

(1988) 07 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 781 of 1986

Vishwanath Kashinath Tribhuvan

APPELLANT

Vs

K. P. Raghuvanshi and another

RESPONDENT

Date of Decision : 13-07-1988

Acts Referred:

Bombay Police Act, 1951 — Section 57, 59

Bombay Prevention of Gambling Act, 1887 — Section 12A

Citation : (1988) 07 BOM CK 0029

Hon'ble Judges : V.P. Tipnis, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—The Deputy Commissioner of Police, Zone-1, District-Thane, served notice under S. 59 of the Bombay Police Act, 1951 (hereinafter referred to as "the Act") upon the petitioner calling upon to show cause why the petitioner should not be externed for a period of two years from the Districts of Thane, Raigad, Greater Bombay and Nasik. The notice recites that the petitioner was convicted under S. 12A of the Bombay Prevention of Gambling Act, 1887 in two cases in the year 1983 and was sentenced to pay a fine of Rs. 200/- and Rs. 40/- respectively. The notice further claims that in spite of the conviction, the petitioner has not given up his habits and is used to commission of crimes. The petitioner showed cause and, thereafter, the impugned order was passed on February 4, 1986. The appeal preferred before the State Government ended in dismissal and that has given rise to the filing of this petition.

2. Miss Desai, learned counsel appearing on behalf of the petitioner, submitted that the requirements of S. 57 of the Act are not at all satisfied and, therefore, the exercise of jurisdiction by the Externing Authority was without authority. The submission is correct and deserves acceptance. Section 57 of the Act prescribes that if a person has been convicted under Clause (a) of S. 12A of the Bombay Prevention of Gambling Act, 1887, the District Magistrate, 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 order externment of

such person. It is obvious that it is not the mere conviction but further satisfaction of the authority that the person is likely again to engage himself in the commission of identical offences. We asked Mr. Gangakhedkar, learned Asstt. Public Prosecutor appearing on behalf of the Externment Authority, to show us the material to come to that conclusion and the learned Asstt. Public Prosecutor stated that there is no such material. In the return filed by the Externment Authority, there is not a whisper of any material available to come to the conclusion that the petitioner is likely again to engage himself in the commission of identical offences. In these circumstances, the order of externment cannot be sustained.

3. Accordingly, rule is made absolute and the impugned order of externment is quashed and set aside.

4. Petition allowed.