

(1955) 12 BOM CK 0023
In the Bombay High Court
Case No : Misc. No. 336 of 1955

Shankar Narayan Mohite

APPELLANT

Vs

State of Bombay and Others

RESPONDENT

Date of Decision : 15-12-1955

Acts Referred:

Bombay Police Act, 1951 — Section 31, 57, 59, 61
Childrens Act, 1960 — Section 102
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114
Penal Code, 1860 (IPC) — Section 114, 302

Citation : AIR 1956 Bom 582

Hon'ble Judges : Coyajee, J

Bench : Single Bench

Advocate : S.A. Mehta, for the Appellant; G.N. Joshi, for the Respondent

Judgement

1. In this petition the petitioner challenges the validity of an order of externment made by the Deputy Commissioner of Police, Crime Branch, C.I.D. dated 6-5-1955 under which he ordered the petitioner to leave Greater Bombay and not to enter the limits of Greater Bombay for a period of 18 months. The order is made u/s 57 Bombay Police Act, 1951, which says that if a person has been convicted under Chapter XVII of the Indian Penal Code the Commissioner specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area and not to enter or return to the area for a specified period.

The powers of the Court to interfere with such an order are limited by Section 61 of the same Act, namely any order passed u/s 57 shall not be called in question in any Court except on certain grounds laid down namely that the procedure prescribed by this Act in Section 59, Sub-section (c) was not followed or that there was no material before the authority concerned upon which it could have

based its order or on the ground that the said authority was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person against whom the order is made.

2. Therefore it is alleged in the petition that he was not given an opportunity as prescribed u/s 59 to call witnesses and to adduce evidence in his favour.

That is categorically denied in para 12 of the affidavit in reply which says that the petitioner did not apply for permission to examine any witnesses and when he was asked whether he required time to file a written statement he replied that he did not wish to file any written statement and the deponent says that after having questioned the petitioner what he had to say in the matter and after hearing him and considering the explanation given by him the deponent of this affidavit was satisfied that the convictions mentioned in the externment, order should be passed.

Mr. G.N. Joshi on behalf of the respondents has handed up to me the statement made by the petitioner and from that I am satisfied that this part of the procedure had been sufficiently complied with.

3. It is necessary, to appreciate the other grounds, that I should set out certain dates. The petitioner was arrested on a charge of murder on the 29th of March and he was discharged on the 28th of July. The show cause notice was issued to him on the 4th of May, served on the 4th of May and the order was made on the 5th of May. An appeal was preferred by the petitioner to the Government which was rejected on 31-8-1955 and the petitioner left Greater Bombay on 1-9-1955.

4. It is conceded on behalf of the petitioner that he was convicted of the offence of theft on two occasions as set out in the order itself. But he states that at the time when he was convicted of these offences, he was a minor. He says his age today is not only 22 but that age of 22 is set out in the show cause notice. If he is 22 years old today when the first conviction was on 2-/-1946, and the second conviction was on 24-11-1950, it is contended that on that computation he was 13 years old when he was first convicted and 16 1/2 years old when he was convicted on the second occasion.

Mr. Mehta on behalf of the petitioner referred me to Section 102 of the Children's Act which, in my opinion, has no relevance as that only saves a party, from disqualification if convicted under the Children's Act. He also referred me to the Probationers Act which has no bearing in this case.

The very fact that the Magistrate convicted and sentenced the accused raises a presumption that he was not a minor at the date when he was convicted and it is for the petitioner to rebut that very strong presumption, but even on merits it appears that the age of 22 as appearing in the show cause notice was the age set out by the petitioner in his statement to the Police and according to the Police he is today at least 26 years old.

On that computation that he is 26 years old at the date of his last conviction in

1950 he would be 21 years old at least. In these circumstances there is no valid ground on which this argument could be sustained.

4a. The next point taken was that in fact the notice to show cause set out first under the heading "allegations" in two counts namely of convictions in 1946 and in 1950 and a further count or allegation is added that he has now been arrested on 29-3-1955 u/s 302 read with Section 114, Penal Code, at the Palton Road Police Station for the stabbing of one Mahadeo Sahadeo Kadam and that "you are likely, again to engage yourself in the commission of an offence similar to that for Which you have been convicted".

In other words that he is likely under the notice to repeat the offence of which he has been convicted, Mr. Mehta has rightly and with some force emphasized that the reference to the pending prosecution and allegation that he had committed murder was an extraneous matter which under the notice must have been taken into consideration by the Commissioner of Police and that if extraneous matter is not taken into consideration then there is no ground forthcoming.

I am afraid I am unable to accept this argument which was to some extent pressed upon me with some emphasis, for two reasons. First of all, if one looks at the order of externment it only refers to the two convictions and thereafter it is said that the reason for making the order was that the petitioner is likely again to engage himself in the commission of a similar offence.

Therefore it is not for a Court to sit in judgment and find out what was the exact ground on which the appropriate authority namely the Deputy Commissioner of Police came to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted as prescribed u/s 57, Bombay Police Act.

It has been laid down by a former Judge of the Bombay High Court, Mr. Justice Lokur, that this Section 57 is expressly enacted for the purpose of externing parties on evidence which in the opinion of the executive officers is sufficient to bring the conviction to their minds if the presence of the party in Bombay is detrimental to the interests of the general public, although if the party were prosecuted in a Court of law such evidence may fall short of an actual conviction. In these circumstances and for that reason this is made a matter entirely for the discretion and subjective examination of the Commissioner of Police.

5. The next point made is that the order is indefinite and vague inasmuch as it says that the petitioner shall remove himself from Greater Bombay within two days from the date of the final order in the case pending against him and in case he is convicted two days after his release, otherwise within two days of the termination of the case.

I do not see any vagueness in that. In fact no party could have been externed before the proceedings were over and no such order could have been made. Therefore necessarily the appropriate authority had to prescribe a period

subsequent upon either the discharge of the accused or conviction and serving of the sentence by the accused in that particular case and therefore in my opinion there is no indefiniteness in the period prescribed.

6. Finally Mr. Mehta said that Section 31, Bombay Police Act, was ultra vires the powers of the Legislature and void under Article 13 of the Constitution. Although that contention was made it was not more than a submission and no argument was presented either based on authorities or principles to sustain that proposition.

7. Lastly I may refer to a point raised by Mr. Joshi on behalf of the respondents. Although that is a technical point, it is a point which I cannot help considering and that is that the order challenged on this petition is the order of the Deputy Commissioner of Police whilst that order is really merged in the order made on appeal to the Government of Bombay and therefore this petition should have prayed for setting aside the order in appeal of the Government of Bombay and not the order of the Deputy Commissioner of Police. In law there is substance in this point, but inasmuch as on the merits I have decided against the petitioner, it, would be unnecessary to determine this point although in my opinion that point should be upheld.

8. I may say that a certain allegation was made on behalf of the respondents that certain facts have been suppressed from the petition namely of a prior conviction subsequent to these two convictions and the change of name by the petitioner.

I do not think there was any deliberate suppression at all and I am satisfied from the statement made by Mr. Mehta that the circumstances in which instructions had to be obtained through an intermediary and the hurried manner in which the petition had to be presented, the petitioner being at Borivli, were such that such omissions would take place in a petition of this kind.

I therefore do not accept the allegation that there was any deliberate suppression of any material facts from the petition.

9. In these circumstances, the rule must stand discharged and the petition dismissed with costs fixed at Rs. 250/-.

10. Petition dismissed.