
(2013) 10 BOM CK 0012

In the Bombay High Court

Case No : Criminal Writ Petition No. 330 of 2013

Sudhakar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 1706

Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J

Bench : Division Bench

Judgement

Z.A. Haq, J.—Rule. Rule made returnable forthwith. Heard the learned Counsel for the parties. The petitioner has challenged the order of externment passed by the learned Sub-Divisional Magistrate, Wardha externing him from Wardha district for a period of two years and the order passed by the Appellate Authority externing him from three districts of Wardha, Amravati and Yavatmal for a period of two years.

2. The show-cause notice was issued on 26.12.2011 seeking explanation from the petitioner. The order is passed by the learned Sub-Divisional Magistrate on 30.7.2012 directing the externment of the petitioner from district of Wardha relying on the prosecutions as stated in the impugned order. The perusal of the impugned order shows that the prosecutions of 1992, 1993, 2000 have been relied upon which are stale prosecutions. Moreover, the petitioner has submitted that in the prosecutions of 1992, 1993, 2000 & 2008 he has been acquitted. The prosecutions at serial Nos. 6, 7, 8 & 9 in the chart in the impugned order are under the provisions of Bombay Prohibition Act which as per the settled law cannot be considered for passing an order of externment.

3. The impugned order is passed on 30.7.2012. The facts show that the impugned order is passed almost after a period of seven months of the issuance of the show-cause notice and the last prosecution which is taken into consideration by the learned Authority is of March, 2010. This shows that the impugned order directing the externment of the petitioner has no nexus with the

object to be achieved by the order of externment as there is considerable delay and there is nothing placed on record by the respondents to show that in the meantime the petitioner had been indulging in activities which necessitated the passing of the impugned order. By now, it is the settled law that the order passed by the learned Authority affecting the civil rights of the petitioner can be passed and can be sustained only if it is based on relevant considerations and irrelevant considerations have not been taken into account. Perusal of the impugned order shows that the learned Authority has considered the irrelevant material and, therefore, the impugned order is not sustainable. As far as the in-camera statements of two persons are concerned, they are not reliable, inasmuch as they do not give the details of the date and the time on which they are recorded and both these statements also do not give the date and time of the alleged incidents. Moreover, both these in camera statements are almost similar.

4. Non application of mind by the Appellate Authority is also patent on the record as though the learned Sub-Divisional Magistrate has directed externment of the petitioner only from Wardha district, the Appellate Authority without giving any show-cause notice to the petitioner has directed his externment from three districts. In view of the above, the impugned orders are not sustainable. The impugned orders are quashed. Rule is made absolute in terms of prayer clause (1). No costs.