
(2021) 07 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No.2460 Of 2021

Shailesh Chaganrao Pawar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 27-07-2021

Acts Referred:

Maharashtra Police Act, 1951 — Section 56
Indian Penal Code, 1860 — Section 34, 324, 506

Citation : (2021) 07 BOM CK 0008

Hon'ble Judges : S.S. Shinde, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : Abhishek R. Avachat, V.B. Konde Deshmuk

Final Decision : Disposed Of

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith with the consent of the learned Counsel appearing for the parties and heard finally.

2. The petition is filed seeking the following substantive relief:

â??b. The order, dated 22/06/2021, of The Divisional Commissioner,Pune passed in Externment Appeal (No-140/2020) and also the order, dated

06/11/2020, of the Deputy commissioner of police, zone 2, Pune, passed in Externment case (order no.18/2020) may kindly be quashed and set-

aside;â??

3. It is the case of the petitioner that on 5.8.2020, the Assistant Commissioner of Police, Swargate Division, Pune issued a show-cause notice under

section 56 of the Maharashtra Police Act, 1951 proposing the externment of the petitioner for a period of two years from the jurisdiction of Pune

Commissionerate, Pimpri-Chinchwad Commissionerate, Pune city and the entire district. The enquiry was conducted by the Assistant Commissioner

of Police, Swargate Division, Pune. He submitted a report to the Deputy Commissioner of Police, Zone 2, Pune. On 6.11.2021, the Deputy

Commissioner of Police, Pune ordered externment of the petitioner for a period of 2 years from the jurisdiction of Pune Commissionerate, Pimpri-

Chinchwad Commissionerate, Pune city and the entire district.

4. Being aggrieved by the said order, the petitioner filed an appeal before the Divisional Commissioner, Pune (Revenue), Pune Division, Pune. The

said appellate authority partly allowed the appeal by order dated 22nd June, 2021 thereby curtailing the period of externment from two years to one

year. Being aggrieved by both the orders, this petition is filed.

5. Learned Counsel appearing for the petitioner submits that, there is no discussion in the impugned order showing a live link between the offences

registered against the petitioner, which are mentioned in the impugned order and initiation of the externment proceedings against the petitioner. It is

submitted that out of seven offences, the petitioner has been acquitted from four offences and only three offences were remaining by the time the

externment proceedings were concluded by the first authority. It is submitted that in the offence registered as C.R. No.169 of 2012 at Rajgad police

station, the petitioner has been acquitted. The learned Counsel invited our attention to the alleged in-camera statements recorded by the concerned

authorities and submitted that there are no material particulars of the said incidents, as alleged in the statements, as to the date and time they had taken

place. It is submitted that the concerned authorities failed to establish a live link between the offences pending against the petitioner wherein

investigation/trial is pending and it has any nexus with the initiation of externment proceedings against the petitioner. Therefore, the learned Counsel

appearing for the petitioner submits that the petition deserves to be allowed.

6. On the other hand, the learned APP appearing for the Respondent â?" State relying upon the reasons recorded in the impugned orders and relevant

documents submitted that the alleged activities of the petitioner caused danger to the life and property of citizens residing in the vicinity and ultimately

gave rise for initiation of externment proceedings against the petitioner. It is submitted that the concerned authority has recorded in-camera statements

of the witnesses wherein it is alleged that due to terror created by the petitioner, the witnesses are not coming forward to depose against him due to fear to their person and property.

7. We have given due consideration to the rival submissions. With the able assistance of the learned Counsel appearing for the petitioner and the learned APP, we have carefully perused the reasons assigned by both the authorities. It appears that in "camera statements of two witnesses were recorded by the concerned authority. We have seen the contents of the said statements. The gist of the said statements has been reproduced in the petition. It is mentioned that witness A has stated that the petitioner is a goon. He roams within the jurisdiction of Sahakarnagar and neighbouring police stations. He owns two paan shops and does not allow other paan shops to conduct the said business. He threatens other paan shop owners. The petitioner possesses dangerous weapons and as a result, the people in the vicinity are not coming forward to depose against the petitioner. One or two incidents have been stated in the statements.

8. Witness B in his statement has stated that on 17.7.2020, at about 7pm, one of his friends came to meet him at home. They were standing on the road in front of the house. The petitioner along with his friend, went to the place of the incident on motor bike. The petitioner suddenly began abusing the said witness and his friend and asked them to leave the said place as he wanted to carry out some of his work there. They refused to leave the said place and the petitioner abused them.

9. Upon careful perusal of the allegations in both the statements, at the most, it can be said that it would create law and order problem and by no stretch of imagination, it can be inferred that the said alleged acts of the petitioner had impact upon public order.

10. It appears that by the time proceedings were concluded by the authorities in Crime No.321 of 2008 registered with Sahakarnagar police station for the offences punishable under sections 324, 506 read with 34 of the Indian Penal Code, there was settlement and the petitioner came to be acquitted from the said offences. However, both the authorities have not considered the said acquittal and relied upon the pending three offences including the aforesaid offence. There is no detailed discussion in the order passed by the first authority that the alleged activities of the petitioner caused or

calculated to cause alarm, danger or harm to the person or property and due to fear, the witnesses are not coming forward to depose against him.

11. In the light of the discussion in the foregoing paragraphs, we are of the opinion that the subjective satisfaction arrived at by the respondent â?

authorities is vitiated. There was no proper application of mind inasmuch as two offences were pending and the authority relied upon the third offence

which has resulted in the acquittal of the petitioner. Secondly, no live link is established between pending old and stale offences and the instant

proceedings. Thirdly, no cogent reasons are given why the externment of the petitioner was warranted from larger area.

12. In the light of discussion in the foregoing paragraphs, we are of the opinion that there was no proper application of mind by the externing authority

and subjective satisfaction arrived at by the authorities stood vitiated and consequently, the petitioner is entitled to the benefit of the same. It is not

necessary for us to elaborate the reasons once we have arrived at a conclusion that there was no proper application of mind by the externing

authority.

13. In that view of the matter, for the reasons and discussion in the foregoing paragraphs, the petition is allowed. Rule made absolute in terms of

prayer clause (b) reproduced above.

14. Writ Petition stands disposed of accordingly.