
(2022) 04 BOM CK 0118

In the Bombay High Court

Case No : Criminal Writ Petition No.268, 269, 369 Of 2022, Criminal Application No. 839, 840 Of 2022

Shaikh Abdul Rasheed Abdul Razaque Kasai And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 26-04-2022

Acts Referred:

Maharashtra Police Act, 1951 — Section 37(1)(3), 55, 59, 60, 135

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 307, 324, 354, 394, 504, 506, 509

Arms Act, 1959 — Section 4, 25

Citation : (2022) 04 BOM CK 0118

Hon'ble Judges : V. K. Jadhav, J; Sandipkumar C. More, J

Bench : Division Bench

Advocate : G. R. Syed, M. M. Nerlikar, Satej S. Jadhav, M. M. Nerlikar

Final Decision : Allowed/Disposed Of

Judgement

Sandipkumar C. More, J

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. All these criminal writ petitions are filed by respective petitioners for challenging the common judgment and order of their externment passed on 09/09/2021 by the Superintendent of Police Nandurbar, District Nandurbar in Case No. 290/LCB/Externment Order/4151, under Section 55 of the Maharashtra Police Act, 1951 (hereinafter referred to as 'the Act'). The petitioners have also challenged the order of the learned Additional Divisional Commissioner, Nashik, Division Nashik in their respective appeals filed under Section 60 of the Act, whereby the earlier order of externment dated 09/09/2021 has been confirmed. Since the externment order dated 09/09/2021 as mentioned above is common for all these petitioners, we find it proper to decide all these petitions by common judgment.

3. In Criminal Writ Petition No. 268 of 2022 the petitioner Shaikh Abdul Rasheed Abdul Razaque Kasai has challenged the order dated 04/02/2022 passed by the learned Additional Divisional Commissioner in his Externment Appeal No. 136 of 2021, whereas in Criminal Writ Petition No. 269 of 2021 the petitioner Shaikh Ishtiyaque Ahmed s/o Abdul Razzaq Qureshi has challenged the order dated 04/02/2022 passed by the Additional Commissioner, Nashik Division in his Externment Appeal No. 120 of 2021. Further the petitioners in Criminal Writ Petition No.369 of 2022 have challenged the order dated 04/02/2022 passed by the Divisional Commissioner Nashik Division in their respective Externment Appeal No. 122 of 2021, Externment Appeal No. 121 of 2021 and Externment Appeal No. 123 of 2021.

4. Background facts are as follows :

All the petitioners have claimed that they are peace loving and law abiding citizens of India and earning their livelihood by doing labour jobs. However, the Police Inspector of Nandurbar (City) Police Station forwarded a proposal to the Superintendent of Police, Nandurbar under Section 55 of the Act on 27/02/2021 and thereby proposed externment of the petitioners. After receipt of the said proposal, the Superintendent of Police, Nandurbar sent the proposal to Sub-Divisional Police Officer, Nandurbar for enquiry under Section 59 of the Act on 11.03.2021. Thereafter, said Sub-Divisional Officer issued notice to all the petitioners on 23/03/2021 calling upon their explanations. The petitioners replied the said notice on 08/04/2021. However, Sub-Divisional Police Officer, Nandurbar after going through the explanations of the petitioners, recommended their externment along with other members of gang from Nandurbar district for a period of two years. The Superintendent of Police, Nandurbar thereafter issued notice dated 16/07/2021 to the present petitioners along with other members of gang mentioning that why they should not be externed as proposed. The petitioners again filed their reply to the said notice on 27/07/2021, however, the Superintendent of Police i.e. present respondent no.2 after hearing the petitioners, passed order of externment against the petitioners and other gang members on 09/09/2021 and thereby externed them from entire Nandurbar district for a period of two years. Though the petitioners in their respective appeals as mentioned above, challenged the said order dated 09/09/2021 before the Divisional Commissioner, Nashik, but those appeals were rejected. Hence, these petitions.

5. The learned counsel for the petitioners submit that order dated 09/09/2021 passed by respondent no.2 and the consequential orders passed in respect of the appeals by the concerned authorities, are cryptic and without assigning proper reasoning. Moreover, those orders are vague in nature and passed on the basis of enquiry report which was never supplied to the petitioners. They further submit that the material or the criminal activities which are considered for passing the order of externment against the petitioners, are not against the public at large but the same appear to be of individualistic nature. They further

submit that Crime No.29 of 2020 and Crime No. 280 of 2020 have been registered against the petitioners out of personal dispute with the complainant parties therein and the same have no bearing at all over the public safety and maintenance of law and order. They further submit that on the basis of material which has been considered by both the authorities below for externment of the petitioners, does not disclose the fact that the petitioners are involved in serious criminal activities which are deterrent to public at large and that they have acted as a gang or body of persons.

6. The learned counsel for the petitioners also relied upon the judgment passed by this court (V. K. Jadhav and S. C. More, JJ) in Criminal Writ Petition No. 1448 of 2021, wherein reference of rival members with whom the present petitioners were having dispute, has come.

7. On the contrary, the learned APP strongly opposed the petitions by filing a common affidavit in reply. Learned APP supported the order of externment of the petitioners and also the orders passed by the learned Divisional Commissioner, Nashik Division in respective appeals filed by these petitioners against that order. According to the learned APP various crimes are registered against the petitioners in the area of Nandurbar City Police Station and the same are sufficient to draw an inference that the petitioners have acted as a gang for causing disturbance to the public tranquility and also maintenance of law and order. Thus, the learned APP prayed for dismissal of all these criminal writ petitions.

8. We have carefully gone through the entire material on record along with police papers. We also perused the impugned orders passed by the Superintendent of Police, Nandurbar as well as the learned Divisional Commissioner, Nashik.

9. It is significant to note that the externment proposal against the petitioners was sent in view of Section 55 of the Act. We would like to reproduce the said Section as below :

"55. Dispersal of gangs and bodies of persons:-

Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed under section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the [Superintendent] [* * *] empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction [or such area and any district or districts, or any

part thereof, contiguous thereto] within such time as such officer shall prescribe, and not to enter to area [for the areas and such contiguous districts, or part thereof, as the case may be,] or return to the place from which each of them was directed to remove himself."

On perusal of the aforesaid said section, it is evident that the criminal cases against the persons sought to be externed, must be of collective nature and the same should not be individualistic in nature. Further, it has to be confirmed that the persons whose externment is proposed under the aforesaid section, must be the members of a gang, whose activities must involve deterrence to public at large. It is, thus, made clear that if all these conditions mentioned above are satisfied, then only Section 55 of the Act can be invoked.

10. On perusal of order dated 09/09/2021 passed by the Superintendent of Police, Nandurbar i.e. respondent no.2, it is evident that the following crimes registered in Nandurbar (City) Police Station against the respective petitioners, have been considered for their externment.

i) Crimes registered against the petitioner i.e. Shaikh Abdul Rasheed Abdul Razaque Kasai in Writ Petition No. 268 of 2022 :

Sr. No.

CR No.

Under Sections

Court Case No.

Final result

1.

29/2020

307, 395, 354, 324, 509, 143, 147, 148, 149, 323, 504, 506 of IPC read with Section 4/25 of the Arms Act, under Section 37(1)(3) read with 135 of of Maharashtra Police Act

RCC No. 189 of 2020

Subjudice

2.

280/2020

324, 143, 147, 148, 149, 504 and 506 of IPC

RCC No.223 of 2020

Subjudice

ii) Crimes registered against the petitioner Shaikh Ishtiyaque Ahmed s/o Abdul

Razzaq Qureshi in Criminal Writ Petition No. 269 of 2022:

Sr. No.

CR No.

Under Sections

Court Case No.

Final result

1.

29/2020

307, 395, 354, 324, 509, 143, 147, 148, 149, 323, 504, 506 of IPC read with Section 4/25 of the Arms Act, under Section 37(1)(3) read with 135 of Maharashtra Police

RCC No. 189 of 2020

Subjudice

2.

280/2020

324, 143, 147, 148, 149, 504 and 506 of IPC

RCC No.223 of 2020

Subjudice

3.

141/2015

143, 147, 323, 504, 506 read with 34 of IPC

SCC No.95 of 2016

Acquitted

iii) Crimes registered against the petitioners i.e. 1) Shaikh Juber Shaikh Mustaq Qureshi, 2) Riyaz Ahmed Mustaq Ahmed Qureshi and 3) Nihal Ahmed Shaikh Ashfak Qureshi in Criminal Writ Petition No. 369 of 2022 :

Sr. No.

CR No.

Under Sections

Court Case No.

Final result

1

29/2020

307, 395, 354, 324, 509, 143, 147, 148, 149, 323, 504, 506 of IPC read with Section 4/25 of the Arms Act, under Section 37(1)(3) read with 135 of of Maharashtra Police Act

RCC No. 189 of 2020

Subjudice

2

141/2015

143, 147, 323, 504, 506 read with 34 of IPC

SCC No.95 of 2016

Acquitted

11. On perusal of the aforesaid crimes registered against the concerned petitioners it is clearly evident that there is only one crime i.e. Crime No. 29 of 2020 under Section 307, 395, 354, 324, 509, 143, 147, 148, 149, 323, 504, 506 read with Section 4/25 of the Arms Act and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act is in fact against all these petitioners. In other crimes all the petitioners are not involved jointly. Moreover, on going through FIR in Crime N. 29 of 2020, it is evident that the same has been registered by way of counter blast in respect of Crime No.28 of 2020. It would not be out of place to mention herein that the complainant party in the said crime had also been externed on the basis of Crime No. 28 of 2020, but the said order of externment has been quashed by this court in the aforesaid judgment relied by the present petitioners in Criminal Writ Petition No.1448 of 2021. Thus, it appears that the only crime wherein the petitioners are jointly arrayed as an accused i.e. Crime No. 29 of 2020, has been arisen out of personal dispute and no aspect of public deterrence, is involved in the same. Moreover, the Crime No.29 of 2020 appears to be result of family dispute. Further, the other crimes which are used for the externment of the petitioners, appear to be individualistic in nature.

12. Further, it is significant to note that though in the impugned order 09/09/2021 it is mentioned by respondent no.2 that due to criminal activities of the present petitioners, there is alarm in the public at large and that nobody from common public are coming forward openly to lodge report against the petitioners, but there is nothing on record to support the said finding. Moreover, no particulars are there in the impugned order dated 09/09/2021 in respect of any confidential statement on the basis of which the petitioners are externed. Therefore, considering the entire material on record, it appears that the crimes registered against the petitioners are either separate crimes or the same are of individualistic nature. Further, the said material does not prima facie show that

the petitioners have acted as gang members or body of persons for commission of serious criminal activities.

13. In case of *Vijay Lalso Jadhav vs. State of Maharashtra and others*, 2013 SCC OnLine Bom 1432 this court has given reference of the observation made in the case of *Ahammad Mainduddin Shaikh vs. The State of Maharashtra* (Criminal Writ Petition No. 2385 of 2013), wherein in para no. 14 it is observed as follows :

"Upon a careful reading of this section, it becomes clear that, whenever it appears to the competent authority that the movement or encampment of any gang or body of persons in the area under his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body of persons or by its members, such officer may by notification addressed to the leaders or chief men of such gang or body of persons and suitably published, issue two types of directions. The first direction is about regulating of conduct of such gang or body of persons in a manner prescribed in the direction in order to prevent violence and alarm. Such direction, in the alternative, can also be in the form of an order for dispersal of members of such gang or body of persons. The second direction which follows the first one, is about removal of each of the members of the gang or body of persons outside the area within the local limits of jurisdiction of the competent authority. In suitable cases, the order of removal can also be from district or it's parts or together with contiguous districts or parts thereof. This second direction, in order to be reasonable, has to be passed for a definite period of time. In the entire section, there is common thread of participation by all and collective action against all that holds together all it's parts. The section starts with gang or body of persons, sails through the dangerous impressions that the movement or encampment of gang or body of persons creates and ends with a direction of removal passed against each of the members of the gang or body of persons. This common thread is the essence of Section 55 and that is the mandate of the legislature. In other words, Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then that action under Section 55 of the Act can be taken and which is to be taken against all members and not only a few of them selectively." (emphasis supplied).

On going through the aforesaid observation, it is evident that Section 55 of the Act can be invoked only if there are collective criminal activities of the body of persons or gang. In the instant case, there is no sufficient material on record to show that the petitioners have acted criminally as members of a gang or body of persons.

14. In the case of *Sachin Bhaskar Badgujar vs. State of Maharashtra*, 2018 SCC OnLine Bom 1429, this court has observed in para 9 as follows :

"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 41.18WP.odt 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”.

15. Further, this court (Coram: V. K. Jadhav & S. D. Kulkarni, JJ.) in Criminal Writ Petition No. 638 of 2021 has made following observation in para 24 :

“24. As discussed herein before, whatever criminal cases are there against the petitioners, did not show that they have indulged in criminal activities as a group and either of them is held as a member of the gang. The material relied upon by the authority did not make out any case against the petitioners as a member or chief of gang or a body of a persons simply on the basis of two crimes referred above cannot be said to be sufficient material to brand them as gang members or chief of the gang”.

16. In the instant case it appears that certain crimes of 2015 are considered for the externment of the some of the petitioners. Moreover, there is no material on record to show that the petitioners have indulged in the criminal activities as a group or a gang. Therefore, in the light of aforesaid observations made by this court in the above cited cases and on careful consideration of the entire material on record, we are of the opinion that the crimes against the petitioners, are individualistic in nature and do not show their involvement as a body of persons or a gang. Thus, the main requirement of Section 55 of the Act is clearly missing in the instant case. Further, it appears that both the authorities below without their being any sufficient material about public deterrence at the hands of petitioners, have wrongly opined that the petitioners need to be externed. Moreover, the crimes which are considered for externment of the petitioners are registered only in the Nandurbar (City) Police Station, but the petitioners have been externed from entire Nandurbar district. Thus, the impugned orders definitely appear excessive in nature. Apart from that there appears no subjective satisfaction of the authorities below while passing the impugned orders. The impugned orders in all these criminal writ petitions are liable to be quashed and set aside and therefore, we pass following order.

ORDER

I) Criminal Writ Petition No. 268 of 2022, Criminal Writ Petition No. 269 of 2022 and Criminal Writ Petition No.369 of 2022 are hereby allowed in terms of prayer clause "B".

II) Rule is made absolute in above terms.

III) Since the impugned orders are quashed and set aside, the Criminal Application No. 840 of 2022 in Criminal Writ Petition No. 268 of 2022 and Criminal Application No. 839 of 2022 in Criminal Writ Petition No. 269 of 2022 for

interim relief, are also disposed of being infructuous.

IV) Criminal writ petitions are disposed of accordingly.