

(2020) 07 BOM CK 0015

In the Bombay High Court

Case No : Criminal Writ Petition No. 66 Of 2020

Sunil Yadavrao Beedkar

APPELLANT

Vs

Divisional Commissioner And Ors

RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Maharashtra Police Act, 1951 — Section 56, 56(1)(a), 56(1)(b)
Indian Penal Code, 1860 — Section 143, 323, 324, 353, 395, 504, 506
Constitution Of India, 1950 — Article 19

Citation : (2020) 07 BOM CK 0015

Hon'ble Judges : T. V. Nalawade, J; Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : S. G. Magre, A. V. Deshmukh

Final Decision : Allowed

Judgement

Shrikant D. Kulkarni, J.):

1. Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.

2. By this writ petition, the petitioner challenges the legality and validity of the order dated 26.12.2019 passed by respondent No. 1 /the Divisional

Commissioner, Aurangabad Division, Aurangabad, confirming the externment order dated 17.10.2019 passed by the Sub Divisional Magistrate,

Paithan-Phulambri, under section 56 of the Maharashtra Police Act, 1951, externing the petitioner from Paithan, Phulambri, Gangapur and

Aurangabad Taluka of Aurangabad District for one year from 17.10.2019.

3. The factual scenario leading to this petition, in brief, is as under:

4. According to the petitioner, he is a educated man and social worker, engaged in social welfare programmes organized by backward class

communities. The Police authority, in collusion with some antisocial ailments, have falsely implicated the petitioner in criminal cases.

5. According to the petitioner, Criminal Case No. 64 of 2015 registered at Bidkin Police Station, Tq. Paithan, under sections 395 and 504 of the Indian

Penal Code though initiated, culminated in filing of a Summary report and the Ld. J.M.J.C. Paithan was pleased to allow the Summary

order dated 31.12.2019. Criminal Case No. 35/2015 and Criminal Case No. 339/2017 though pending, do not give any foundation to pass

an externment order. The proceeding of Criminal Case No.332/2018 registered at Bidkin Police Station for the offence punishable under sections 324, 323,

504 and 506 of the Indian Penal code has been initiated at the instance of wife of the petitioner and the said criminal case is likely to be settled

between the parties. According to the petitioner, he is a law abiding citizen and never indulged in any unlawful activities. It is contended that

an externment order passed against the petitioner is a classic case of abuse of power. The externment order does not pass the test of validity and legality

as per provisions of the Maharashtra Police Act.

6. We have heard Mr S. G. Magre, learned counsel for the petitioner and Mr. A. V. Deshmukh, learned Assistant Public Prosecutor for the

respondents/State. We have also perused the affidavit sworn by Dr. Swapnil Bharat More, Sub Divisional Officer & Sub Divisional Magistrate, Paithan-

Phulambri and record and proceeding of Appeal No. 2019/ / -1/ -1/ / -105.

7. Mr. Magre, learned counsel for the petitioner, invited our attention to the impugned order passed by the Divisional Commissioner, Aurangabad

Division, Aurangabad and the externment order dated 17.10.2019 passed by the Sub Divisional Magistrate, Paithan Phulambri, and argued that there is

absolutely no material against the petitioner to pass the externment order. The learned counsel Mr. Magre further pointed out that the impugned order

speaks itself that it is a case of non application of mind. The externment order involved fundamental rights of the petitioner guaranteed under Article

19 of the Constitution of India. The learned counsel urged that the impugned order deserves to be quashed and set aside.

To support his argument, Mr. Magre has placed reliance on the decisions of this Court in the case of Ranjit Jijabharao Ingle Vs. T State of

Maharashtra & ors , dated 5th July, 2019 passed in Criminal Writ Petition No. 330

of 2019 and in the case of Ravi s/o Ramdas Aher Vs. State of Maharashtra, reported in 2019 ALL MR (Cri) 419.

8. As far as alleged criminal activities of the petitioners are concerned, the same are stated to be in four talukas viz. Paithan, Phulambri, Gangapur and Aurangabad taluka of Aurangabad district. Upon careful reading of the impugned orders it is noticed by us that there is no discussion or subjective satisfaction disclosed in the impugned orders for the externment of the petitioner from the above four talukas when no criminal cases are registered in three talukas viz. Phulambri, Gangapur and Aurangabad.

9. The learned Divisional Commissioner, Aurangabad Division, Aurangabad has taken into consideration one criminal case registered at Bidkin Police Station Tq. Paithan vide Crime No.64 of 2015, under sections 395 and 504 I.P.C. and stated to be subjudice before the court. However, it is pointed out by the learned Advocate for the petitioner that in the said crime, the police officials had fled â??Bâ? Summary before the Learned J.M.F.C., Paithan and the learned JMFC was pleased to allow the â??Bâ? Summary and in that background, it was not proper to consider the proceeding initiated vide Crime No. 64/2015, registered at Bidkin Police station. On careful scrutiny of the impugned order, it is noticed by us that the Divisional Commissioner, Aurangabad Division Aurangabad seems to have not applied his mind while passing the impugned order and overlooked the above-said legal aspect.

10. Even though the impugned order speaks about so many criminal cases registered against the petitioner, but as per record, only four criminal cases have been registered against the petitioner at Bidkin Police Station and one out of them i.e. Crime No. 64/2015, as discussed above, was culminated in â??Bâ? summary. So far as Criminal Case No. 35/2015 under sections 353, 143,323, 504 I.P.C. is concerned, it seems to have been registered at Bidkin Police Station against the petitioner and others when the petitioner had been to Bidkin Police station in order to know as to what had happened with respect to Criminal case No. 34 of 2015 registered against accused therein for outraging modesty of a victim woman. Criminal case No.

332/2018 is registered at Bidkin Police Station has been initiated by the wife of the petitioner and it seems to be out of matrimonial discord and it is

difficult to accept that it has caused danger to the public at large and created law

and order problem.

11. This Court, in the case of Ranjit Jijabrao Ingle (supra), vide judgement dated 5th July, 2019, to which one of us was party (Coram: T.V.

Nalawade, J.), observed that in view of the object behind provisions of section 56 of the Act, the words of expressions used in section 56(1) (a) and

(b) like alarm, danger or harm to person or property needs to be read as they are referring to public at large and not to one or two individuals known to

the proposed externee. When there is some dispute due to which some crime is committed, motive always plays important part. Ordinarily

maintenance of public order is not involved, when the dispute is of private nature. In such cases, there are other provisions like chapter case

proceedings given in Criminal Procedure Code for taking preventive action. It is never desirable to use the provisions of externment as, it involves

restraint to much extent on the enjoyment of fundamental rights guaranteed under the Constitution.

In case of Ravi s/o Ramdas Aher (supra) this Court has held that if the externment order is passed without recording reasons or subjective

satisfaction, such externment order is excessive and same is liable to be struck down.

12. On careful study of the impugned orders, it is noticed by us that the competent authorities under the provisions of the Maharashtra Police Act have

not recorded their subjective satisfaction as per requirement of law. In view of decision in the case of Ravi s/o Ramdas Aher (supra), the externment

order is found excessive, arbitrary and without application of mind.

13. In light of above discussion, we are of the considered view that impugned orders are liable to be quashed and set aside since they are not

satisfying the the requirement of law. Hence, we proceed to pass the following order:

ORDER

(1) Criminal writ petition is allowed.

(2) Impugned order dated 17.10.2019 in externment case No. 2019/ / / -32passed by the Sub Divisional Magistrate, Paithan

Phulambri under section 56 of the Maharashtra Police Act, 1951, externing the petitioner from Paithan, Phulambri, Gangapur and Aurangabad Taluka

of

Aurangabad District for one year from 17.10.2019 and? the order dated 26.12.2019 confrming the externment passed by the Divisional Commissioner, Aurangabad, Division Aurangabad in Appeal No. 2019/ / -1/ -1/ / -105 are hereby quashed and set aside.

(2) Rule is made absolute in above terms. No order as to costs.