

(2011) 03 BOM CK 0103

In the Bombay High Court

Case No : Criminal Writ Petition No. 68 of 2011

Shaikh Dayan Shaikh Lukman

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Bombay Police Act, 1951 — Section 56
Penal Code, 1860 (IPC) — Section 160

Citation : (2011) 03 BOM CK 0103

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : N.B. Kalwaghe, for the Appellant; C.N. Adgaokar, Add. Public Prosecutor, for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith and the petition is heard finally by consent.

2. Heard both learned Advocates. Perused the Petition, annexures and citations cited at the bar.

3. Petitioner was externed by order dated 21st September, 2010 [Annexure-E] from districts of Buldana, Akola, Washim, Jalna, Beed, Parbhani, Jalgaon [Khandesh] and Aurangabad. Petitioner's appeal was partly allowed and the territory of externment has been restricted to Buldana district only.

4. Petitioner has challenged before this Court the appellate order dated 24th December, 2010, urging that the order of externment was without legal basis and hence without jurisdiction, and ought to have been set aside in totality.

5. The grounds of challenge, as urged before this Court, can be summarized as follows:

[a] Out of four Offences referred to, Crime No. 64/06 is not covered by Chapters-XII, XVI and XVIII of Indian Penal Code and hence cannot be a foundation for

Showcause-Notice and the order too.

In the remaining three crimes, namely Crime Nos. 174/07, 25/08 and 204/08, Petitioner was acquitted.

The judgment and order of acquittal of only one amongst the cases is placed on record.

Said acquittal was brought to the notice of Appellate Authority.

[b] The material not included in the Showcause-Notice, namely two offences which were registered against the Petitioner on 27th April, 2010 and 31st August, 2010, was taken into consideration while passing the externment order.

[c] One amongst two offences registered during pendency of externment case is u/s 160 of Indian Penal Code and hence not within the compass of Chapters-XII, XVI and XVIII of Indian Penal Code.

[d] About period of one year was consumed from first Show-cause-Notice, which is dated 16th September, 2009, and the externment order dated 21st September, 2010, and on the ground of delay, the order is vitiated.

[e] Petitioner has not been supplied with the document, namely the proposal for externment.

6. In support of the grounds, namely [1] using material not put in the Show-cause-Notice, and [2] delay in passing order, various judgments are relied upon, which are as follows:

[1] Maroti Dattarao Bansode v. State of Maharashtra and Anr. 2007 ALL MR 3509,

[2] Ramesh @ Munda son of Briglal Karihar v. State of Mah. and Anr. 2008 ALL MR 133,

[3] Saratullah Mohammed Mukim Khan v. Sudesh K. Padvi and Ors. 2002 ALL MR 419,

[4] Yashwant Damodar Patil v. Hemant Karkare, Dy. Commr. Of Police, Thane and Anr. 1989 Mh.L.J. 1111,

[5] Sanjay Pandurang Nagpure Vs. State of Maharashtra and Another, ,

[6] Mallu @ Malva Niyaji Alli Siddhique v. State of Mah. and Ors. 2007 ALL MR 1630,

[7] Vishwas Damduji Choudhari v. State of Mah. and Anr. 2010 ALL MR 123,

[8] Sitaben M. Thakore v. Commr. Of Police, Ahmedabad and Ors. 1997 CRI. L.J. 4511, and

[9] Mohammed Alam Ibrahim Shaikh @ Aalu v. Shri S.G. Suryavanshi, Dy. Commr. Of Police, Thane and Ors. 2005 ALL MR 2593.

7. In so far as the law governing the question of externment as to the grounds to be incorporated in the notice etc., is concerned, it is clear without any ambiguity that an order of externment cannot be based on material not put to the externnee; lest it will result in violation of principles of natural justice.

It is also clear that the very purpose of externment gets defeated if the passing of order is unduly delayed. In the reported judgments, the orders were passed after one-year-and-four-months [Sitaben M. Thakore v. Commr. Of Police, Ahmedabad and Ors. (cited supra at Sr. No. 8)] and one-year-six months [Mohammed Alam Ibrahim Shaikh @ Aalu v. Shri S.G. Suryavanshi, Dy. Commr. Of Police and Ors. (cited supra at Sr. No. 9)].

8. Now, coming to the facts of the case, it is seen that:

[a] The Show-cause-Notice dated 16th September, 2009 was served on the Petitioner.

[b] Admittedly, Crime No. 64/06 is not amongst the offences from Chapters-XII, XVI and XVIII of Indian Penal Code.

[c] In so far as other three crimes are concerned, those are falling within the compass provided in Section 56 of the Bombay Police Act.

[d] The Show-cause-Notice in specific terms contains the imputation that the conduct of the Petitioner is such that because of his goon_ s personality, the witnesses are not coming forward to depose due to threat to the security of life and property.

[e] Petitioner has replied the notice. He admits the registration of offences. He does not claim that he has been acquitted in the criminal cases against him as has later pleaded, admittedly because acquittal in one case is later in date to the date of reply to Show-cause-Notice.

[f] The report of Enquiry Officer, who was Sub-Divisional Police Officer, was received by the Deputy Collector on or about 1st October, 2009 and a Show-cause-Notice dated 8th June, 2010 was served.

[g] Petitioner has submitted written reply, and order is passed on 21st September, 2010.

[h] It is not shown that any specific document or documents were demanded, and were not supplied.

[i] It is also not shown that the proposal for externment is required to be furnished according to any rule of law or precedent.

[j] Moreover, it is not shown that any material, which was incorporated in the proposal, but not included in the Showcause-Notice, is used against the Petitioner.

9. Perusal of order discloses that the material, which was put to the Petitioner, alone was considered. A passing reference is occurring in penultimate para of

narration that even during pendency of the show-cause notice, two offences were registered.

The last para of order consists of disclosure of application of mind and the reasons. This paragraph, in no manner, indicates that the new material i.e., the subsequently registered offences are referred to or relied upon.

10. On the basis of material, which was put in the Show-cause-Notice and second Show-cause-Notice, satisfaction is recorded that witnesses are not coming forward to publicly depose against the externee, and to file a report due to the fear of injury to life and property, as the Petitioner has indulged in threatening the witnesses. The Sub-Divisional Magistrate has, therefore, passed order of externment based on material already incorporated in the Show-cause-Notice.

11. The Appellate Authority has considered the points as urged and seen in the Memo of Appeal, and in a laconic way re-appreciated the material and recorded reasons in para 6 of the order concurring with the Authority on the point of externment, but disagreeing as regards the extent of the territory, and held that the externment ought to be restricted to the territory of Buldana district.

12. From what this Court has considered, it is clear that though four offences were imputed in the Show-cause-Notice, three do squarely fall within the prescription of Section 56 of the Bombay Police Act. On the basis of contents of Enquiry Report, the Sub-Divisional Magistrate has recorded satisfaction. The satisfaction is, in no manner, based on material which was put to the Petitioner.

13. In the result, the impugned orders are not only well reasoned, but are based on material which was put to the Petitioner. There are absolutely no indications of non-observance of principles of natural justice.

14. In these premises, petition does not deserve any indulgence.

15. Rule is discharged.