
(2017) 04 BOM CK 0084
In the Bombay High Court
Case No : 463 of 2017

Shanno @ Shamali Jafar Pathan

APPELLANT

Vs

The State of Maharashtra, & Ors.

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Bombay Police Act, 1951, Section 59, Section 56(1)(b), Section 56(1)(a) -
Hearing to be given before order under sections 55, 56, or 57 is passed - Removal of persons about t

Citation : (2017) 04 BOM CK 0084

Hon'ble Judges : S.S.Shinde, K.K.Sonawane

Bench : DIVISON BENCH

Advocate : D.R.Jaybhar, P.V.Diggikar

Final Decision : Allowed

Judgement

1. Heard.
2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.
3. This Writ Petition takes exception to the judgment and order dated 17th March, 2017, passed by the Divisional Commissioner, Nashik Division, Nashik in Appeal No.5/2017, thereby confirming the judgment and order dated 12th January, 2017, passed by the Sub Divisional Magistrate, Pathardi Region, Pathardi in Externment Case bearing No.S.R. No.103/2016.
4. The learned counsel appearing for the petitioner submits that, there are in all 6 cases, registered at Pathardi Police Station, Pathardi, against the petitioner. Out of the said 6 cases, which are relied upon by the authorities, the petitioner is acquitted from two cases. The said aspect has not been considered by the respondent ? authorities before passing the impugned orders. It is submitted that the cases filed against the petitioner are only with a view to harass the

petitioner. It is submitted that the petitioner is the only bread earner member of the family. An old aged parents are dependent upon him. He is doing business of selling the scrapped material in Pathardi Town. It is submitted that, all alleged offences have been registered against the petitioner at Pathardi Police Station, and therefore, without assigning any specific reasons, the petitioner is unnecessary externed from the boundaries of Ahmednagar, Shevgaon and Pathardi Taluka from Ahmednagar District and also from the boundaries of Ashti and Shirur Kasar Talukas in Beed District. It is submitted that, the order passed by respondent no.2 is excessive. It is submitted that issuance of show cause notice and also the order passed by respondent no.2, is without application of mind. There is no reference to the incamera statements, either in the show cause notice or in the impugned order passed by respondent no.2. It is submitted that though it is not expected to give the names of witnesses, whose incamera statements have been recorded or other material particulars of such recording of the statement, nevertheless in view of the mandate of Section 56 (1) (b) of the Maharashtra Police Act, it is necessary to record incamera statements of the witnesses, so as to arrive at the subjective satisfaction by the concerned authority that the witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. Therefore, the learned counsel appearing for the petitioner submits that the petition may be allowed.

5. The learned APP appearing for respondent?State, relying upon the original record and also the reasons assigned in the impugned orders, submits that, the petition is devoid of any merits and the same may be rejected. He further submits that there is reference to the incamera statements recorded by the respondent authority that the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property.

6. We have carefully considered the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent?State. With their able assistance, we have also carefully perused the pleadings and grounds taken in the petition, annexures thereto, original record made available for perusal by the respondents. Upon careful perusal of the impugned show cause notice and the orders impugned in this Petition, it appears that, all the offences registered against the petitioner are at Pathardi Police Station, Pathardi. Respondent no.2 has not given any specific reason why the externment of the petitioner from the Ahmednagar, Shevgaon and Pathardi Taluka from Ahmednagar District and also from the boundaries of Ashti and Shirur Kasar Talukas in Beed District, was necessary. It is true that, if there is sufficient and cogent material on record, and by assigning specific reasons, proposed externee can be externed from other adjoining Talukas or Districts. But in the present case, respondent no.2 has not assigned any specific reasons, why the petitioner's externment was necessary from Ahmednagar, Shevgaon and Pathardi Taluka from Ahmednagar District and also from the boundaries of Ashti

and Shirur Kasar Talukas in Beed District. It is true that the Appellate Authority i.e. respondent no.3 has reduced the period of externment of 2 years to one year and also externment of the petitioner is restricted from Pathardi Taluka. However, an initiation of the externment proceedings is serious matter for the proposed externee, inasmuch as, his right to move from one place to another or right to reside / stay at the particular place of his choice gets restricted and curtailed, in case an excessive externment order is passed. Therefore, it is necessary for the concerned authority while initiating an externment proceedings, to strictly adhere to the mandate of the provisions of Section 56 (1) (a) (b) and 59 of the Maharashtra Police Act. Therefore, the proper and conscious application of mind by the authority in such proceedings is indispensable, and the mandate of law contemplates such exercise.

7. Upon careful perusal of the show cause notice and also the order passed by respondent no.2, there is no reference to the incamera statements of the witnesses. At this juncture, it would be apt to reproduce herein below the provisions of Section 56 (1) (a) and (b) of the Maharashtra Police Act reads thus:

56. Removal of persons about to commit offence

(1)

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or

(b) 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 an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or

[Underlines are added]

8. Upon careful perusal of the aforesaid provisions, an order of externment can be passed against a person whose movements or acts are causing or calculated to cause alarm, danger or harm to person or property as provided in clause (a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence as provided in clause (b). An order of externment can also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, or Chapter XVI, or Chapter XVII of the Indian Penal Code. But in addition to the above, the concerned Officer, who is dealing externment proceedings, should be of the opinion that the witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.

9. The Division Bench of the Bombay High Court [at Principal seat] in the case of Yeshwant Damodar Patil Vs. Hemant Karkar, Dy. Commissioner of Police & another, 1989 (3) Bom.C.R. 240 had occasioned to consider the scope of provisions of Section 56 [1] [a] and [b] and also the mandate of provisions of Section 59 of the Bombay Police Act. It would be gainful to reproduce herein below para 3 of the said judgment:

3. Section 56 (i) of the Bombay Police Act visualises three situations in which the order of externment could be passed by the designated officer. We will, however, ignore, for the purpose of the disposal of this petition the third type of situation and only analyse the two situations which are covered by Clauses (a) and (b) of section 56 (i) of the Act. An order of externment can be passed against a person whose movements or acts are causing or calculated to cause alarm, danger or harm to person or property. That is what is provided in clause (a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence. It is so provided in the first part of clause (b) of section 56 (i) of the Act. An order of externment can also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, of Chapter XVI, or Chapter XVII of the Indian Penal Code. This is so provided in the latter part of clause (b) of section 56 (i) of the Act. But it is not enough that these conditions alone are satisfied. In addition to this the designated officer should be of the opinion that witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.

[Underlines added]

10. The aforementioned provisions make it abundantly clear that in order to fulfill mandate of the provisions of Section 56 (1) (b), the designated officer has to record his opinion that witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.

11. Yet in another exposition of law in the case of Balu Vs. The Divisional Magistrate, Pandharpur, 1969 Mh.L.J. 387, while appreciating the facts involved in that case, this Court held that extending the area of externment not only outside Pandharpur Taluka but to the Districts of Solapur, Pune and Satara is illegal since the alleged activities against the petitioner therein, as stated in the show cause notice, were confined to the Pandharpur City.

12. In the light of the discussion herein above, it will have to be held that there was no proper application of mind on the part of respondent no.2 and an order of externment is excessive, inasmuch as, the petitioner is externed from Ahmednagar, Shevgaon and Pathardi Taluka from Ahmednagar District and also from the boundaries of Ashti and Shirur Kasar Talukas in Beed District, through

the offences are registered only at Pathardi Police Station, Pathardi, District Ahmednagar.

13. In the light of the discussion herein above, we pass the following order:
ORDER

i) The Writ Petition is allowed. The judgment and order dated 17th March, 2017, passed by the Divisional Commissioner, Nashik Division, Nashik in Appeal No.5/2017 and the judgment and order dated 12th January, 2017, passed by the Sub Divisional Magistrate, Pathardi Region, Pathardi in Externment Case bearing No.SR No.103/2016 stand quashed and set aside.

ii) Rule made absolute in the above terms. The Writ Petition stands disposed of. No order as to costs.