

(2017) 03 BOM CK 0057
In the Bombay High Court
Case No : Criminal Writ Petition No. 9 of 2017

Shri Mallu Tikaram Varma	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:

Bombay Police Act, 1951 — Section 57(1)(a)
Constitution of India, 1950 — Article 22(5)

Citation : (2017) 2 MhLJCrI 608

Hon'ble Judges : B.P. Dharmadhikari and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Shri A.B. Moon, Advocate, for the Petitioner; Shri A.S. Fulzele, AGP, for the Respondents

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J. (Oral)—Heard finally by issuing rule and making it returnable forthwith with the consent of Shri Moon, learned counsel for the petitioner and Shri Fulzele, learned AGP for the respondents.

2. The order of externment under Section 57(1)(a)(v) of the Bombay Police Act, 1951, dated 19.10.2016 for a period of two years has been questioned in present petition.

3. Shri Moon, learned counsel relies upon the order passed by the Division Bench of this Court on 02.12.2016 in Criminal Writ Petition No. 845 of 2016, to urge that neither in show cause notice nor in the impugned order or then in reply before this Court, there is any reference to subjective satisfaction of the Competent Authority, which forms the base for ordering the externment.

4. The learned APP is strongly opposing this statement. According to him, two incamera statements and four convictions under Section 12(A) of the Maharashtra Prevention of Gambling Act, 1887, (hereinafter referred to as 1887 Act) support the action. He, therefore, submits that the material on record being

relevant and power conferred by the statute having resorted to, there is no jurisdictional error.

5. We have perused the impugned order. The impugned order mentions five offences under Section 12(A) of the above mentioned 1887 Act and conviction in four. Then, there is reference to two incamera statements but then how incamera statements show likelihood of indulgence in similar offence, is not discussed there. A perusal of show cause notice dated 17.09.2016 also does not throw any light in this respect.

6. It appears that two so-called incamera statements bring on record at the most an act of extortion. Connection or bearing of those acts with 1887 Act and conviction under Section 12(A) thereof, is missing.

7. The order dated 02.12.2016 in Criminal Writ Petition No. 854 of 2016 observes :

"Perusal of Section 57(1)(a)(v) of the Bombay Police Act, 1951, reveals that it specifically refers to previous offences under the Bombay Prevention of Gambling Act. Section 57(1) permits externment if the Authority has reason to believe that such convict is likely to engage again in commission of the offences similar to that for which he was convicted. This "satisfaction" is lacking in the matter. No such satisfaction is reflected in show cause notice or in final orders, even in the reply affidavit it has not been pleaded. Mere commission of offence in past is not sufficient in scheme of Section 57(1) of the said Act. The authority must have reasons with it which persuaded it to record a subjective satisfaction that convict is likely to engage in similar offences again. As there is no such satisfaction, the material ingredient is lacking."

One of us (B.P. Dharmadhikari, J.) is party to that order.

8. In this situation, we find that the present order dated 17.09.2016 is also unsustainable. It is accordingly quashed and set aside. Rule is made absolute. However, in the facts and circumstances of the case, there shall be no order as to costs.