

(1958) 11 BOM CK 0011

In the Bombay High Court

Case No : Criminal Revision Application No. 1393 of 1958

Vishnu Ramchandra

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 25-11-1958

Acts Referred:

Bombay Police Act, 1951 — Section 124, 142, 167, 57
City of Bombay Police Act, 1902 — Section 27, 27(1)
Penal Code, 1860 (IPC) — Section 411

Citation : AIR 1959 Bom 515 : (1959) 61 BOMLR 498 : (1959) CriLJ 1415 :
(1959) ILR (Bom) 1145

Hon'ble Judges : Mudholkar, J

Bench : Single Bench

Advocate : G.P. Kini and K. Pradhan, for the Appellant; V.T. Gambhirwala, Asst.
Govt. Pleader, for the Respondent

Judgement

Mudholkar, J.—The petitioner has been convicted by the Presidency Magistrate, Second Court, Mazagaon, u/s 142 of Act XXII of 1951 and sentenced to undergo rigorous imprisonment for six months.

2. It is common ground that the petitioner was convicted for an offence under Sections 380 and 114, Indian Penal Code, by the Presidency Magistrate, 13th Court, Bombay, on 16-11-1949 and sentenced to undergo rigorous imprisonment for one month. On 15-10-1957 the Deputy Commissioner of Police, Crime Branch, C.I.D., Greater Bombay, made an order u/s 57 of the Bombay Police Act, externing the petitioner. At that time the petitioner was facing a prosecution u/s 411. Indian Penal Code, or in the alternative u/s 124 of the Bombay Police Act. The externment order was, therefore, not executed on the petitioner and he was allowed to stay on within the limits of Greater Bombay. On 10-7-1958 the Criminal Case came to an end and the petitioner was acquitted. Immediately thereafter, he was taken by a Police Constable to Mumbra Railway Station and left there. According to the Prosecution, the petitioner, instead of staying out of Greater Bombay, came into the city a breach of the aforesaid order and was

arrested by a Police Constable near Pydhonie. The Petitioner, on the other hand, contends that through he was originally taken by a Police Constable to Mumbra, he was forcibly brought by him to Byculla and from there he was forced to go to Pydhonie. The learned Magistrate did not accept the version of the petitioner and convicted and sentenced him as already stated.

3. On behalf of the petitioner Mr. Kini has raised three points. The first point is that the Deputy Commissioner of Police did not apply his mind to the facts of the case before making the order of externment. The second point is that Section 57 of the Bombay Police Act is prospective in application and that before an order could be made thereunder it had to be established that the person against whom the order is made had been convicted of an offence falling under Chapters XII, XVI or XVII of the Indian Penal Code subsequent to the coming into force of the Act. The third ground is that the belief entertained by the Deputy Commissioner that the petitioner was likely to engage himself in the commission of an offence similar to that for which he was convicted was based on the fact that the petitioner was facing a prosecution before the Magistrate in Bombay, and that since the petitioner was ultimately acquitted in the case against him, the foundation for making the order had disappeared.

4. It is not necessary for me to deal with the first and the third points because, in my opinion, the second point is a good one and must succeed. Now, the relevant portion of section 57 of the Bombay Police Act, 1951 is as follows--

"If a person has been convicted

(a) of an offence under Chapters XII, XVI or XVII of the Indian Penal Code....the Commissioner, the District Magistrate or the Sub-Divisional Magistrate specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous thereto by such route and within such time as the said officer may prescribe and not to enter or return to the area or the area such contiguous districts or part thereof, as the case may be, from which he was directed to remove himself."

It has to be noted that the Legislature has used the present participle "has been" and not the past participle. It must, therefore, be inferred that section 57 was intended to be utilised where a person was convicted subsequent to the coming into force of that Section. Indeed, this Section being a penal Section, the presumption would be that it would not penalise anything that had taken place prior to its coming into force. Mr. Gambhirwala, the learned Assistant Government Pleader, however, said that Section 57 merely reproduced the provisions of Section 27 of the City of Bombay Police Act, 1902, and that any liability incurred by a person under that Section is preserved by Section 167 of the Bombay Police Act, 1951. It seems to me, however, that this argument is

untenable. The relevant portion of Section 27 of the City of Bombay Police Act, 1902, is as follows:--

"(1) Wherever it shall appear to the Commissioner of Police--

(a) That the movements or Acts of any person in the Greater Bombay are causing or calculated to cause alarm, danger or harm to person or property, or that there are reasonable ground for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence, or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence and when in the opinion of the Commissioner witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property";"

Now, this provision does not make any reference to the conviction of a person for an offence under Chapters XII, XVI or XVII of the Indian Penal Code, whereas Section 57(a) of the present Act does. If a person is convicted subsequent to the coming into force of the Bombay Police Act, 1951, for an offence under Chapters XII, XVI or XVII of the Indian Penal Code, any of the authorities named in that section would be competent to make an order of externment against that person provided the authority was satisfied that person was again likely to engage himself in the commission of an offence similar to the one in respect of which he was convicted. Under Section 27(1)(a), a person who has been convicted of an offence under Chapters XII, XVI or XVII was not rendered liable for being proceeded against under that section. No doubt, the Commissioner of Police, who alone was authorised to make an order under that section, could make an order of externment against a person if there were reasonable grounds for believing that such person was engaging or was likely to engage in the commission of an offence involving force or violence or of an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code. But the belief has to be entertained by the Commissioner of Police at time of the making of the order. No belief of this kind was entertained by the Commissioner of Police with regard to the petitioner in the year 1949 or at any time prior to the coming into force of Section 57 of the present Police Act; and therefore no order could have been made against the petitioner u/s 27 of the now repealed Police Act of 1902. Since no liability was incurred by the petitioner under the repealed Act, Section 57 of the present Act affords no assistance to the prosecution.

5. Now, before an order of externment is made u/s 57, the existence of one of the conditions precedent which are set out in Clauses (a), (b) and (c) of that section are to be fulfilled. There is no suggestion that Clauses (b) and (c) have any application to the present case. Reliance was placed only upon Clause (a), which requires that a person against whom the order is to be made has been convicted of an offence under Chapters XII, XVI or XVII, Indian Penal Code. As already stated, such a conviction should have been made after the coming into force of Section 57. A conviction made prior to that time is of no avail.

6. Upon this view, I allow this application in revision, set aside the order of conviction and sentence passed against the petitioner, and direct that the petitioner, who is in jail, shall be set at liberty. The Rule is made absolute.

7. Rule made absolute.