

(2016) 09 BOM CK 0052

In the Bombay High Court

Case No : Criminal Writ Petition No. 317 of 2016

Shaikh Mukhtyar S/o Mustafa Shaikh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Police Act, 1951 — Section 56(1)(a)

Citation : (2016) 3 AIRBomRCri 691 : (2017) ALLMRCri 268

Hon'ble Judges : B.P. Dharmadhikari and A.S. Chandurkar, JJ.

Bench : Division Bench

Advocate : Shri A.K. Waghmare, Counsel, for the Petitioner; Shri V.A. Thakre, Additional Public Prosecutor, for the Respondents/State; Shri C.P. Chandurkar, Counsel, for the Intervenors

Final Decision : Disposed Off

Judgement

A.S. Chandurkar, J.(Oral)—Heard learned counsel for the parties at length.

2. The challenge in the present criminal writ petition is to order of externment, passed by respondent No. 3, dated 11.4.2016 by which the petitioner has been externed from the limits of the Commissionerate at Nagpur for a period of one year. This order has been passed under the provisions of Section 56(1)(a) of the Maharashtra Police Act, 1951 (for short, "the said Act").

3. Show cause notice dated 5.1.2016 was issued to the petitioner in which reference was made to five offences that were stated to have been registered against him at Ambazari Police Station. Three of the offences pertain to the year 2001-02, one offence pertains to the year 2014 and the last offence pertains to the year 2015. The petitioner submitted his reply to the aforesaid notice on 14.1.2016. By the impugned order, respondent No. 3 proceeded to pass the order of externment, as stated herein above.

4. Learned counsel Shri A.K. Waghmare for the petitioner submitted that the

impugned order indicated non-application of mind on the part of the Externng Authority. He submitted that out of the five offences that were referred to in the show cause notice, the petitioner had been acquitted in two of the offences. Though it was stated in the order of externment that the aforesaid offences had been excluded from consideration by the Externng Authority, it has been stated in the impugned order that the petitioner had been indulging in such activities since the year 2001 onwards. It was then submitted that though in the show cause notice there is no reference to recording of secret statements, the reference to secret statements finds place in the impugned order. Further in the impugned order it has been vaguely stated that the witnesses were not willing to come forward to make any complaint. He then submitted that the last offence relating to the year 2015 pertains to a petty offence in which no charge-sheet has been filed even till date. He, therefore, submitted that the impugned order was liable to be set aside.

5. Learned Additional Public Prosecutor Shri V.A. Thakre for the respondents/ State relied upon the affidavit-in-reply filed on behalf of respondent No. 3. He submitted that acquittal of the petitioner from two of the offences had been taken into consideration by the Externng Authority while passing the impugned order. He submitted that on the basis of various statements recorded, the Externng Authority had reached to the conclusion that the activities of the petitioner were dangerous in nature and a case for externment under the provisions of Section 56(1)(a) of the said Act had been made out. After due verification of these statements, the satisfaction had been reached by the Externng Authority and the impugned order came to be passed.

6. Learned counsel Shri C.P. Chandurkar for the intervenors submitted that by order dated 13.7.2016, the applicants therein were permitted to address the Court before passing of final orders. He submitted that all six applicants had made various complaints as regards the dangerous activities of the petitioner before the Police Authorities. Their statements had been duly recorded and on that count, the order of externment, as passed, was liable to be sustained.

7. With the assistance of the learned counsel for the parties, we have perused the documents on record. We have also given due consideration to their respective submissions.

8. Perusal of show cause notice dated 5.1.2016 indicates reference being made to two offences of the years 2001 and 2002. The petitioner in his reply dated 14.1.2016 stated that he had been acquitted in the said two cases. The order passed by the learned Magistrate, acquitting the petitioner in both these offences indicates that the petitioner stands acquitted in Regular Criminal Case No. 65 of 2001 on 25.8.2005 and in Summary Criminal Case No. 1220 of 2002 on 20.2.2008. It is, therefore clear that in two offences that were registered in the year 2001-02, the petitioner stands acquitted. The impugned order indicates that the effect of acquittal of the petitioner has not been given its due consideration by the Externng Authority. The Externng Authority has merely stated in the

impugned order that the aforesaid two offences have not been taken into consideration. If the effect of registration of those two offences was not taken into consideration, there was no question of thereafter recording that since the year 2001 the petitioner had been indulging in the aforesaid activities resulting in breach of public peace. This aspect, therefore, indicates non-application of mind by the Externment Authority to the acquittal of the petitioner. This has, therefore, resulted in vitiating the impugned order.

9. In the impugned order, there is a reference to certain secret statements that have been recorded by the Authorities on the basis of which the order of externment came to be issued. However, the show cause notice does not refer to any such secret statement on the basis of which the petitioner was asked to show cause for his proposed externment. This aspect has resulted in vitiating the impugned order.

It is also to be noted that when the intervenors, who are six in numbers, have come up with the specific grievance that they had lodged reports against the petitioner, the show cause notice does not indicate that the Authorities have sought to rely upon these statements made by the intervenors while seeking to extern the petitioner. It is thus apparent that relevant material available with the Authorities has also not been taken into consideration before directing externment of the petitioner.

10. Another aspect to be taken into consideration is, that the show cause notice indicates five offences being registered in Ambazari Police Station against the petitioner. The order of externment, however, relates to the entire area of the Commissionerate at Nagpur. The impugned order does not indicate any such reason as to why the petitioner was required to be externed from the entire area of the Commissionerate at Nagpur in the backdrop of the show cause notice referring only to five offences pertaining to Ambazari Police Station. To that extent, the impugned order is excessive in nature.

11. In view of aforesaid, we find that impugned order of externment dated 11.4.2016 is liable to be set aside on the ground that the same has been passed without due application of mind and without taking into consideration relevant aspects. At the same time, we also find that when the intervenors had expressed willingness to lodge reports against the petitioner and were also willing to come before the Authorities in that regard, no steps in that direction have been taken into consideration by the Externment Authority. Cognizance of grievances that could have helped the Authorities in sustaining the order of externment has not been taken for which there is no explanation. In that view of the matter, as we find that the Authorities have not given due consideration to this aspect of the matter, the intervenors would be entitled to receive costs of (rupees one thousand only) each from respondent No. 1. Accordingly, following order is passed:

ORDER

1. Order dated 11.4.2016, passed by respondent No. 3, is set aside.
 2. Respondent No. 3 shall take into consideration the matter available on record and pass fresh order within a period of four months from today.
 3. The applicants in Criminal Application No. 70 of 2016 would be entitled to receive costs of (rupees one thousand only) each from respondent No. 1. The amount of costs be paid to them within a period of six weeks from today.
12. Rule is made absolute in aforesaid terms.