposed when the activities of the petitioner was confined only to the district of Dahod.

4. Another contention has been that no reason has been given either in the show cause notice or in the impugned orders of the externing authority or the appellate authority why the petitioner was externed from so many districts mentioned above whereas he is resident of district Dahod only. On all such grounds, learned advocate appearing on behalf of the of the petitioner prays to quash the impugned orders.

5. This argument has substance and it discloses non-application of mind by the appellate authority as well as by the externing authority for externing the petitioner from five districts mentioned aforesaid. When even an externing authority chooses to direct externment from not only the district within which the person against whom the order is passed is seen to be active, but also from contiguous districts, the reason why such externment order should operate even in regard to such contiguous districts should be shown in the notice preceding the order as well as in the order. It must be so, for if a person confined his activities to a particular district there would be no justification to extern him not only from that district, but from the adjoining district also unless it is shown that circumstances warrant such a course. If there is such lacuna in the show cause notice as well as in the impugned order, it is not for the court to fill up lacuna in the material noticed by the externing authority by assuming that there must be some reason for externing from contiguous district also. That must be indicated by the externing authority. For this full bench decision in Sandhi Mamad Kala Vs. State of Gujarat, and Saiyad Husen Saiyad Umar vs. State of Gujarat, 1985(2) G.L.R. 1045 can be referred.

6. Per contra, learned APP submits that the competent authorities have passed the impugned order after considering all the relevant materials and statement of witnesses so as to demonstrate that there is likelihood of breach of peace in the area and therefore, the learned APP supported the impugned orders and urged to dismiss the petition.

7. The externing authority u/s 56 of the Bombay Police Act has power to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the districts contiguous to his own district. The criteria for passing such an order is provided for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order. The case of Vrajlal Mohanlal v. District Magistrate, Rajkot and another, reported in 3 G.L.R. 807 can be referred on the point.

8. In view of the foregoing reasons, the petition is allowed. The order of externment dated 29.4.2013 passed by the respondent No. 3 in Hadpari Case No. 64 of 2013 as well as order dated 7.12.2013 passed by the respondent No. 2 in Appeal No. 317 of 2013 are hereby quashed and set aside. Rule is made

absolute to the aforesaid extent. Direct service is permitted.