
(2016) 02 MP CK 0065

In the Madhya Pradesh High Court

Case No : Writ Petition No. 516 of 2016

Yatindra Verma alias Yatin Verma alias Mahendra Verma alias
Jatin Kala

APPELLANT

Vs

Commissioner, Indore Division

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 — Section 13(2), 3, 8
Penal Code, 1860 (IPC) — Section 376

Citation : (2016) 2 JabLJ 16 : (2016) 2 MPLJ 635

Hon'ble Judges : S.C. SHARMA, J.

Bench : Single Bench

Advocate : Deepesh Kumar Sharma with Subhash Choudhary and Sameer Verma, Advocates, for the Appellant; Deepak Rawat, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J.—The petitioner before this Court has filed this present writ petition being aggrieved by the order dt. 30/12/2015, passed by the Commissioner, Indore Division, Indore dismissing the appeal preferred by the petitioner against the order dated 08/10/2015 passed by the Additional District Magistrate, Indore in exercise of powers conferred under the M.P. Rajya Suraksha Adhiniyam, 1990.

2. In the present case, the contention of the petitioner is that the order of externment was passed by the Additional District Magistrate and, therefore, as under the Act of 1990, the District Magistrate is competent to pass an order, the order dated 8/10/2015 and the subsequent order passed in the appeal, deserves to be set aside. The second ground raised by the learned counsel for the petitioner is that the petitioner is involved in petty offences and old and stale cases have been considered while passing the order of externment and, therefore, in the light of the judgment delivered by this Court in the case of

Ashok Kumar Patel v. State of Madhya Pradesh reported in 2009 (4) MPLJ 434, the order of externment deserves to be set aside. It has also been stated that the order of externment also deserves to be set aside in the light of the judgment delivered by this Court in the case of Mohit Prasad Patel v. State of M.P.& ors., reported in 2007 (II) MPJR SN 38, as Khandwa is not a neighbouring District.

3. On the other hand, a reply has been filed in the matter and the stand of the respondent ? State is that the petitioner is involved not in petty cases, but he is involved in very serious and heinous cases which includes an offence u/S. 376, wherein, he is an accused of committing gang rape. A specific query was raised to the learned counsel for the petitioner whether the criminal case registered against the petitioner which is in respect of gang rape, has been decided or the petitioner has been acquitted or not. It has been informed that the case is still pending.

4. Facts of the case reveal that the proper Show Cause Notice was issued u/S. 8 of the M.P. Rajya Suraksha Adhiniyam and the petitioner was granted time to file reply.

5. After receiving the reply, the Addl. District Magistrate has passed an order of externment. For the reasons best known to the petitioner, the order of externment has not been filed.

6. The petitioner has enclosed copy of the order passed in appeal.

7. It is true that the Division Bench of this Court in the case of Ashok Kumar Patel (supra), in paragraph Nos. 6, 9, 11, 13 and 14, has held as under :

6. A plain reading of Section 5 (b) of the Act of 1990 quoted above, would show that for passing an order of externment against a person, two conditions must be satisfied:-

(i) There are reasonable grounds for believing that a person is engaged or is about to be engaged in commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 or in the abetment of any such offence; and

(ii) In the opinion of the District Magistrate, 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.

9. We will therefore have to examine the impugned order dated 18/11/2008 passed by the District Magistrate, under section 5(b) of the Act of 1990 to find out whether the petitioner was engaged in the commission of an offence mentioned in section 5(b) of the Act of 1990, or in the abetment of such offence, which was very close in proximity to 18/11/2008 when the impugned order of externment was passed. The first offence mentioned is alleged to have been committed by the petitioner on 09/04/1995 when the petitioner and his other

associates forcibly took possession of "Mahuwa" of Tilakdhari Tripathi, son of Indramani Tripathi and collected the same, and Crime No.46/95 under sections 447 and 379 of the Indian Penal Code was registered and the petitioner was arrested and produced before the Court. The second offence is alleged to have been committed by the petitioner on 14/3/2007 when the petitioner is alleged to have written a letter to Shivshankar Tripathi, son of Tilakdhari Tripathi, giving threats regarding construction of new building of Shiksha Guarantee School, and Crime No.42/2007 under sections 353, 294, 506 read with section 34 of the Indian Penal Code has been registered and a challan has been filed in the Court in Case No.729/2008. The third act which has been mentioned in the impugned order is not an offence alleged to have been committed but a Prohibitory Proceeding No.22/2007 under sections 107 and 116(3) of the Code of Criminal Procedure instituted against the petitioner on 9/4/2007 and the petitioner has been produced in Court. The fourth offence alleged to have been committed by the petitioner is in July, 2008 when the petitioner along with 6 or 7 others is alleged to have caused hindrance in Government work during the election of Palak Shikshak Sangh and created disturbances in election work and committed "Marpeet" on the basis of which Crime No.216/2008 for offences under sections 253, 294, 323, 325 and 506-B read with section 34 of the Indian Penal Code has been registered. In our considered opinion, these offences alleged to have been committed by the petitioner in the year 1995 to 2007, cannot be the offences have no proximity at all to the order of externment passed on 18/11/2008. Even, the offence alleged to have been committed by the petitioner along with 6 or 7 other persons in July, 2008, cannot constitute a reasonable ground to believe on 18/11/2008 that the petitioner is engaged or is about to be engaged in offence mentioned in section 5(b) of the Act of 1990.

11. In the instant case, the District Magistrate has in the impugned order only baldly stated that the list of offences registered against the petitioner reflects that he is a daring habitual criminal and because of this there is fear and terror in the public and has not recorded any clear opinion on the basis of materials, that in his opinion witnesses are not willing to come forward to give evidence in public against such person by a reason of apprehension on their part as regards safety of their person or property. In most of the cases, Challans have been filed by the Police in Court obviously after examination of the witnesses under Section 161 of the Criminal Procedure Code and the cases are pending in the Court. There is no reference in the order of District Magistrate that witnesses named in the Challans filed by the Police are not coming forward to give evidence against the petitioner in Court. Hence, in the absence of any existence of material to show that witnesses are not coming forward by a reason of apprehension to danger to their person or property to give evidence against the petitioner in respect of the alleged offences, an order under Section 5(b) of the Act of 1990 cannot be passed by the District Magistrate by merely repeating the language of Section 5(b) of the Act of 1990."

13. The Act of 1990 certain serious restrictions on the fundamental right to

freedom under Article 19 (1) of the Constitution and the fundamental right to personal liberty under Article 21 of the Constitution and unless the conditions mentioned under section 5(b) of the Act of 1990 are strictly satisfied, an order of externment, will have to be quashed by the Court. While considering a case under section 56 of the Bombay Police Act, which also empowered the police to pass an order of externment, the Supreme Court observed in *Pandharinath Shridhar Rangnekar v. Dy. Commissioner of Police, State of Maharashtra (supra)*, as under -

"It is true that the provisions of section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in *Gurbachan Singh v. The State of Bombay*, AIR 1952 SC 221 had upheld the validity of section 27(1) of the City of Bombay Police Act, 1902, which corresponds to section 56 of the Act. Following that decision, the challenge to the constitutionality of section 56 was repelled in 1956 SCR 533 : AIR 1956 SC 585. We will only add that care must be taken to ensure that the terms of sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee."

14. We are thus of the considered opinion that the two conditions for an order of externment stated in section 5(b) of the Act of 1990 do not exist in this case and the order passed by the District Magistrate and appellate order of the Commissioner are liable to be quashed. Since the impugned order of externment passed by the District Magistrate and the appellate order passed by the Divisional Commissioner are liable to be quashed on this ground alone, it is not necessary for us to deal with the other grounds raised by the petitioner in this writ petition. In the result, we quash the impugned order dated 18/11/2008 passed by the District Magistrate Rewa in Cr. Case No.227/08 as well as the appellate order dated 13/1/2009 passed by the Commissioner, Rewa Division.

8. This Court has carefully gone through the aforesaid paragraphs and is of the considered opinion that the learned Additional District Magistrate has rightly passed the order of externment keeping in view the various cases which are reflected in the list annexed along with the reply which include a criminal case relating to gang rape. Offences are also not stale and as the offence u/S. 376 of the of the Indian Penal Code is of the 2014 only and, therefore, the judgment relied upon by the learned counsel for the petitioner is of no help to the petitioner.

9. This Court has carefully gone through the judgment delivered in the case of *Mohit Prasad Patel (supra)*.

10. Khandwa is certainly a neighbouring District which is very close to Indore and this Court is of the considered opinion that the judgment relied upon by the learned counsel for the petitioner is again of no help to the petitioner.

11. A ground has also been raised that the learned Additional District Magistrate is not competent to pass such an order. The State Government in exercise of the powers conferred under sub-Section (11) of Sec. 13 of the M.P. Rajya Suraksha

Adhiniyam has issued a Notification dt. 3/3/2003 and by virtue of the aforesaid Notification, the Additional District Magistrate is certainly competent to pass an order of externment. The Notification is still in existence.

12. The same has not been controverted by filing any rejoinder. Otherwise also, the present Writ Petition is not maintainable as the State of Madhya Pradesh has not been impleaded as respondent and the copy of the externment order has not been filed.

13. Resultantly, the admission is declined.