
(2013) 09 BOM CK 0236

In the Bombay High Court

Case No : Criminal Writ Petition No. 303 of 2013

Vilas

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 4376

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

Bench : Division Bench

Advocate : Amol Mardikar, for the Appellant; M.K. Pathan, APP for State/ Respondents 1 to 3, for the Respondent

Judgement

Z.A. Haq, J.—Heard Mr. Amol Mardikar, the learned Advocate for the petitioner and Mr. M.K. Pathan, the learned Additional Public Prosecutor for the State/ respondents. Rule. Rule made returnable forthwith.

2. The petitioner has challenged the order passed by the Sub-Divisional Magistrate, Warora in Criminal Case No. 10/2011-2012 externing the petitioner from Chandrapur, Yavatmal, Wardha, Nagpur, Bhandara and Gadchiroli districts for 2 years.

3. The submissions of the petitioner is that he is having political background, he was member of Panchayat Samiti, Sirpur, he was member of Zilla Parishad, Neri from Sirpur Neri for 5 years, he was head of Shivsena in 2001. He is in the business of decoration and catering at village Wadala (Paiku). According to the petitioner the Authority while passing the impugned order has taken into consideration 9 prosecutions against the petitioner but in Sessions Case No. 86/2002 the petitioner has been acquitted. Shri Mardikar, the learned Advocate for the petitioner, has submitted that all the crimes which are considered by the Authority for passing the impugned order are registered with the police station Chimur and police station Bhisli and there is no reason for externing the petitioner from 6 districts. According to him, the impugned order externing the

petitioner from 6 districts is excessive and is violative of the guarantee enshrined under Article 14 of the Constitution of India and is unsustainable in law. It is further stated that Police Officer, Bramhapuri has recorded statements of 6 persons in camera and has relied on those statements to extern the petitioner from 6 districts but according to the petitioner the tenor of the in camera statements show that they are not reliable and in any case none of the statements show that the petitioner has committed any act in the recent past on the basis of which the order of externment could have been passed.

4. We find that the Sub-Divisional Magistrate, Warora while passing the impugned order has taken into consideration the prosecutions of 2001, 2003 and 2004 which are stale. The learned Authority has taken into consideration the pendency of Sessions Trial No. 86/2002 which according to the petitioner is decided and in which the petitioner has been acquitted. The learned Authority has taken into consideration the material which could not have been taken into consideration by it and because of it the impugned order is vitiated. We find force in the submissions made on behalf of the petitioner that the in camera statements of 6 persons are not reliable and appear to be monotonous. The order of externment of the petitioner from 6 districts on the basis of in camera statements cannot be sustained and in none of the statements it has come on record that the petitioner has indulged in such type of activities in the recent past which necessitated his externment. Apart from this, there is no reason given by the learned Authority for externing the petitioner from 6 districts and we are of the considered view that this is an excessive punishment which is not sustainable in law. The impugned order is quashed.

Rule is made absolute in terms of prayer clause (a).

In the circumstances, parties to bear their own costs.