
(2012) 11 BOM CK 0146

In the Bombay High Court

Case No : Criminal Writ Petition No. 3481 of 2012

Sudhir Raviraj Choudhary

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Bombay Police Act, 1951 — Section 56, 56(1)(a)(b), 59, 7

Constitution of India, 1950 — Article 226

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3

Citation : (2013) ALLMR(Cri) 175

Hon'ble Judges : S.S. Shinde, J;A.S. Oka, J

Bench : Division Bench

Advocate : Vikash Singh assisted with Mr. Ravi Shankar Dwivedi, for the Appellant; A.R. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

1. By this Petition under Article 226 of the Constitution of India, the Petitioner has taken an exception to the order dated 21st February, 2012 passed by the Deputy Commissioner of Police, Mumbai Zone VIII, Mumbai in exercise of powers u/s 56(1)(a)(b) of the Bombay Police Act, 1951, (hereinafter referred to as "the said Act"). The learned Counsel appearing for the Petitioner has invited our attention to the show cause notice issued u/s 59 of the said Act and the impugned order of externment, which externs the Petitioner from Districts of Bombay and Bombay Suburban for a period of one year. His submission is that there is no subjective satisfaction recorded by the Externment Authority that witnesses are unwilling to come forward and to give evidence in public against the proposed Externee by reason of apprehension on their part as regards the safety of their person and property. It is submitted that the order of externment stands vitiated as the said subjective satisfaction has not been recorded. He also pointed out that though show cause notice refers to contents of the alleged incamera statements of two witnesses, in the impugned order of externment, there is no reference to the contents of the alleged incamera statements.

2. The learned A.P.P. supported the impugned order by submitting that the show cause notice makes detailed reference to the incamera statements. The show cause notice specifically alleges that witnesses are not coming forward to depose against the Petitioner. He submitted that, on the basis of show cause notice, by recording subjective satisfaction of the aforesaid fact, the impugned order has been passed and, therefore, no interference is called for.

3. We have carefully considered the submissions. It will be necessary to make reference to subsection (1) of Section 56 of the said Act, which reads thus:

56. Removal of persons about to commit offence

(1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed u/s 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub Divisional Magistrate empowered by the State Government in that behalf (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 Chapter XII, XVI or XVII of the Indian Penal Code (XLV of 1860), or in the abatement 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 (bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980 (Mah. VII of 1981), or (2) in any manner prejudicial to the maintenance of supplies of commodities essential to the community as defined in the Explanation to subsection (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by and order in writing duly served on him or by beat of drum or otherwise as he things fit direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm [or such prejudicial act,] or the outbreak or spread of such disease or notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether contiguous or not), by such route, and within such time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as "the specified area or areas") from which he was directed to remove himself.

4. The learned Counsel appearing for the Petitioner relied upon the decision of

the Division Bench of this Court in the case of Subhash Jethu Patil Vs. State of Maharashtra and Deputy Commissioner of Police, Division-2, Panvel, . In paragraph 3, the Division Bench has observed thus:

3. Several grounds have been urged in this petition. However, it is not necessary to traverse through all those grounds, as, in our opinion, the first ground urged before us goes to the root of the matter. According to the petitioner, the impugned externment order passed by the Appropriate Authority and as confirmed by the Appellate Authority does not record subjective satisfaction of the fact that witnesses were not willing to come forward to depose against the petitioner out of fear, which is one of the cardinal requirement to invoke Section 56 of the act. This position is no more *res integra*. The Apex Court in the case of Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, has observed that an order of externment can be passed under clause (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 externnee by reason of apprehension on their part as regards the safety of their persona and property. This subjective satisfaction is conspicuously absent in the order passed by the Externment Authority as also by the Appellate Authority.

5. In paragraph 4, the Division Bench held that what is stated in show cause notice cannot be the basis to assume that the concerned authority was subjectively satisfied about the existence of the aforesaid fact and in absence of such subjective satisfaction of the fact, the Externment Authority would not acquire jurisdiction to invoke Section 56(1)(a)(b) of the said Act.

6. Perusal of the impugned order of externment shows that there is a complete absence of such subjective satisfaction of the fact that the witnesses are unwilling to come forward to give evidence in public against the Petitioner by reason of apprehension on their part as regards the safety of their person and property. In our view, in absence of such subjective satisfaction in the order of externment, the order is rendered illegal and deserves to be quashed and set aside. Accordingly, we pass following order:

"ORDER"

(i) The impugned order of externment dated 21st February, 2012 (Exhibit" B" to the Petition) is hereby quashed and set aside.

(ii) Rule is, accordingly, made absolute in that behalf.

(iii) Parties are directed to act upon an authenticated copy of this order.