

(1961) 03 BOM CK 0020

In the Bombay High Court

Case No : Criminal Revision Application No. 1393 of 1958

State

APPELLANT

Vs

Vishnu Ramchandra

RESPONDENT

Date of Decision : 16-03-1961

Acts Referred:

Bombay Police Act, 1951 — Section 124, 142, 55, 56, 57
Penal Code, 1860 (IPC) — Section 114, 380, 381, 411

Citation : (1961) 63 BOMLR 615 : (1961) NLJ 560

Hon'ble Judges : Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Naik, J.—This revisional application No. 1393 of 1958 has a chequered career. It arises in the following circumstances:

The petitioner, who would hereinafter be referred as the "accused", was served with an order of externment u/s 57(a) of the Bombay Police Act, 1951, on October 15, 1957. The order was to the effect that the accused was convicted u/s 380 read with Section 114 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one month on November 16, 1949, and that he was likely again to engage himself in the commission of an offence similar to the above offence, and, therefore, the Deputy Commissioner of Police called upon the accused to remove himself out of the limits of Greater Bombay and Thana District within two days from the date of the final order in the case, viz. the Yellow gate Police Station L.A. No. 11682 of 1957 pending against him and in case he is convicted in the said case and is sent to the jail for undergoing any imprisonment he will remove himself within two days from the date of his release from the jail. The case for the prosecution was that the police officer explained the contents of the order and obtained the left hand thumb impression of the accused and the copy of the order was given to the accused. Thereafter on August 24, 1958, at about 8-30 p.m. Police Constable No. 6511/D arrested the

accused at Ibrahim Rahimtulla Road on suspicion. The accused, therefore, was prosecuted for having entered within the limits of Greater Bombay by violating the order of externment, u/s 142 of the Bombay Police Act, 1951.

2. The accused pleaded not guilty to the charge. He admitted that the order of externment was served on him properly. He, however, denied that he had entered within the limits of the prohibited area. According to him, he was arrested at Mumbra Railway Station and was brought by train. This was the only contention that was raised before the learned Presidency Magistrate. The learned Presidency Magistrate rejected the defence and believing the evidence of the prosecution held the offence proved. He accordingly sentenced the accused to suffer rigorous imprisonment for six months. Against that judgment the accused has come up in revision.

3. In the first instance, this revision application was heard by my learned brother Mr. Justice Mudholkar (as he then was). Three points were urged before Mr. Justice Mudholkar. The first was that the Deputy Commissioner of Police had not applied his mind to the facts of the case before making the order of externment. The second was that Section 57 of the Bombay Police Act was prospective and could not be made applicable, unless the conviction on which the action of externment was based, took place after the coming into force of that Act. The third was the belief entertained by the Deputy Commissioner that the accused was likely to engage himself in the commission of an offence similar to that for which he was prosecuted was based on the prosecution which was then pending and that that ground disappeared after the acquittal. Mr. Justice Mudholkar did not consider the first and the third grounds. He accepted the second contention, viz. Section 57 of the Bombay Police Act was prospective and could not be made applicable unless the conviction on which the action of externment was based, took place after the coming into force of that Act. Accordingly, he acquitted the accused. See 61 Bom. L.R. 498. The State preferred an appeal to the Supreme Court after obtaining special leave. The appeal was heard by the Division Bench consisting of Hidayatullah and J. C. Shah, JJ., of the Supreme Court. Their Lordships came to the conclusion See 63 Bom. L.R. 427 that Section 57 would apply even when the offence for which the externee was convicted was committed by him before the coming into operation of the Bombay Police Act, 1951. Their Lordships pointed out:

No man has such a vested right in his past crimes and their consequences as would entitle him to insist that in no future legislation shall any regard whatever be had to his previous history.

4. In view of the fact that the first and the third grounds were not considered by Mr. Justice Mudholkar, their Lordships have sent the case back to this Court for consideration of those two grounds.

5. Before proceeding to discuss the points that were urged before me by Mr. Shinde on behalf of the accused, it may be pointed out that the pending case to

which a reference has been made in the order of externment was registered as an L. A. Case, i.e. a case under the local enactment. Mr. Justice Mudholkar in his judgment has proceeded on the footing that the accused was facing prosecution u/s 411 of the Indian Penal Code, or in the alternative u/s 124 of the Bombay Police Act. There is no basis in the record of the case for the statement that the prosecution was u/s 411 of the Indian Penal Code. It is possible that some statement was made at the bar in that connection and, therefore, the learned Judge stated that the accused was facing prosecution u/s 411 of the Indian Penal Code. In view of the fact that the offence was registered under a Local Act to which a clear reference has been made in the externment order, it appears to me that there was no charge levelled against the accused for an offence u/s 411 of the Indian Penal Code. With a view to clarify the matter, I called upon the learned Assistant Government Pleader to call for the papers of the case, but he tells me that the papers are not traceable. He, however, told me on instructions that an accused person would not be charge-sheeted for an offence under the Indian Penal Code unless an offence was registered under the Indian Penal Code. It is clear in the present case that the offence was not registered against the accused under the Indian Penal Code but was only registered under the local enactment. That means that the accused was being prosecuted u/s 124 of the Bombay Police Act only. It is an admitted fact that by the time the application came up for hearing before Mr. Justice Mudholkar, the prosecution against the accused had ended in acquittal, and the third ground urged before Mr. Justice Mudholkar was based on that circumstance. I will consider the effect in law of the fact that the offence for which the accused was being prosecuted at the time when the externment order was passed was an offence under a Local Act, that is to say, Bombay Police Act, at a later stage of this discussion.

6. It appears from the judgment of the learned Presidency Magistrate that the accused had two previous convictions to his credit. The first conviction was u/s 381 of the Indian Penal Code on September 8, 1939, and the second was u/s 380 read with Section 114 of the Indian Penal Code on November 16, 1949. It is, however, significant that the externment order makes no reference to the conviction of the year 1939, presumably because that conviction was 10 years prior to the second conviction. The basis of the externment order is the conviction on November 16, 1949, u/s 380 read with Section 114 of the Indian Penal Code.

7. Let me now turn to the position in law, in the light of the facts set out above. Section 57 of the Bombay Police Act, 1951, provides:

If a person has been convicted-

(a) of an offence under Chapter XII, XVI or XVII of the Indian Penal Code (XLV of 1860), or...the Commissioner,..., if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction....

It will thus be seen that under Clause (a) two conditions must be satisfied before an order of externment is passed by the Commissioner of Police. Firstly, an offence under one of the three chapters i.e. XII, XVI, or XVII of the Indian Penal Code has been committed, and secondly, the Commissioner has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted. The explanation defines the expression "an offence similar to that for which a person has been convicted" to mean in the case of a person convicted of an offence mentioned in Clause (a)--an offence named in any of the Chapters of the Indian Penal Code mentioned in that clause. There is no dispute that the first condition has been satisfied in this case. The question for our consideration is whether the second condition has been duly fulfilled in the present case.

8. The offence which is relied upon for the purpose of el. (a) was committed as far back as November 16, 1949. The order was passed 011 October 15, 1957. The offence for which he was convicted in 1949 fell within Chapter XVII of the Indian Penal Code. There is no evidence to show that between 1949 and 1957, when the order was passed, the accused had committed any offence under Chapter XVII. In other words, there is nothing to indicate that the accused had as a matter of fact committed an offence similar to that for which he was convicted in 1949. The Commissioner's belief in the possibility of the accused engaging himself in the commission of a similar offence appears to have been based on the circumstance that a prosecution was pending against the accused u/s 124 of the Bombay Police Act. The prosecution u/s 124 of the Bombay Police Act, 1951, has very little in common with the prosecution u/s 411 of the Indian Penal Code. Section 124 of the Bombay Police Act reads thus:

Whoever has in his possession or conveys in any manner, or offers for sale or pawn, anything which there is reason to believe is stolen property or property fraudulently obtained, shall, if he fails to account for such possession or to act to the satisfaction of the Magistrate, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees or with both.

The important ingredients of the offence are: (1) The accused person should be in possession of a property which there is reason to believe is stolen property or property fraudulently obtained; and (2) the accused fails to account for such possession or to act to the satisfaction of the Magistrate. The expression "property fraudulently obtained" does not necessarily mean that the property has been secured by committing an offence of cheating. In its ordinary meaning it will cover the case of property which has been obtained by the exercise of fraud, which may or may not amount to the offence of cheating. The second ingredient is equally important without the fulfilment of which the offence u/s 124 of the Bombay Police Act, 1951, would not be completed. The nature of the offence u/s 124 of the Bombay Police Act, 1951, is substantially different from the offence for which the accused was convicted in 1949. The mere fact, therefore, that the

accused was facing a prosecution for an offence u/s 124 of the Bombay Police Act, 1951, would not afford an adequate ground for the Deputy Commissioner of Police to base his belief on, that the accused was likely to commit an offence similar to the offence for which he was convicted in 1949. There must be reasonable grounds for the Deputy Commissioner of Police for basing his belief upon. The offence committed in 1949 for which he was convicted would not in itself be a sufficient ground on which the Deputy Commissioner would form his belief. Similarly the circumstance that the accused was charge-sheeted for an offence u/s 124 of the Bombay Police Act, 1951, would not supply a ground on which the Deputy Commissioner of Police would reasonably base his belief, which is the very condition precedent, for the passing of the order of externment u/s 57(a) of the Bombay Police Act, 1951. As a matter of fact, the accused eventually was acquitted in the prosecution launched u/s 124 of the Bombay Police Act, 1951.

9. Mr. Shinde on behalf of the accused contended that the Deputy Commissioner of Police should have waited to see the result of the prosecution pending against the accused. There is some force in this line of reasoning, but it is not necessary for me to pronounce any opinion on this point. Mr. Shinde lays stress upon the circumstance that the Deputy Commissioner of Police had not applied his mind to the facts of the case and has jumped to the conclusion that the accused was likely to commit a similar offence for which he was convicted in 1949 merely on the circumstance that the accused was involved in a prosecution u/s 124 of the Bombay Police Act. He argued that the Deputy Commissioner of Police has failed to see that the offence for which the accused was being prosecuted was not of a similar character to the offence for which he was convicted in 1949. In my view, this argument must prevail because it is not possible to imagine that the Deputy Commissioner of Police based his belief merely on the fact that an offence was committed in 1949. The fact that the accused was being prosecuted for an offence u/s 124 of the Bombay Police Act, 1951, must have weighed with the Deputy Commissioner of Police while passing the order of externment which he passed in this case on October 15, 1957. It is, therefore, clear that he has passed the order of externment without giving much thought to the same.

10. The learned Assistant Government Pleader relied upon Section 61 of the Bombay Police Act, 1951, which in effect provides:

Any order passed under Sections 55, 56 or 57...shall not be called in question in any Court except on the ground that the authority making the order or any officer authorised by it had not followed the procedure laid down in Sub-section (1) of Section 59 or that there was no material before the authority concerned upon which it could have based its order...

It is nobody's case that the procedure laid down in Sub-section (1) of Section 59 has not been followed. Mr. Gambhirwalla laid stress upon the expression "that there was no material before the authority concerned"" and argued that the real question is whether there was material which could lead to the subjective

satisfaction of the mind of the Deputy Commissioner of Police. It is sufficient if there is some material before the authority. Sufficiency of the material as an objective fact is not to be taken into account in considering the validity of the order passed u/s 57 of the Bombay Police Act, 1951. In the abstract, this position seems to be correct. At the same time, in order to consider the question as to whether there is subjective satisfaction of the authority concerned, we have necessarily to take into account whether the material is such as could lead to the subjective satisfaction. The expression "subjective satisfaction" does not refer to the whim or the caprice of the authority concerned. Satisfaction means the satisfaction of a reasonable man and it can be arrived at on the basis of some material which satisfies a rational mind. We know what was the material before the Deputy Commissioner of Police when he passed the externment order. That material merely consisted in the fact that a prosecution u/s 124 of the Bombay Police Act, 1951, was pending against the accused. This material would not satisfy the mind of any reasonable person that there was ground for believing that the accused was likely to commit an offence of a similar character for which he was convicted in 1949.

11. The application succeeds, and the conviction and the sentence passed are set aside. The order of externment passed is not valid and the accused could not, therefore, be convicted for violating the terms of such an externment order. The accused is acquitted.