

(2017) 02 BOM CK 0063
In the Bombay High Court
Case No : Criminal Writ Petition No.21 of 2017

Zumbar s/o. Goroba Kadam

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Maharashtra Police Act, 1951 — Section 56(1)(a), Section 56(1)(b), Section 59

Citation : (2017) 2 AIRBomRCri 94 : (2017) ALLMRCri 843 : (2017) 2 MhLJCrI 45

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. G.J. Kore, Advocate, for the Petitioner; Ms. Preeti V. Diggikar, APP, for the Respondent/State

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition is filed with the following prayer clause :

B. By issuing the writ of certiorari or any other writ, order or direction like in nature the impugned order dated 28/12/2016 in proceeding No. 2016/SAPR/EXTERNMENT/CR-127 passed by the Ld. Divisional Commissioner Aurangabad and order dated 07/10/2016 passed by the Sub Divisional Officer Osmanabad in proceeding No.2016/Penal/CR-108 may kindly be quash and set aside.

4. The learned counsel appearing for the petitioner submits that the Sub Divisional Officer ought to have considered that the offences registered against the present petitioner are not serious one or against the society or dangerous to the public at large. It ought to have been considered by the authorities that only three offences are registered against the present petitioner and the same are registered only to pressurize the present petitioner. Respondent no.3 did not take

consideration that as the present petitioner had filed complaint against the Sarpanch namely Arun Appasaheb Veer and only to give counter blow to the crime registered by the present petitioner the false case is filed by the complainant namely Arun Appasaheb Veer. It is submitted that the petitioner is working as labourer.

5. It is further submitted that the present petitioner is of 68 years old and suffering from old age problem and his economical condition is very bad. The petitioner is doing social work and due to the said work, the complainant in crime No. 52/2015 got annoyed. With an intention to stop the social activities initiated by the petitioner, false cases were filed against him by the complainants. It is submitted that the alleged offences registered against the present petitioner are false one and the same are registered only to give counter blast to the complaints filed against the complainants about their illegal activity and misappropriation of government funds and land. It is submitted that the expression "alarm, danger or harm to person or property must be held to refer to the alarm, danger or harm to person or property of the public at large and not of one or two individual amongst the public. However, in the present case in both the cases, the complainant is one and the same. It is submitted that except three crimes, no any other crime is registered against the present petitioner. Therefore, the learned counsel appearing for the petitioner submits that, the petition may be allowed.

6. On the other hand, the learned APP appearing for the respondent ? State relying upon the original record and also the reasons assigned by respondent nos.2 and 3 in the impugned orders submit that the orders passed by respondent nos.2 and 3 are in conformity with the provisions of Section 56 [1] [a] of the Maharashtra Police Act, 1951 and also keeping in view the documents collected during the course of enquiry by the respondent no.3.

7. We have carefully considered the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent ? State. With their able assistance, we have also carefully perused the pleadings and grounds taken in the Petition, annexures thereto, original record made available for perusal by the respondents and also the reported judgments cited across the Bar by the learned counsel appearing for the petitioner. At the outset, it would be apt to reproduce herein below the provisions of Section 56 (1) (a) and (b) of the Maharashtra Police Act, 1951 reads thus :

56. Removal of persons about to commit offence

(1)

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or

(b) that there are reasonable grounds 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 such officer 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, or

[Underlines are added]

8. Upon careful perusal of the aforesaid provisions, an order of externment can be passed against a person whose movements or acts are causing or calculated to cause alarm, danger or harm to person or property as provided in clause (a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence as provided in clause (b). An order of externment can also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, or Chapter XVI, or Chapter XVII of the Indian Penal Code. But in addition to the above, the concerned Officer, who is dealing externment proceedings, should be of the opinion that the 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 have carefully perused the reasons assigned by respondent no.3 while passing the order of externment of the petitioner and we find that the said authority has not recorded subjective satisfaction and formed opinion that the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property.

10. The Division Bench of the Bombay High Court [at Principal seat] in the case of Yeshwant Damodar Patil v. Hemant Karkar, Dy. Commissioner of Police & another, 1989 [3] Bom.C.R. 240 had occasioned to consider the scope of provisions of Section 56 [1] [a] and [b] and also the mandate of provisions of Section 59 of the Bombay Police Act. It would be gainful to reproduce herein below para 3 of the said judgment:

3. Section 56 (i) of the Bombay Police Act visualises three situations in which the order of externment could be passed by the designated officer. We will, however, ignore, for the purpose of the disposal of this petition the third type of situation and only analyse the two situations which are covered by Clauses (a) and (b) of section 56 (i) of the Act. An order of externment can be passed against a person whose movements or acts are causing or calculated to cause alarm, danger or harm to person or property. That is what is provided in clause (a). The order of externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged in the commission of an offence involving force or violence. It is so provided in the first part of clause (b) of section 56 (i) of the Act. An order of externment can also be

passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, of Chapter XVI, or Chapter XVII of the Indian Penal Code. This is so provided in the latter part of clause (b) of section 56 (i) of the Act. But it is not enough that these conditions alone are satisfied. In addition to this the designated officer should be of the opinion that 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.

[Underlines added]

11. The aforementioned provisions make it abundantly clear that in order to fulfil mandate of the provisions of Section 56 (1) (b), the designated officer has to record his opinion that 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.

12. Yet in another exposition of law in the case of Balu v. The Divisional Magistrate, Pandharpur, 1969 Mh.L.J. 387, while appreciating the facts involved in that case, this Court held that extending the area of externment not only outside Pandharpur Taluka but to the Districts of Solapur, Pune and Satara is illegal since the alleged activities against the petitioner therein, as stated in the show cause notice, were confined to the Pandharpur City.

13. As already observed in the foregoing paragraphs, it does not appear from the discussion in the order passed by respondent no.3 that, as a matter of fact he recorded in-camera statements of the witnesses and before passing the impugned order of externment, he formed opinion that the witnesses are not willing to come forward to give evidence in public against the petitioner. It further appears that there is no discussion in the impugned order why the externment of the petitioner is necessary from Latur District and Ausa Taluka in Latur District, Barshi in Solapur District, North Solapur, South Solapur when the alleged activities/offences against the petitioner are registered with the Osmanabad Gramin Police Station, Osmanabad.

14. In the light of discussion in the foregoing paragraphs, an inevitable conclusion can be drawn that respondent no.3 has not followed the mandate of the provisions of Section 56 [1] [b] of the Maharashtra Police Act. There is non application of mind of respondent no.3 inasmuch as he has not adverted to the specific grounds in the show cause notice and also did not adhere to the mandate of the provisions of Section 56 [1] [b] of the Maharashtra Police Act, 1951.

15. The Appellate Authority, though, modified the order passed by respondent no.3 and restricted its implementation to the Osmanabad District nevertheless did not consider that respondent no.3 has not adhered to the provisions of Section 56 [1] [b] of the Maharashtra Police Act, 1951. In the light of the discussion herein above, we pass the following order :

ORDER

(i) The Writ Petition is allowed. The order dated 28.12.2016 in proceeding No.2016/SAPR/EXTERNMENT/CR-127 passed by the Divisional Commissioner, Aurangabad and the order dated 07.10.2016 passed by the Sub Divisional Officer, Osmanabad in proceeding No. 2016/Penal/CR-108 stand quashed and set aside.

(ii) Rule made absolute in the above terms. The Writ Petition stands disposed of. No order as to costs.