

(2013) 09 BOM CK 0067

In the Bombay High Court

Case No : Criminal Writ Petition No. 3257 of 2013

Vinayak Dynaneshwar Mainkar

APPELLANT

Vs

The State of Maharashtra, Sub Divisional District Magistrate
and Shri. Vineet Agarwal

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Bombay Police Act, 1951 — Section 56(1)(a), 56(1)(b)
Constitution of India, 1950 — Article 226

Citation : (2013) ALLMR(Cri) 3528 : (2014) 1 BomCR(Cri) 448

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Patel, J

Bench : Division Bench

**Advocate : N.N. Gawankar, instructed by Ms. Sharon Patole, for the Appellant;
A.S. Pai, APP for the Respondent State, for the Respondent**

Judgement

G.S. Patel, J.—Rule; by consent, made returnable forthwith and taken up for final hearing, the Respondents having waived service. The operative part of our judgment was pronounced in open court and reads thus:

For the reasons separately recorded, we are of the opinion that no useful purpose will be served by allowing the Respondent No. 3 to hear the Appeal No. 103 of 2013 or the Stay Application therein. Despite our clear directions, he has failed either to hear the Appeal or the Stay Application within time. Hence, we have heard the learned Advocates on merits.

2. In view of the above, that we have heard the learned counsel on merits of the matter and for the reasons recorded, the Writ Petition succeeds. The order of externment of the Petitioner dated 5th July, 2013 is quashed and set aside.

3. Parties to act on an authenticated copy of this order.

2. Our reasons follow. First, the facts: The Petitioner was served with two notices, dated 22nd April 2012 and 17th October 2012, asking him to show cause why he should not be externed from the districts of Sangli, Satara,

Kolhapur and Solapur for two years. On 5th July 2013, the 2nd Respondent ordered the Petitioner's externment from Sangli and Kolhapur Districts for six months. The Petitioner filed an appeal to the 3rd Respondent, also seeking a stay of the externment order. He also filed an application for re-entry. Given the externment period, the Petitioner's advocate asked for an immediate hearing. He was told that on account of forthcoming city-wide festivals, the earliest hearing would not be before 18th September 2013 - a date not yet upon us. The Petitioner and his Advocate later learned that the 3rd Respondent scheduled the hearing for 21st September 2013. The Petitioner moved this Court by filing Criminal Writ Petition No. 2764 of 2013. On 6th August 2013, we recorded the statement of the Learned APP then appearing that the appeal would be heard on 27th August 2013.

3. What followed, and is set out at length in the Petition, makes for the most distressing reading. The hearing was to be at 2:30 pm at the office of the 3rd Respondent, Vineet Agarwal, at World Trade Centre, Cuffe Parade, Mumbai. The Petitioner and his Advocate were both at the venue in good time. They reported their presence to the under secretary. They were told that Mr. Agarwal was out to lunch and would return in half an hour, and asked them to wait in the conference room adjacent to Mr. Agarwal's office. Half an hour later, at 3:00 pm, one of the staff from Mr. Agarwal's office told the Petitioner and his Advocate to leave the conference room as a meeting was scheduled there. They were forced to wait in the lobby outside Mr. Agarwal's chamber. They waited for another half hour till Mr. Agarwal returned at about 3:30 pm. A few minutes later, they saw some snacks being taken into Mr. Agarwal's chamber. A little before 4 pm, they were told they would be called in for the hearing in another 10 minutes. By then, police personnel from Miraj had arrived. At 4 pm, an hour and a half after the scheduled time for the hearing, Mr. Agarwal exited his chamber, asking the police to wait in the opposite room. At 4:15, the parties were finally called in. When the Petitioner's Advocate set his files on the desk, Mr. Agarwal demanded that they be removed. The Petitioner's Advocate was forced to balance his papers and files on his lap while he argued the appeal. Mr. Agarwal closed the hearing in 30 minutes and when, to his question, the Petitioner's Advocate said he had nothing to add, the Petitioner's Advocate was allowed to leave. As they left, Mr. Agarwal asked the police staff to remain behind. At 5:30 pm, the Petitioner's Advocate received a phone call from Mr. Agarwal's under secretary saying that the next date of hearing was fixed for 21st September 2013. On making enquiries, the Petitioner's Advocate was told that this had indeed been ordered by Mr. Agarwal, who had apparently directed the police to produce additional documents.

4. The Petitioner has therefore filed this Writ Petition under Article 226 of the Constitution of India seeking that his appeal be transferred from the 3rd Respondent to some other officer.

5. We are of a mind to go further and to quash the externment order itself for, as we have noted, directing the 3rd Respondent to hear the appeal is clearly an

exercise in futility. Knowing that this Court advanced the date of hearing, the 3rd Respondent conducted himself in a manner that is uncivil and unbecoming an officer of his rank. Worse, it seems to be an attempt to over-reach this Court. There is no other explanation for his having gone through the motions of a hearing on the advanced date of 27th August 2013, only to then engineer a postponement to the original date of 21st September 2013. There was no ambiguity about our order of 6th August 2013. Mr. Agarwal was required to hear and decide the appeal on 27th August 2013. He did not have the liberty of postponing the hearing or continuing it on any other date.

6. Equally appalling is his treatment of the Petitioner's Advocate appearing before him. Mr. Agarwal forgets, or perhaps is unaware, that the conduct of the law is the conduct of civility. He was expected to put aside any feelings of bitterness and to conduct himself fairly, impartially and without rancor. He did not. This is not how appellate proceedings in any matter, and most especially in matters affecting personal liberty and constitutionally guaranteed freedoms, are to be handled.

7. We fail to comprehend what more documents could be sought by Mr. Agarwal from the police and that, too, without notice to the Petitioner. In his appeal, the Petitioner argues that he was never served with the two show cause notices. That is fatal in itself. Worse yet, the externment order refers to two in-camera witness statements dated 29th August 2012. Neither show cause notice mentions these. The externing authority refers to some so-called written statements dated 29th April 2013, 6th May 2013 and 7th May 2013. These, the Petitioner says, are not his. The authorities appear to have picked up someone else's statements. The externment order confuses Sections 56(1)(a) and 56(1)(b) of the Bombay Police Act. These are the submissions of the Petitioner in appeal and they are all matters that needed to be decided by Mr. Agarwal; and they had to be decided urgently, on 27th August 2013, the date fixed by this Court and not some other date. Mala fides are writ large in the appellate proceedings.

8. We must, without hesitation, note too the sharp contrast between Mr. Agarwal's conduct and that of the Learned APPs, to whom falls, again and again, the thankless and onerous task of defending his dubious appellate orders. Mrs. Pai, Learned APP appearing in this matter, conducted herself with exemplary dignity and restraint. It is a matter of regret to us that she was put in the unenviable position in which she found herself, but that was of Mr. Agarwal's making, not ours. We thank her for her assistance and fairness in approach. It is a tragedy that Mr. Agarwal seems not to want to learn from his mistakes or pay any heed even to Government counsel.

9. In matter after matter, we have had to set aside appellate orders passed by the 3rd Respondent in externment proceedings. These orders reflect a formulaic approach involving what is little more than a cut-and-paste job. Stock phrases are used, even entire paragraphs, regardless of the merits of the matter. There is almost never a reference to a single pronouncement of the law on externment by

the Supreme Court or this Court in any of these orders that come before us. The words of every court, from the highest court downward, seem to pass like the idle wind, and are respected not. There is little or no attention to facts, and this in a sphere of law that is fundamentally fact-dependent. There is a persistent misreading of the law. For instance, the appellate orders repeatedly refer to "public peace and order", matters extraneous to externment proceedings under the Bombay Police Act. Whether there are or are not in-camera witness statements, and whether these are relied on in the show-cause notice but not in the externment order, or vice-versa, are all matters that are treated as equally irrelevant. As far as we can tell, the approach seems to be that facts are merely an inconvenience, the law but a nuisance, and the Constitution might as well not exist. Writ Petitions Nos. 2950 of 2013, 1363 of 2013, 399 of 2013, 459 of 2013 and 490 of 2013 are just a few very recent examples of an egregious non-application of mind in passing such orders. It pains us to note that such orders betray the call of the assigned duty. None is a greater victim of these appellate orders than the State itself and its police machinery. There may well be cases where an order of externment is warranted and, if properly handled in appeal, might even be sustained. Time and again, the cavalier and blithe-spirited approach to both facts and law in the 3rd Respondent's appellate orders renders this impossible. We note this not in any anger, but with acute distress and sorrow, for we believe every person is entitled to expect, even demand, greater care and caution while dealing with matters that affect personal liberty.

10. At one stage, we considered passing strictures against Mr. Agarwal, of having these noted in his confidential reports, and even imposing costs to be borne by him personally. We also considered directing that he be divested of the present assignment. At our request, Mr. Agarwal was personally present in Court when we expressed our views. We are satisfied, for the moment, that we have made matters clear to him and, equally, that he has understood us completely. At this stage, we do not wish to sully the officer's record or visit him with penalties or strictures. We are confident that he has understood our meaning and intent and will, in future matters, show greater care and circumspection while hearing and deciding appeals in externment proceedings. It will, of course, be open to the State Government to consider whether, in the interests of all concerned, it would be advisable to appoint another officer to this assignment. We prefer to allow matters to rest there. The externment order dated 5th July 2013 is quashed and set aside. No costs.