

(2022) 09 BOM CK 0127

In the Bombay High Court

Case No : Criminal Writ Petition No.853 Of 2022

Shaikh Naseem Shaikh Salim

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 22-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(d), 19(1)(e)
Maharashtra Police Act, 1951 — Section 56, 56(1)(a), 56(1)(b)
Indian Penal Code, 1860 — Section 34, 323, 324, 341, 354A, 427, 504, 506

Citation : (2022) 09 BOM CK 0127

Hon'ble Judges : Shrikant D. Kulkarni, J

Bench : Single Bench

Advocate : Naseem R Shaikh, S P Deshmukh

Final Decision : Allowed

Judgement

Shrikant D. Kulkarni, J

1. Rule. Rule made returnable forthwith. Heard finally with consent of both sides at admission stage.
2. The petitioner has challenged the legality of the externment order passed by the Externment Authority and confirmed by the Appellate Authority by invoking writ jurisdiction.
3. The S.D.P.O., Bhusawal submitted a proposal to the Sub-Divisional Magistrate, Bhusawal for externment of the petitioner for two years from entire Jalgaon District. Externment Authority, after taking into consideration the criminal record of the petitioner was pleased to pass externment order under section 56(1)(b) of the Maharashtra Police Act, 1951 for a period of one year from entire Jalgaon District. The petitioner had preferred an externment appeal No.31 of 2022 before the Divisional Commissioner, Nashik and assailed the externment order on various grounds. The appellate authority was pleased to dismiss his appeal and upheld the order of externment passed by the Externment Authority.

4. In the above background the petitioner is before this court.
5. Heard Mr. Naseem Shaikh, learned counsel for the petitioner and Mr. S P Deshmukh, learned APP for the State/Respondents.
6. Mr. Naseem Shaikh, learned counsel for the petitioner vehemently submitted that the petitioner is not involved in any criminal activity. Three criminal cases were registered against the petitioner. Out of them, the petitioner has been acquitted in two criminal cases and only one criminal case is pending against him. He submitted that there was no sufficient material against the petitioner to extern him from Jalgaon District for a period of one year. He submitted that, externment order is passed by the authority without application of mind. The appellate authority has also not considered all these aspects and upheld the order of externment. Both the orders are bad in law and liable to be quashed and set aside. He submitted that so-called criminal activities of the present petitioner were restricted to Bhusawal Taluka Police Station and Bhusawal Bajarpeth Police Station. As such, there was no reason for the authority to extern the petitioner from entire District. The order of externment is very much excessive. It is liable to be quashed and set aside.
7. Mr. Naseem Shaikh, learned counsel for the petitioner has placed his reliance in a case of Sayeed Firoz Sayeed Noor Vs. State of Maharashtra, reported in 2016 ALL (Cri) 3410 (Nagpur Bench) and Pappu @ Akhilesh Shivshankar Mishra Vs. The State of Maharashtra through Secretary, Home Department, Mantralaya, Mumbai with with connected matters reported in 2017 (1) Mh.L.J. Cri. 87 (Nagpur Bench).
8. Percontra, Mr. Deshmukh, learned APP for the State supported the impugned order of externment and the decision of the appellate authority as well. He submitted that both the authorities after having subjective satisfaction have arrived at conclusion to extern the petitioner for a period of one year from Jalgaon District. The Externing Authority has followed the principles of natural justice. Thus, there is no legal defect in the impugned orders passed by the respective authorities. It is not a case of excessive order of externment.
9. I have considered the submissions of both sides. I have gone through the impugned order of externment passed by the externing authority dated 28.2.2022 and confirmed by the Appellate authority in externment appeal no.31 of 2022 dated 31.5.2022. Perused the original file produced by the learned APP as well as in-camera statements.
10. Following criminal record is relied upon by the externing authority for passing externment order against the petitioner.
11. Mr. Naseem Shaikh, learned counsel for the petitioner has placed on record copies of the judgment and order of acquittal rendered by the JMFC, Bhusawal in two criminal cases. On perusing copy of the judgment and order in RCC No.84 of 2019 it would reveal that Bajarpeth Police Station, Bhusawal has fled charge-

sheet against the present petitioner in connection with Crime No.448 of 2018 under section 354-A, 323, 504, 506 of IPC. The learned JMFC, Bhusawal was pleased to acquit the petitioner by judgment and order dated 6.6.2022. Same is the case of Cr.No.847 of 2020 registered against the petitioner at Bazarpeth Police Station, Bhusawal u/s 324, 341, 427, 323, 504, 34 of the IPC. The learned JMFC, Bhusawal vide judgment and order dated 6.6.2022 was pleased to acquit the present petitioner.

12. Having regard to the above factual scenario and in view of the judgment and order of acquittal rendered by the competent court, present petitioner has been acquitted out of two criminal cases. Only one criminal case is pending against the petitioner.

13. In *Deepak Vs. State of Maharashtra* reported in 2022 SCC online SC 99, the Hon'ble Supreme Court has made important observations in paragraph no.10 which are as under :-

"10. There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause (b), there must be objective material on the basis of which the competent authority must record subjective satisfaction that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or offences punishable under Chapter XII, XVI or XVII of the IPC. Offences under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences under Chapter XVII are offences relating to the property. In a given case, even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that by itself is not sufficient to pass an order of externment under clause (b) of sub-section (1) of Section 56. Moreover, when clause (b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b).

14. In a case of Rahmat Khan alias Rammu Bismillah Vs. Deputy Commissioner of Police reported in (2021) 8 SCC 362, the Hon'ble Supreme Court has held that in view of the scheme of Maharashtra Police Act, 1951 the fundamental rights of the citizens guaranteed under Article 19(1)(d) and (e) of the Constitution cannot be taken away on frivolous grounds.

15. It is mandatory on the part of the competent authority to have subjective satisfaction before passing the order of externment. In other words, there must be material available on record for recording a subjective satisfaction as contemplated u/s 56 (1)(b) of the Maharashtra Police Act, 1951.

16. Having regard to the legal position made clear by the Hon'ble Supreme Court, if the impugned order of externment passed by the competent authority and order of appellate authority are studied, it would reveal that there was no proper application of mind. There was no subjective satisfaction before passing the order of externment against the petitioner. There was no sufficient material against the petitioner to extern him from the entire Jalgaon District.

17. On perusing two in-camera statements relied upon by the externing authority are concerned, it would reveal that those statements are replica of each other, except change of month, rest of the contents are the same. Such kind of in-camera statements cannot be relied upon.

18. In view of above referred two important citations of the Hon'ble Supreme Court, there is no need to discuss the citation of the Division Bench of this Court in view of clear legal position discussed above.

19. In the light of the above discussion, I am of the considered view that the impugned orders are liable to be quashed and set aside since those are not satisfying requirement of law.

ORDER

- i. The Criminal Writ Petition stands allowed in terms of prayer clause 9-a.
- ii. Rule is made absolute in above terms.
- iii. No order as to costs.
- iv. Petition is accordingly disposed off.