
(2013) 08 BOM CK 0258

In the Bombay High Court

Case No : Criminal Writ Petition No. 262 of 2012

Shankar Singh

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 4408

Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J

Bench : Division Bench

Advocate : S.V. Sirpurkar, for the Appellant; R.S. Nayak, Assistant Public Prosecutor, for the Respondent

Judgement

Z.A. Haq, J.—Heard Mr. Sirpurkar, learned Advocate for the petitioner and Mr. Nayak, learned A.P.P. for the respondents. Rule. Rule made returnable forthwith.

2. The petitioner has challenged the order passed by the Sub Divisional Magistrate, Warora on 15th September, 2012 externing the petitioner from six districts i.e. Chandrapur, Yavatmal, Wardha, Nagpur, Bhandara and Gadchiroli, for a period of two years, u/s 56 of the Bombay Police Act. By amending the petition, the petitioner has challenged the order passed by the Secretary (Special), Home Department, Government of Maharashtra, on 28th January, 2013 dismissing the appeal filed by the petitioner.

3. The submission on behalf of the petitioner is that the impugned order passed by the Sub Divisional Magistrate shows that the reliance is placed on seven proceedings, out of which in five proceedings the petitioner has been acquitted. According to the petitioner, in any case, the learned Sub Divisional Magistrate has placed reliance unnecessarily on the proceedings of 1990, 1991, 1992, 1994 and 1998 which were stale proceedings and could not have been relied upon, while passing the impugned order. The learned Advocate for the petitioner has further submitted that the crimes were registered with the Police Station, Warora and Police Station, Majari and by the impugned order the petitioner is externed

from six districts and the impugned order has no nexus with the externment of the petitioner. According to the petitioner, the Appellate Authority has also not considered the relevant material and, therefore, the appellate order passed is vitiated. Learned Advocate for petitioner, in support of his submissions, has rightly relied on the judgment reported in Badri Nath Vs. Financial Commissioner (Appeals-II), Punjab, Chandigarh and others, .

4. Mr. Nayak, learned A.P.P. for the respondents, has supported the impugned order and has relied on the alleged antecedents of the petitioner, as shown in the chart reproduced in the impugned order.

5. In our considered opinion, the submissions made on behalf of the petitioner have to be up-held. The learned Sub Divisional Magistrate could not have passed the order of externment of the petitioner from six districts i.e. Chandrapur, Yavatmal, Wardha, Nagpur, Bhandara and Gadchiroli overlooking the relevant fact that the crimes against the petitioner are registered with Police Station, Warora and Police Station, Majari. This shows the non-application of mind by the learned Sub Divisional Magistrate. The submission on behalf of the petitioner that he has been acquitted in five out of the seven cases is also relevant and the fact that the cases of 1990, 1992, 1994 and 1998 were stale prosecution should also have been considered by the learned Sub Divisional Magistrate. We find that the learned Sub Divisional Magistrate has taken into consideration the extraneous material for passing the impugned order. The externment of the petitioner from six districts is without any reason inasmuch as already stated earlier, the crimes against the petitioner are registered with the Police Stations only in Warora Tahsil. The Appellate Authority has also failed to appreciate the relevant material and has committed the same error of considering the extraneous material and the stale prosecution to maintain the order of externment. The impugned orders are unsustainable in law and are liable to be quashed. In the result, Rule is made absolute in terms of prayer clause (i) and (I-A). No costs.