

**(2013) 02 BOM CK 0074**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 522 of 2012**

Shri Nitesh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

**Date of Decision : 01-02-2013**

**Acts Referred:**

Arms Act, 1959 — Section 25, 4  
Bombay Police Act, 1951 — Section 27(1), 56, 59  
Penal Code, 1860 (IPC) — Section 394, 395, 398

**Citation : (2013) ALLMR(Cri) 1615**

**Hon'ble Judges : M.L. Tahaliyani, J**

**Bench : Single Bench**

**Advocate : A.B. Moon, for the Appellant; P.V. Bhoyar, Addl. P.P., for the Respondent**

## **Judgement**

M.L. Tahaliyani, J.—Heard learned Counsel Mr. A.B. Moon for the petitioner and learned Additional Public Prosecutor Mr. P.V. Bhoyar for the respondents. Rule. Rule made returnable forthwith, by consent of learned Counsel for the parties.

2. The petitioner impugns the order passed by the Deputy Commissioner of Police, Zone-1, Nagpur in exercise of his powers u/s 56 of the Bombay Police Act directing the petitioner to remove himself from the territorial limits of Nagpur district for a period of two years. The impugned order has been passed on 10th September, 2012.

3. The petitioner is permanent resident of Wadi, which is within the territorial limits of Nagpur district and comes under the jurisdiction of the Superintendent of Police, Nagpur Rural. Learned Counsel Mr. A.B. Moon appearing on behalf of the petitioner has submitted that the impugned order suffers from three major infirmities i.e. (i) there is inordinate delay in passing the externment order from the date of last offence allegedly committed by the petitioner, (ii) the allegations made against the petitioner in the show cause notice are vague, and (iii) the Deputy Commissioner of Police i.e. respondent No. 2 has not recorded his

subjective satisfaction in the impugned order.

4. As far as delay is concerned, the learned Counsel Mr. A.B. Moon has relied upon the judgment of this Court in the case of Shri Shahid Mohammedali Bepari Vs. The Sub-Divisional Magistrate Miraj Division, Miraj, The Superintendent of Police Sangli, District Sangli, Office at Vishram Bhag, Sangli, The Police Inspector Miraj City Police Station, Laxmi Market, Miraj and The State of Maharashtra, . In the said case, the petitioner was externed on the basis of solitary incident, which had occurred on 2nd September, 2009. The petitioner was served with show cause notice on 20th August, 2010 and the impugned order was passed on 11th April, 2011. As such the impugned order was passed after about one year and seven months from the date of incident on the basis of which the petitioner was externed. In the present case, the petitioner is involved in about eleven cases including the cases u/s 394 of the Indian Penal Code. He has been acquitted of the charges in two cases. Nine cases are still pending against him. The last offence allegedly committed by the applicant was dated 1st August, 2011, which is punishable under Sections 395 and 398 of the Indian Penal Code and Section 25 read with Section 4 of the Arms Act. Show cause notice was issued to the petitioner on 17th March, 2012. The externment order has been passed on 10th September, 2012. During the period between 17th March, 2012 and 10th September, 2012 the other statutory steps were taken according to law, which included show cause notice to be issued to the proposed externee and holding of enquiry. An enquiry was held by the Sub-Divisional Police Officer/ACP under the orders of respondent No. 2. After submission of enquiry report, the same was considered by respondent No. 2 and the impugned order came to be passed.

5. The learned Additional Public Prosecutor Mr. P.V. Bhoyar has submitted that during the course of enquiry, the petitioner was absent for about sixteen dates of hearing out of twenty-two dates. This fact however has not been stated by the respondents in their affidavit-in-reply. The learned Counsel for the petitioner is not able to make any statement in this regard. It, therefore, cannot be said that delay has been caused on part of the respondents. In fact, there is no unreasonable delay for which the proceedings can be said to be vitiated. As already stated, show cause notice was issued on 17th March, 2012 and externment order has been passed on 10th September, 2012. In the first place, the delay cannot be said to be of extra ordinary nature. Secondly, the statement made by the learned Additional Public Prosecutor shows that the petitioner was absent in sixteen out of twenty-two hearings. As such the petitioner himself has also contributed in delaying the proceedings. Moreover, the petitioner is not able to demonstrate that any prejudice has been caused to him due to the delay as alleged in the petition.

6. The second issue raised by the learned Counsel for the petitioner is that the allegations mentioned in the show cause notice and the impugned order are vague in nature. He has relied upon the judgment in the case of Shri Mohamad Siddiki Haji Moha Shafi @ Ansari Vs. The State of Maharashtra and Others, . It is

seen that this case was mainly based on the statement recorded in camera. The present case is based on the offences registered against the petitioner. In my considered opinion, the observations made by this Court in the case reported at 2013 ALL MR(Cri) 18 will not be applicable to the present set of facts. Moreover, on facts I do not find any substance in the arguments of Mr. A.B. Moon that the allegations made against the petitioner in the show cause notice and the externment order were vague in nature.

7. I have gone through the show cause notice issued to the petitioner by the Assistant Commissioner of Police, MIDC Division, Nagpur on 17th March, 2012. Not only the allegations are clearly stated in the said show cause notice but each and every offence allegedly committed by the petitioner has been described in detail including crime number and the nature of allegations made against the petitioner. The facts of each case have also been stated in the show cause notice. The petitioner was provided with details of about 10 cases and three preventive actions against him. Therefore, submission that the allegations were vague is devoid of merits.

8. It appears from the impugned order that respondent No. 2 has carefully and in detail examined details all the cases pending against the petitioner. The details of all the cases have been mentioned in the externment order. At this stage, it may be noted here that the show cause notice was in much detail as compared to the externment order. If the show cause notice gave almost all details necessary for effective defence of the petitioner, it was not necessary for respondent No. 2 to record the same details in the externment order also. It may be noted here that the show cause notice, in fact, merges into externment order and the facts stated in the show cause notice are treated to be part of the externment order. The submission made on behalf of the petitioner that the allegations made against the petitioner were vague in nature is not acceptable and is rejected.

9. The third issue raised by the learned Counsel for the petitioner is with regard to subjective satisfaction of the authority. It is submitted that respondent No. 2 has not stated in the impugned order that he was satisfied that it was necessary to pass order of externment. It is further submitted that subjective satisfaction is not reflected in the impugned order. Mr. A.B. Moon has relied upon the judgment in the case of Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, . He has mainly based his arguments on paras 9 and 10 of the said judgment.

These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under cl. (a) or (b) of Section 56 if, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show cause notice

were to furnish to the proposed externee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which it is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee "of the general nature of the material allegations against him". That obligation fixes the limits of the correlative right of the proposed externee. He is entitled, before an order of externment is passed u/s 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.

10. It is true that the provisions of Section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in *Gurbachan Singh Vs. The State of Bombay and Another*, had upheld the validity of Section 27(1) of the City of Bombay Police Act, 1902, which corresponds to Section 56 of the Act. Following that decision, the challenge to the constitutionality of Section 56 was repelled in *Bhagubhai Dullabhabhai Bhandari Vs. The District Magistrate, Thana and Others*, . We will only add that care must be taken to ensure that the terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee.

10. No doubt, it was necessary for the competent authority u/s 56 of the Bombay Police Act to record subjective satisfaction that the witnesses were unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. The Hon''ble Supreme Court in the same judgment and in the same para has stated that a full and complete disclosure of particulars will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed esternnee detail data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. It is thus clear that the right of proposed externee u/s 56 is very limited. He is not entitled to full disclosure of the material on the basis of which he is proposed to be externed. What he is entitled is to know the material allegations against him and the general nature of those allegations. The Hon''ble Supreme Court has stated that he is not entitled to be informed of specific particulars relating to the material allegations. The rights of a proposed externee are clearly described in the said judgment and keeping in view the observations made by the Hon''ble Supreme Court, I have come to the conclusion that in the present case the Assistant Commissioner of Police and respondent No. 2 have disclosed more than what the petitioner was entitled to. Therefore, no prejudice

at all of any nature has been caused to the petitioner. I do not think that the petitioner was handicapped in defending himself effectively before respondent No. 2. Respondent No. 2 has clearly stated in para 3 of his order that after having considering the papers placed before him and details of the allegations, he was sure that the petitioner was involved in serious offences. Respondent No. 2 has further recorded in unambiguous terms that he was satisfied that the witnesses were not willing to give evidence in public due to fear of the petitioner. As such the subjective satisfaction is writ large on the face of the order passed by respondent No. 2.

11. I have taken note of the nature of offences alleged against the petitioner. The petitioner appears to be in habit of committing offences of chain snatching and other similar offences. According to police record, in the year 2012 he was continuously indulging in such types of offences till the date of passing of impugned order. In the circumstances, the impugned order of externment was fully justified and does not call for any interference. I do not find any merit in the petition. Petition stands dismissed. Interim order stands vacated.

Rule stands discharged.

At this stage, learned Counsel Mr. A.B. Moon for the petitioner prays for continuation of interim stay for a period of one week. Prayer is rejected.