

(2019) 01 BOM CK 0137

In the Bombay High Court

Case No : Criminal Writ Petition No. 1173, 1174 Of 2018, 4 Of 2019

Shaikh Shahid Ahmad

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 28-01-2019

Acts Referred:

Maharashtra Police Act, 1951 — Section 55, 56(1), 59, 59(1)

Citation : (2019) 2 BCR(Cri) 297 : (2019) 1 CivCC 297

Hon'ble Judges : Sunil B. Shukre, J;S.M. Modak, J

Bench : Division Bench

Advocate : Abdul Subhan, S.S. Doifode

Final Decision : Allowed

Judgement

Sunil B. Shukre, J.

1. Rule. Rule is made returnable forthwith and heard finally with the consent of Shri Firdos Mirza and Abdul Subhan, learned counsel for the petitioners in respective petitions and Shri S.S. Doifode, learned APP for the respondents.

2. These petitions challenge the legality and correctness of the order of externment dated 14.09.2018 commonly passed by the Superintendent of Police, Buldhana, under Section 55 of the Maharashtra Police Act, 1951 (Act of 1951 for short) and also the order passed by respondent No. 5

- Divisional Commissioner, Amravati on 30.11.2018, confirming the order dated 14.09.2018 passed by respondent No. 2.

3. Shri Mirza and Shri Abdul Subhan, learned counsel appearing for the petitioners in respective petitions have submitted that the impugned order is bad in law on three counts. Firstly, the notice issued under Section 59 of the Act of 1951 is devoid of the material allegations stated in general terms, thereby giving an inference that there is no material in existence warranting any action under Section 55 of the Act of 1951. Secondly, there is absence of live link between the

offences registered and the impression created thereby in the minds of members of public. Thirdly, no effective hearing has been granted to the petitioners.

4. According to the learned APP, in this case three show cause notices have been issued to the petitioners and if one considers them carefully, one would find that they are consistent with the requirements of Section 59 of the Act of 1951. He also submits that several offences have been registered against all the petitioners and these petitioners forming together a gang of criminals, by indulging in such dangerous offences, have created an impression in the minds of the members of the society that their movements are likely to cause danger or harm to them or would give rise to a reasonable suspicion that some unlawful designs are entertained by them. Thus, according to him, there is live link between the offences registered against them and what is ultimately perceived by the people. He further submits that the impugned order itself would show that appropriate and effective opportunity of hearing has been given to the petitioners. On these grounds, these petitions deserve to be dismissed forthwith.

5. To deal with the arguments canvassed on behalf of both sides, it would be appropriate that we consider the essentials of Section 55 of the Act of 1951, which section has been invoked in the present case to pass the common impugned orders. This section enables the authority to pass an order of externment with a view to break down the strength of gang or body of persons, whose members by their actions or movements, create a reasonable fear in the mind of the members of the society regarding the safety of their person or the property. This section works on the principle that if the strength lies in unity, by effectively striking at the unity, the strength of a gang or body of persons is drained out and the gang or the body of persons no longer remains any danger to the persons or their properties. This is the reason why section requires three essential ingredients to be present before the power under this section is invoked by the authority. These three essential requisites are : 1. Presence of a gang or body of persons in the area within the local limits of the Externment Authority; 2. The movements or encampment of the gang or body of persons in such area; and 3. The dangerous or alarming or suspicious movements of the gang or body of persons. The strength of the gang or body of persons may be calculated on the basis of intensity of danger or harm that the members may pose or reasonableness of suspicion about such gang or body of persons having some unlawful designs on its mind. The essence of Section 55 is of the collection of certain persons together and collective action on their part, which would cause or which is likely to cause danger or harm or reasonable suspicion of members of such a body of persons indulging in unlawful designs.

6. This has been explained by a Division Bench of this Court in the case of Ahammad Mainuddin Shaikh vs. The State of Maharashtra & Anr., reported at 2013 ALL MR (Cri) 3804, by stating that commonality of the action of several persons joined together is the essential requisite of Section 55 of the Act of 1951. The Division Bench in para 8 observed that 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 when it is to be taken, it must be taken against all members and not only a few of them selectively. This view has also been followed by another Division Bench in the case of *Vijay Lalso Jadhav vs. State of Maharashtra & Ors.*, reported at 2014 ALL MR (Cri) 1277. So the commonness of the persons as well as action are the prerequisites for invoking the power of the officer under Section 55 of the Act of 1951, which law is now well settled.

7. On examining the three show cause notices issued under Section 59 of the Act of 1951, in the light of the law so settled and discussed earlier with regard to the applicability of Section 55 of the Act of 1951, we find that these show cause notices and as rightly submitted by the learned counsel for the petitioners, fail in all the parameters. These show cause notices speak about commission of certain offences by the persons i.e. the petitioners to whom they have been issued and also say that because of their actions, harm or danger is being caused to the persons and their property inasmuch as witnesses are not coming out in open for deposing against them. Thus, the averments in the show cause notice relate more to the clauses (a) and (b) of Section 56(1) of the Act of 1951 rather than to Section 55 of the same Act. We have seen that Section 55 requires a collection of body of persons and collective harmful activity or movement on its part. These show cause notices do not disclose presence of these essential ingredients of Section 55 of the Act of 1951. Therefore, these show cause notices, we would say, do not also meet the parameters of Section 59 (1) of the Act of 1951, which are essentially about the notice containing averments made in general terms regarding the material allegations against the proposed externees.

8. Here, in this case, the material allegations relate to the persons forming a gang or body, their movements or encampment and the consequences of their assemblage and movements in causing danger or harm to the members of body or their property or creating reasonable suspicion about evil designs and, therefore, these material allegations ought to have appeared, if not in a comprehensive or specific manner but generally in the show cause notices. However, all the show cause notices are devoid of the same.

9. Thus, we find that the show cause notices issued to the petitioners are bad in law and as these show cause notices form the foundation of the further action taken against the petitioners, the further action also would have to be seen as bad in law by applying the principle where the foundation falls, edifice built upon it must also fall. On this ground alone, we are of the opinion that these Criminal Writ Petitions can be allowed. We are also of the opinion that the foundation of the case having crumbled down, there is no need for us to deal with the other two objections relating to absence of live link and failure to give proper opportunity of hearing, raised by the petitioners.

10. In the result, the impugned orders are quashed and set aside. Criminal Writ Petitions are accordingly allowed. Rule is made absolute in above terms.