

(2016) 12 BOM CK 0045

In the Bombay High Court

Case No : Criminal Writ Petition No.1461 of 2016

Sharad s/o. Vithalrao Munde

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Maharashtra Police Act, 1951 — Section 55, Section 56

Citation : (2017) 1 AIRBomRCri 392 : (2017) ALLMRCri 388 : (2017) 1 BomCR(Cri) 488 : (2017) 1 MhLJCrI 223

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

Bench : Division Bench

Advocate : Mr. P.S. Patil, Addl.P.P, for the Respondent/State; Mr. S.S. Thombre, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

S.S. Shinde, J. - Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Writ Petition is filed by the petitioner, under Articles 226 and 227 of the Constitution of India, questioning the legality, propriety and correctness of the impugned order dated 21st September, 2016, passed by respondent no.4 in File No.2016 / MAG/Externment/CR01 and also the order passed by the appellate Authority i.e. respondent no.2 to the extent of confirming the order of externment of the petitioner from Beed District, vide order dated 09.11.2016 in Appeal No.125/2016.

4. The learned counsel appearing for the petitioner submits that the order of externment passed by respondent no.4 is outcome of political vendetta inasmuch as the same is passed at the instance of the Guardian Minister of Beed District so as to ensure that the petitioner is not present in Parali [Vajinath] Town during the period of elections of the Municipal Council. It is submitted that the FIR being

Crime No. 273/2015 registered against the petitioner for the offences punishable under Sections 354 (A), 341 r/w. 34 of the Indian Penal Code and Section 25 (3) of the Arms Act is filed at the instance of the Guardian Minister and it is clear indication that the said FIR is registered with false allegation so as to involve the petitioner only to gain political mileage in the election of Municipal Council Parali [Vaijnath]. It is submitted that the petitioner was elected as a member of the Municipal Council, Parali [Vaijnath] for the period from 2011 to 2016. He is also a Director of the Agriculture Produce Market Committee, Parali [Vaijnath] and he was also group leader of the Nationalist Congress Party.

5. The order passed by respondent no.4 suffers from nonapplication of mind, same is cryptic and unsustainable in law. It is submitted that though the petitioner is acquitted from 6 crimes after fullfledged trial nevertheless without application of mind the proposal was submitted by the concerned Police Officer mentioning therein those 6 crimes from which the petitioner stands acquitted even before submitting proposal for externment by the concerned Police Officer. It is submitted that the alleged activities of the petitioner are within the jurisdiction of the Parali Vaijnath Police Station in City area, however, the petitioner was externed by respondent no.4 from Beed, Parbhani, Latur, Osmanabad and Jalna Districts. Though the Appellate Authority has modified the order passed by respondent no.4 to the extent of externing the petitioner from Parbhani, Latur, Osmanabad and Jalna Districts, nevertheless the Appellate Authority did not properly appreciate the contention of the petitioner that the order passed by respondent no.4 stands vitiated due to nonapplication of mind, and therefore, the said should have been quashed in its entire by the Appellate Authority. It is submitted that respondent no.4 did not follow the mandate of provisions of Section 56 (1) (a) and (b) of the Maharashtra Police Act, inasmuch as there is no elaborate reference to the incamera statements, if any, recorded by respondent no.4 Authority. Therefore, relying upon the pleadings/grounds taken in the Petition, annexures thereto and exposition of law by the Division Bench of the Bombay High Court Bench at Aurangabad in the case of Iqbaluddin Ziauddin Pirzade v. The State of Maharashtra and Ors.2015 (2) Bom.C.R.[Cri]464: [2015 ALL MR (Cri)2298] and also the Division Bench of the Bombay High Court in the cases of Shafi and Saddam Shoukat Qureshi v. The Assistant Police Commissioner and others in Criminal Writ Petition No.2032 of 2016, decided on 11.08.2016, Yeshwant Damodar Patil v. Hemant Karkar, Dy. Commissioner of Police & another 1989 (3)Bom.C.R.240 Imran Abdul Wahid Hasmi v. Deputy Commissioner of Police and others 2016 (3) Bom .C.R.[Cri]642:[2016 ALL MR (Cri)3056],Umar Mohamed Malbari v. K.P.Gaikwad, Dy. Commissioner of Police and another 1988 Mh.L.J.1034:[2000 ALL MR (Cri)578] Ashfaq v. The State of Maharashtra 2015 ALL MR (Cri)1110 and Syed Noman Hussaini Kausar v. The State of Maharashtra,[2015 ALL MR (Cri)1094] and the exposition of law by the Division Bench of the Bombay High Court Bench at Nagpur in the case of Sayeed Firoz Sayeed Noor v. State of Maharashtra 2016 (1) Bom.C.R.[Cri]270 : [2016 ALL MR (Cri) 3410] and in the case of Balu v. The Divisional Magistrate,

Pandharpur 1969 Mh.L.J. 387 and submits that the Petition deserves to be allowed.

6. On the other hand, the learned APP appearing for the respondent ? State relying upon the original record submits that the alleged activities of the petitioner and his involvement in the commission of offences has been thoroughly considered by respondent no.4. It is submitted that the witnesses were not coming forward to depose against the petitioner, and therefore, after arriving at subjective satisfaction on the basis of the material collected by respondent no.4, the order of externment externing the petitioner from five Districts was passed by respondent no.4. The learned APP appearing for the respondent ? State invites our attention to the various documents from the original record and submits that the Writ Petition is devoid of any merits and the same may be rejected.

7. 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 and also the reported judgments cited across the Bar by the learned counsel appearing for the petitioner. At the outset, 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. We have carefully perused the order passed by respondent no.4 from the original record, it appears that respondent no.4 had made reference to the proposal submitted by the Police Inspector, Parli City Police Station. In the said proposal, there is mention of 7 offences. Those crimes numbers are also mentioned in the show cause notice issued to the petitioner. Which are as under:

1] Crime No.45/2000 registered with Parli Gramin Police Station, for the offences punishable under Section 147, 148, 149, 324 of the Indian Penal Code

2] Crime No.62/2001 registered with Parali City Police Station, for the offences punishable under Sections 325, 504, 506, 34 of the Indian Penal Code

3] Crime No.84/2004 registered with Parali City Police Station, for the offences punishable under Sections 143, 147, 307 of the Indian Penal Code and Section 25 (3) of the Indian Arms Act.

4] Crime No.184/2005 registered with Ambajogai City Police Station for the offences punishable under Sections 147, 148, 354, 452, 323 of the Indian Penal Code.

5] Crime No.32/2006 registered with Ambajogai City Police Station for the offences punishable under Sections 307, 147, 148, 149, 323 of the IPC and Section 135 of the Bombay Police Act.

6] Crime No.186/2009 registered with Parali Gramin Police Station, for the offences punishable under Sections 279, 457, 504, 506, 34 of the Indian Penal Code and Sections 5 and 7 of the Indian Arms Act.

7] Crime No.273/2015 registered with Parali City Police Station for the offences punishable under Sections 354 [A], 341, 34 of the Indian Penal Code and Section 25 (3) of the Indian Arms Act.

10. Pursuant to the showcause notice issued to the petitioner, the petitioner did file reply stating therein that out of 7 offences, 6 offences mentioned at serial nos. 1 to 6, he is already acquitted by the Competent court even before initiating proposal of his externment by the Police Officer, Parali City Police Station. The petitioner has also placed on record copies of the judgment and order passed by the concerned Court in those cases. While passing the impugned order, respondent no.4 did consider the contention of the petitioner that the petitioner is acquitted from the offences mentioned at serial nos. 1 to 6, however, in the impugned judgment, it is stated that the petitioner though acquitted from the

offences mentioned at serial nos.1 to 5, he is a habitual offender and his activities are dangerous to the public which are likely to cause fear in the minds of the people and ultimately his activities would lead to breach of peace and security of the citizens. Therefore, it clearly emerges that respondent no.4 did not consider assertion of the petitioner, which was supported by the copy of the judgment and order placed on record that the petitioner stands acquitted from the crime No.186/2009 [mentioned at serial no.6] registered with Parali Gramin Police Station for the offences punishable under Sections 279, 457, 504, 506, 34 of the Indian Penal Code and Sections 5 and 7 of the Indian Arms Act.

11. Upon careful perusal of the discussion in the order passed by the respondent no.4, there is no discussion in the said order as to how the offences registered from the year 2000 till 2009 are relevant for the purpose of passing the impugned order. In fact, from those alleged offences the petitioner stands acquitted even prior to initiating proposal for externment by the Police Officer, therefore, there is no live link between the said offences from which the petitioner stands acquitted and the impugned order passed by respondent no.4. Be that as it may, there is no discussion in the impugned order passed by respondent no.4 that as a matter of fact he recorded incamera statements of the witnesses and they deposed about the alleged illegal activities of the petitioner. The Division Bench of the Bombay High Court [at Principal seat] in the case of Yeshwant Damodar Patil [cited supra] 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]

12. The aforementioned provisions make it abundantly clear that in order to fulfil 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.

13. Yet in another exposition of law in the case of Balu v. The Divisional Magistrate, Pandharpur [cited supra], 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.

14. As already observed in the foregoing paragraphs, it does not appear from the discussion in the order passed by respondent no.4 that, as a matter of fact he recorded incamera statements of the witnesses and before passing the impugned order of externment, he formed opinion that the witnesses are not willing to come forward to give evidence in public against the petitioner. It further appears that there is no discussion in the impugned order why the externment of the petitioner is necessary from Parbhani, Latur, Osmanabad and Jalna Districts when the alleged activities / offences against the petitioner being Crime No.273/2015 is registered with the Parali City Police Station.

15. In the light of the discussion in the foregoing paragraphs, an inevitable conclusion can be drawn that the Police Inspector, Parali City Police Station while submitting the proposal of externment of the petitioner, in spite of his acquittal by the competent court, from the offences mentioned at serial nos.1 to 6 did mention the said offences in the said proposal submitted to respondent no.4. It shows non application of mind of the concerned Police Officer at the time of initiation of proposal for externment of the petitioner. Respondent no.4 though made a casual reference to the reply filed by the petitioner making reference of crimes mentioned at serial nos.1 to 5, nevertheless did not take into consideration the contention of the petitioner that even the petitioner stands acquitted from the offence, which is mentioned at serial no.6 i.e. Crime No.186/2009 even before initiating the proposal of his externment.

16. It is true that the Appellate Authority modified the order passed by the respondent no. 4 inasmuch as the order of externment is confined to the limits of Beed District. However, the Appellate Authority had not taken into consideration the contention of the petitioner that while passing the impugned order, the mandate of provisions of Section 56 (1) (b) has not been adhered to/followed by respondent no.4. Therefore, we are of the considered view that the impugned order passed by respondent no.4 is not in conformity with the mandate of the provisions of Section 56 (1) (b) of the Maharashtra Police Act and also suffers from non assigning the detail reasons and hence call for interference under extra

ordinary writ jurisdiction. Hence the following order:

ORDER

i) The Writ Petition is allowed. The order dated 21.09.2016 passed by respondent no.4 and the order dated 09.11.2016 passed by respondent no.2 stand quashed and set aside.

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