
(2013) 07 BOM CK 0295

In the Bombay High Court

Case No : Criminal Writ Petition No. 1583 of 2013

Sunil Mani Shetty

APPELLANT

Vs

Dy. Commissioner of Police

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2014) 2 BomCR(Cri) 503

Hon'ble Judges : S.C. Dharmadhikari, J;S.B. Shukre, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil Balkrishna Shukre, J.—This writ petition is directed against the order dated 16th December, 2012 passed u/s (56)(1)(a) and (b) of the Bombay Police Act, 1951 whereby the petitioner has been externed for a period of one year from the limits of the Districts of Greater Mumbai and Suburban Mumbai. The order was passed by the Deputy Commissioner of Police, Zone-VII, Mumbai. This order was challenged by the petitioner before the Appellate Authority i.e. Secretary (Special), Home Department, Government of Maharashtra. The appeal, however, was dismissed by the Appellate Authority by its order dated 17th April, 2013. This Court has already put the parties to the petition on notice that the petition is likely to be decided finally at the stage of admission. Accordingly, rule is issued. It is made returnable forthwith. Learned A.P.P. for the respondents waives notice.

2. Heard Mr. Tripathi, learned Counsel for the petitioner and learned A.P.P. for the State.

3. It is submitted on behalf of the petitioner that the impugned order dated 16th December, 2012 suffers from grave illegalities as it has been passed without following the principles of natural justice. He has further argued that the impugned order is based upon a show cause notice u/s 59 of the Bombay Police Act which does not spell out the factual details necessary for the petitioner to effectively meet the case sought to be made out against him. He has argued that

the Externig authority has come to a conclusion that the activities of the petitioner had caused alarm or danger or harm to the lives and properties of the peace loving citizens, but in fact, no sufficient material was placed before the Externig Authority enabling him to come to such a conclusion. He has submitted that the Externig Authority has relied upon in-camera statements of three witnesses (A), (B) & (C), but, the dates on which their statements were recorded have not been disclosed either in the show cause notice or in the impugned order and that even these statements lack in material particulars such as the area or the locality where the alleged incidents took place. He has further submitted that the show cause notice referred to some irrelevant incidents of the year 2009 which could not have any bearing upon the proceedings initiated against the petitioner. He has also pointed out from the show cause notice that the incident of 13th September, 2012 referred to therein was purely of individual nature and which was not sufficient to pass an externment order against him. In support, he has relied upon the case of Abdul Kadir Razzaque Beg Vs. The Sub-divisional Magistrate (S.S. Zende), Nasik Sub-division and others, and Shri Mohamad Siddiki Haji Moha Shafi @ Ansari Vs. The State of Maharashtra and Others, .

4. Learned A.P.P. has submitted that the impugned order does not suffer from any illegality and has been passed in consonance with the principles of natural justice. He has argued that the impugned order is based upon a detailed show cause notice issued to the petitioner and inquiry report of the concerned Police Inspector, both of which indicate that the allegations made against the petitioner were in sufficient details and afforded complete opportunity to meet the case against him. He has also submitted that the impugned order also refers to the number of opportunities given to the petitioner to answer the material allegations against him and thus is completely in accordance with law.

5. We have carefully gone through the petition and all the documents annexed thereto. including the impugned order and the order of the Appellate Authority. We have also considered the contention of the respondents as appearing in the affidavit in reply to the petition.

6. It is seen from the impugned order that its foundation is constituted by statements of three witnesses recorded confidentially and some criminal cases pending against the petitioner. Show cause notice, a copy of which is available vide Exhibit-A, page 13 of the record, also refers to the same material. It is nowhere mentioned in either the show cause notice or the impugned order as to on what date the statements of witnesses (A), (B) and (C) were recorded. It is also particularly seen that the places of incidents as referred by these three witnesses have not been either properly described or have been described in such a manner as to lead no clue whatsoever regarding the exact area or the location where the alleged incidents took place. These inadequacies, in our opinion, are material in nature and have caused prejudice to the defence of the petitioner. In the absence of dates on which the statements of witnesses were recorded, it cannot be said that sufficient opportunity was given to the petitioner to meet out

case sought to be made against him, Similarly, insufficient description of the place of alleged incident has also resulted in causing of serious prejudice to the defence of the petitioner.

7. The impugned order refers to one Criminal Case No. 225/09 and also one Chapter Case bearing No. 01/2009. Both these cases relate to 2009 incidents and cannot be said to be having any relevance for the prejudicial activities allegedly committed almost three years thereafter. In order to reach a subjective satisfaction that the movement or acts of a person are causing alarm or danger or harm, or creating an apprehension that the person would commit similar acts, there has to be present on record a material which shows that the activities of that person are continuously of such a nature that they must cause some apprehension in the minds of the residents of that locality about the dangerous nature of the person proceeded against u/s 56(1)(a) and (b) of the Bombay Police Act, 1951. If some past incident is referred and there is no further material reasonably establishing connectivity between the past and present incidents which together cause alarm or danger or apprehension as envisaged by law, discretionary power u/s 56 cannot be exercised. In this case, the 2009 incidents are sporadic having no continuity further and, therefore, could not have been taken into account while passing the impugned order.

8. There is also a mention in the impugned order of Crime No. 186/12 registered against the petitioner with the Police Station, Vikhroli. This crime has been registered for the offences punishable under sections 324, 506(2) read with section 34 of the I.P.C. It appears from the details given about this crime that the alleged acts are individual in nature arising from some individual differences. It only seems to be a stray incident. Therefore, this crime registered against the petitioner by itself would not be sufficient to reach a conclusion that the activities of the petitioner were prejudicial to a section of the society.

9. From the above referred discussion, it can be seen that the principles of natural justice have not been followed and that the impugned order is based upon such materials as are not sufficient to draw a conclusion required to exercise power u/s 56(1)(a) and (b) of the Bombay Police Act, 1951. We, therefore, find substance in the submissions of learned Counsel for the petitioner and do not agree with learned APP on the points canvassed by him. As such, the impugned order cannot be sustained in law.

10. This Court has time and again laid down that the order of externment has serious consequences as it infringes on the freedom of movement or choice of residence of the affected person. Therefore, this Court has taken a consistent view that such an order must answer the basic requirements of law and must be in consonance with the principles of natural justice. This view is reiterated in the cases of Abdul Kadir Razzaque Beg and Shri Mohammed Siddiki Haji Moha Safi (cited supra) referred to us by the learned counsel for the petitioner. Unfortunately, the concerned police authorities had not followed these well established principles of law while passing the impugned order.

11. In the result, the petition is allowed and the impugned order is quashed and set aside. Consequently, the order passed by the Appellate Authority on 17th April, 2013 also goes. Rule is made absolute in the above terms.