
(1990) 04 GUJ CK 0015
In the Gujarat High Court

Vikram Maya Maiya

APPELLANT

Vs

State of Gujarart and Another

RESPONDENT

Date of Decision : 02-04-1990

Acts Referred:

Bombay Police Act, 1951 — Section 59, 59
Constitution of India, 1950 — Article 226, 227

Citation : (1991) 2 GLR 1210

Hon'ble Judges : K.J. Vaidya, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

K.J. Vaidya, J.—In this petition under Article 226 of the Constitution of India, one Vikram Maya Maiya-the petitioner externee herein has brought under challenge the impugned order of externment dated 5th May, 1989, passed by the Sub-Divisional Magistrate, Veraval, whereby he was ordered to be externed from the District of Junagadh and other adjoining Districts.

2. Briefly, the petitioner at the relevant time was a resident of village Pikhori of Taluka Maliya-Hatina. He was served with an externment notice dated 20th March, 1989, passed by the Sub-Divisional Magistrate, Veraval, u/s 59 of the Bombay Police Act, 1951, calling upon him to show cause why he should not be externed from Junagadh as well as its adjoining Districts for a period of two years. The said notice contains the following allegations:

(a) that it has been alleged against you that you are in habit of beating and administering threats to the people and passers-by, committing thefts, extortion and molesting the ladies;

(b) that any person who dares to allege against you against any of the activities, you give them threat of killing and cause damage to the life and property and because of this fear, the residents of village Pikhori are afraid to complain against you in public;

(c) that these activities of yours are day-by-day increasing. By disturbing law and

order situation you are terrorism the people of village Pikhori and round about areas;

(d) that you are residing at village Pikhori with your family members and you are maintaining yourself by distilling, selling and consuming illicit liquor. In this way, you have committed breaches of the Bombay Prohibition Act and many complaints are registered against you.

3. The aforesaid show cause notice was received by the petitioner on 24th March, 1989 and that in response to the same, he appeared before the externing authority on 1st April, 1989 with a surety. Ultimately, at the end of the proceedings, by an order dated 5th April, 1989, the petitioner came to be externed for two years from the District of Junagadh and its other adjoining Districts.

4. Feeling aggrieved and dissatisfied by the impugned order of externment passed by the externing authority, the petitioner has filed this petition under Articles 226 and 227 of the Constitution of India.

5. Mr. Bharat C. Dave, learned Advocate for the petitioner has raised the following contention, which is duly reflected in ground 5(c) of the petition:

That since the show cause notice issued u/s 59 of the Bombay Police Act suffers from patent vice of vagueness inasmuch as the same did not indicate the activities the petitioner has been clearly denied his legitimate right of a reasonable opportunity to meet with the allegations levelled against him by tendering explanation in said regard by way of defence.

In support of the aforesaid contention, Mr. Dave has invited our attention to a decision in the case of *Kathi Harsur Rukhad Vs. State of Gujarat and Others*, .

6. Now in order to appreciate the point raised by Mr. Dave, let us first of all hurriedly glance through Section 59 of the Bombay Police Act, which reads as under:

Section 59: Hearing to be given before order under Sections 55, 56, 57 or 57A is passed-(1) Before an order under Sections 55, (56 or 57) (56, 57 or 57A) is passed against any person, the officer acting under any of the said sections or any officer above the rank of an inspector authorised by that officer shall inform the person in writing of the general nature of material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness, produced by him, the authority or officer concerned shall grant such application and examine such witness, unless for reasons to be recorded in writing, the authority or officer is of opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filed with the record of the case. Such person shall be entitled to appear before the officer proceeding under this section by an Advocate or attorney for the purpose of tendering his explanation and examining the witness produced by him.

(2) The authority or officer proceeding under Sub-section (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under Sections 55 (56 or 57) (56 or 57A) require such person to appear before him, and to pass a security bond with or without sureties for such attendance during the inquiry. If the person fails to pass the security bond as required or fails to appear before the officer of authority during the inquiry, it shall be lawful to the officer or authority to proceed with the inquiry and thereupon such order as was proposed to be passed against him be passed.

7. Now examining the contents of the notice, in its entirety has been set out in para 2 of this judgment, the same leaves no room for any doubt in our mind that the notice is as vague as it could be so far as the area and the period during which the said objectional criminal activities were carried on by the petitioner. It is by now well settled that before the proposed externee can be said to have been given a reasonable opportunity to tender explanation of material allegations of general nature, have to be pointed out to him. As seen in the present case, the allegations in the show cause notice are totally vague. The said notice does not contain even a whisper regarding the during which and the area in which the petitioner is alleged to have indulged in committing objectionable criminal activities. This infirmity by itself is fatal to invalidate the externment order. This High Court in the case of Kathi Harsur Rukhad Vs. State of Gujarat and Others, , was called upon to deal with the similar question on practically similar facts as arisen in the present case. In the said case, relying upon Supreme Court decision in the case of State of Gujarat v. Mehbubkhan AIR 1968 SC 1468 it has been held that the externee was not given any reasonable opportunity to put forward his defence as the impugned show cause notice was vague enough not to indicate the area and period during which the externee indulged in objectionable activities. It was further observed that-"It is obvious that even though notice issued u/s 59 is to refer to allegations of general nature containing material particulars, at least such allegations in order to meet the requirement of the law, must indicate the area or locality where such alleged activities were said to have been committed by the proposed externee and the allegations should also indicate as to during what period, he did it so that his defence about alibi if at all can be reasonably put forward for consideration of the externing authority."

8. The aforesaid decision squarely covers the point raised by Mr. Bharat Dave, learned Advocate for the petitioner. Accordingly, it is got to be held that the show cause notice issued u/s 59 of the Bombay Police Act being vague, the petitioner was denied a fair and reasonable opportunity of defending his case by tendering appropriate explanation by way of defence. This infirmity in the notice is fatal enough to invalidate the order of externment.

9. In the result, this petition is allowed. The impugned order of externment passed by the externing authority is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.