
(2023) 01 BOM CK 0038

Bombay High Court (Nagpur Bench)

Case No: Criminal Writ Petition No.829 Of 2022

Pratik

APPELLANT

Vs

Divisional
Commissioner,
Amravati And Others

RESPONDENT

Date of Decision: Jan. 7, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 19(1)(d), 21
- Maharashtra Police Act, 1951 - Section 53(1),, 56, 56(1)(a), 56(1)(b), 56 (1)(a)(b), 110(e)(g)
- Code Of Criminal Procedure, 1973 - Section 110

Citation: (2023) 01 BOM CK 0038

Hon'ble Judges: G. A. Sanap, J

Bench: Single Bench

Advocate: J.Y. Ghurde, H.D. Dubey

Final Decision: Disposed Of

Judgement

Sr.

No.",Police Station,Crime No.,Sections,"Charge sheet

No. Dt.,"Court case

No.,"Case

status

1.,Frezarpura,473/15,"324, 504,

506, 34

IPC", "284/16

dt.3.11.16", "1365/16 dt.

10.11.16", "Dispose

of.

2., Frezarpura, 352/18, "452, 323,

504, 506

(B), 34 IPC", "245/19

29.07.2019", "1001/19

dt.3.08.19", "Court

Pending

3., Rajapeth, 360/19, "324, 452,

427, 323,

506, 34

IPC", "595/19

dt. 12.11.19", "496/19

dt. 13.11.19", "Court

Pending

4., Rajapeth, 810/21, "302, 34

IPC", "639/21

dt.10.08.21", "1089/21

dt. 12.08.21", "Court

pending

satisfaction arrived at on the basis of the objective material.,,,,,,

9. I have heard Shri J.Y. Ghurde, learned Advocate for the petitioner and Shri H.D. Dubey, learned APP for the respondent Nos. 1 to 3. Perused the",,,,,,

record and proceedings.....,

10. Shri J.Y. Ghurde, learned Advocate submitted that the stale crimes including the crime in which the petitioner was acquitted have been taken into".....,

consideration. He further submitted that there was no live link between the crimes and the order passed by the respondent No.2. Learned Advocate.....,

submitted that on the basis of the material relied upon to pass the externment order, the basic requirements of Section 56 (1) (a)(b) of the Act of 1951".....,

have not been made out. The statements of the in-camera witnesses were not verified by the respondent No.2 as required by law. In-camera.....,

statements of the confidential witnesses lack particulars. The statements are vague. It is submitted that, therefore, the statements could not have been".....,

made the basis of the externment order. Learned Advocate further submitted that in all crimes, the petitioner has been released on bail. This aspect".....,

has not been taken into consideration while passing the order. Learned Advocate further submitted that in absence of the reasons having been.....,

recorded by the respondent No.2, the order of externment from entire Amravati District for a period of two years suffers from the vice of".....,

excessiveness. Learned Advocate submitted that the prima-facie analysis of the material would show that dent has been caused to subjective.....,

satisfaction sought to be asserted. Learned Advocate submitted that liberty and fundamental right of the petitioner cannot be curtailed in this manner.....,

Learned Advocate further submitted that in the chapter proceeding initiated against the petitioner, the petitioner, in the month of January, 2022 had".....,

furnished the bond for good behavior. It is submitted that it is not the grievance of the respondents that the petitioner after executing the bond for good.....,

behaviour and before passing the order of externment, committed the breach of the conditions of bond. Learned Advocate pointed out that the last".....,

crime relied upon was registered in the month of June, 2021 whereas the order of externment came to be passed on 16.03.2022. Learned Advocate".....,

submitted that live link has not been established between the crimes and the order. Learned Advocate in order to substantiate his submission placed.....,

reliance upon a decision of Division Bench of Bombay High Court, in the case of Ganesh Balasahebe Changle Vs. Deputy Commissioner of Police, " , , , , , ,

Nashik and others reported at (2014) Mh.L.J. (Cri.) 653, wherein it is held that the reference to the crime, in which, the petitioner had already been" , , , , , ,

acquitted cannot be taken into consideration and if taken into consideration, that vitiates the proceeding. It is further held that in the absence of the" , , , , , ,

dates, time and places of the alleged offence with the witnesses having stated in the statements, the statements become doubtful. It is further held that" , , , , , ,

such approach vitiates the subjective satisfaction sought to be asserted. , , , , , ,

11. Learned APP submitted that the petitioner was involved in identical crimes from 2015 to 2021 and, therefore, the same was sufficient to establish" , , , , , ,

the live link. Learned APP further submitted that on the basis of the continuous commission of crimes, it has been established beyond doubt that his" , , , , , ,

movements or acts were likely to cause calculated danger or harm to the persons or property. Learned APP justified the reliance placed on the , , , , , ,

statements of the in-camera confidential witnesses. Learned APP submitted that at every stage of proceeding, the opportunity was extended to the" , , , , , ,

petitioner to deal with the proceeding. Learned APP submitted that the in-camera statements were duly verified and therefore, the apprehension" , , , , , ,

placed on record by the petitioner is totally misplaced. Learned APP submitted that the observations by the Appellate Authority with regard to the= , , , , , ,

non establishment of live link may not be fatal to the case of the respondents. , , , , , ,

12. The record of the externment proceeding has been placed on record. I have gone through the same. The externment order was passed by relying , , , , , ,

upon the provisions of Section 56 of the Act of 1951. It would be necessary to reproduce the said section. Section 56 reads thus: , , , , , ,

“ 56. Removal of person about to commit offence:- , , , , , ,

(1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Section 7 to the Commissioner , , , , , ,

and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section, to the" , , , , , ,

District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf-",,,,,,

(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 or an offence involving,,,,,,

force or violence or an offence punishable under chapter 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," ,,,,,,

(bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of,,,,,,

public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980, or" ,,,,,,

(2) in any manner prejudicial to the maintenance of supplies of commodities essential of the community as defined in the Explanation to sub-section (1),,,,,,

of Sec. 3 of the Prevention of Black & " marketing and Maintenance of Supplies of Essential Commodities act, 1980, or" ,,,,,,

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing" ,,,,,,

duly served on him or by beat of drum or other wise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in" ,,,,,,

order to prevent violence and alarm [or such prejudicial act] or the outbreak or spread of such disease or [notwithstanding anything contained in this,,,,,,

Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local" ,,,,,,

limits of the jurisdiction of the Officer or not and whether contiguous or not), by such route, and within such time as the officer may specify and not to" ,,,,,,

enter or return to the said area or areas specified (hereinafter referred to as & "the specified area or areas& ") from which he was directed to remove,,,,,,

himself].”

13. It is not out of place to mention that against the petitioner, the externment order came to be passed by relying upon clauses (a) and (b) of Section

56 sub-section (1) of the Act of 1951. The ground under clause (a) provides that the movements or act of any person must be causing or calculated to

cause alarm, danger or harm to the person or property. The ground under clause (b), requires that on the basis of the material it must be established

that there are reasonable grounds for believing that person sought to be externed 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, XIV or XVII of the Indian Penal Code or abetment of any such offence. The

second part of clause (b), which is required to be read with first part, clearly provides that the competent authority empowered to pass an order should

form an opinion that the witnesses are not willing to come forward to give evidence in public against such person, only because of an apprehension on

their part as regards safety of their person or property. The conjoint reading of clauses (a) and (b) would, therefore, show that in arriving at subjective

satisfaction as to the grounds, there must be objective material on record before the authority and the same must be considered in accordance with

law.

14. Before proceeding to the merits of the arguments, at this stage, it would be necessary to consider the law laid down by the Hon’ble Apex

Court in the case of Deepak s/o Laxman Dongre .vs. State of Maharashtra and others, reported at 2022 All M.R. (Cri.) 761 (S.C.).

15. In this case the Hon’ble Supreme Court has considered the decision in the case of Pandharinath Shridhar Rangnekar .vs. Dy. Commissioner,

of Police, State of Maharashtra, reported at (1973) 1 SCC 372. On consideration of this decision, it is held that the reasons which necessitate or justify

passing of an extraordinary order of externment arise out of extraordinary circumstances. It is held that, therefore, strict compliance of Section 59 of

the Act of 1951 is required to be made. It is further held that the order of externment deprives the citizen of his fundamental right of free movement,,,,,,

throughout the territory of India. The order of externment in fact prevents the person even from staying in his own house along with his family,,,,,,

members during subsistence of the externment order. It is, therefore, held that the subjective satisfaction must be arrived at on the basis of the" ,,,,,,

objective material.,,,,,,

16. In order to consider applicability of the proposition to the facts of the case on hand, it would be necessary to go through the show cause notice and" ,,,,,,

the material relied upon in the show cause notice, which ultimately converged into the order of externment thereby recording subjective satisfaction on" ,,,,,,

the basis of the said material.,,,,,,

17. The question whether the subjective satisfaction arrived at by the authority is based on objective material is the question of fact. In this case, four" ,,,,,,

crimes have been relied upon to form subjective satisfaction. First crime was registered in 2015 at Frezarpura Police Station. The second crime was,,,,,,

registered at the same police station in 2018. The third crime bearing No.360/2019 was registered in 2019 at Rajapeth Police Station. The forth crime,,,,,,

bearing No.810/2021 was registered in June, 2021. Respondent No.3 - Assistant Commissioner of Police, as well as respondent No.2 - Deputy" ,,,,,,

Commissioner of Police, who ultimately passed the externment order, took into consideration all through out the crime bearing No.473/2015, in which" ,,,,,,

the petitioner was already acquitted. The respondent No.1-Appellate Authority has recorded a finding that the petitioner was acquitted in this offence,,,,,,

before initiation of the proceedings. It is, therefore, apparent that the crime which was registered in 2015 and wherein the petitioner was acquitted was" ,,,,,,

taken into consideration to form subjective satisfaction by the respondent No.2. In my view, this fact would reflect upon the non-application of mind." ,,,,,,

In my view, this would be one of the grounds to set aside the order." ,,,,,,

18. Considering the years of the crime registered against the petitioner as above, it would indicate that initial three crimes mentioned in the order has to" ,,,,,,

be termed as stale crimes for the purpose of this proceeding. The respondent No.2 relied upon the stale crimes to form his subjective satisfaction. In,,,,,,

my view, on the basis of these stale crimes, the live link between these crimes and the order of externment would get completely snapped. The forth" ,,,,,,

crime was registered in June, 2021. First notice issued by the respondent No.3 on the basis of the authority given to him by respondent No.2 is dated" ,,,,,,

12.02.2022. It is, therefore, apparent on the face of record that the time gap between the registration of the last crime in the year 2021 and the notice" ,,,,,,

dated 12.02.2022 would be of 9 months. The respondent No.2 issued the show cause notice to the petitioner on receipt of the papers from the,,,,,,

respondent No.3 on 26.02.2022. The order was passed on 16.03.2022. Even by making rough calculation, it would show that there was time gap of" ,,,,,,

about 9 months between the registration of last crime and order of externment. The perusal of the externment order dated 16.03.2022 would show,,,,,,

that this aspect has not been dealt with and considered while passing this order after 9 months of registration of the last crime against the petitioner. It,,,,,,

is further pertinent to note that in three crimes, in which the cases are pending against the petitioner, he has been released on bail. It is not out of place" ,,,,,,

to mention that seriousness of crime is one of the factors while deciding the bail application. The role attributed to the accused is by and large taken,,,,,,

into consideration while deciding the bail application. It is undisputed that in all three cases, the petitioner has been released on bail. The perusal of the" ,,,,,,

order would show that this aspect has also not been taken into consideration. It is not the case of the respondents that the petitioner had either,,,,,,

breached the conditions of the bail order or misused the liberty after the bail order. The respondent No.2 was required to take this aspect into,,,,,,

consideration and after doing so, ought to have formed his subjective satisfaction. Perusal of the order of the respondent No.1- Appellate Authority" ,,,,,,

would show that the Appellate Authority has also not considered this aspect. In my opinion, this would be contrary to the law. The respondent No.1-" ,,,,,,

Appellate Authority in its order dated 25.08.2022 has observed that considering the gap between the crimes registered in 2015 and 2018, the live link",,,,,,

has not been established. The Appellate Authority, however, observed that even though there is no live link between these two crimes, the crime chart",,,,,,

indicates that the appellant is continuously engaged in very serious crimes. The Appellate Authority was required to take this aspect into consideration.,,,,,,

On the basis of the material on record, it has to be held that the crimes relied upon were stale crimes. On the basis of stale crimes, relied upon to form",,,,,,

the subjective satisfaction, the live link between the crimes and the order was completely snapped. In order to justify the externment order on the",,,,,,

ground provided under Section 56(1) clauses (a) and (b), the urgency and promptness required on the part of an Officer in initiating the proceeding and",,,,,,

taking the proceeding to the logical end at the earliest, is completely lacking in this case. No acceptable justification has been placed on record for this",,,,,,

purpose.,,,,,,

19. The next important aspect which has not been taken into consideration is the chapter proceeding initiated under Section 110 of the Code of,,,,,

Criminal Procedure. Perusal of the show cause notices and the order of externment would show that the said chapter proceeding was initiated at the,,,,,

behest of the in-charge of Rajapeth Police Station, Amravati. This case was finally decided and the petitioner was directed to execute the bond for",,,,,,

good behaviour for a period of six months. The petitioner executed the bond on 10.01.2022. It is not the case of the respondent No.2 that the petitioner,,,,,

had breached the conditions of the bond. The order of externment was passed within a period of three months from the date of the execution of this,,,,,

bond. It is not the case of the respondents that during the bond period the petitioner committed the breach of conditions of the bond. This fact has not,,,,,

been taken into consideration at any stage of the proceeding. The respondent No.2, while arriving at the subjective satisfaction to warrant externment,",,,,,

ought to have taken into consideration and dealt with the good behaviour of the petitioner consistent with the conditions of the bond executed for good,,,,,

behaviour. In my view, this would, therefore, certainly dent the subjective satisfaction. The first show cause notice was issued by the respondent No.3" ,,,,,,

on 12.02.2022. The second show cause notice was issued by the respondent No.2 on 26.02.2022. The order was passed on 16.03.2022. It is therefore," ,,,,,,

apparent that there is a gap of about one month between the date of issuance of first notice and the order. ,,,,,,

20. The next important aspect is with regard to the consideration of the in-camera statements of the confidential witnesses. The statements were in ,,,,,,

sealed envelope. In the Court, the sealed envelopes were opened. Minute perusal of the statements would show that the same were recorded on" ,,,,,,

03.02.2022 by the Senior Police Inspector, Rajapeth, Police Station, Amravati City. The first notice was issued by the respondent No.3 on 12.02.2022." ,,,,,,

It is therefore, seen that the statements were very much available with the respondent No.3, when he had issued the notice dated 12.02.2022 to the" ,,,,,,

petitioner. Perusal of this notice would show that there is no mention of the recording of in-camera statements of the confidential witnesses. The ,,,,,,

respondent No.2 had delegated his powers to respondent No.3 for the purpose of inquiry. Respondent No.3 was, therefore, required to make a" ,,,,,,

specific mention of the statements of the confidential witnesses in his notes. The failure on this count can make one to draw an inference that those ,,,,,,

statements by that time were not recorded. The perusal of the statements would show that respondent No.3 verified those statements on 22.02.2022. ,,,,,,

It is therefore, seen that on the date of issuance of notice on 12.02.2022, the statements of the confidential witnesses were not even verified by the" ,,,,,,

respondent No.3. The respondent No.3, therefore, formed his opinion for the purpose of initiation of proceeding without taking the statements of the" ,,,,,,

confidential witnesses into consideration. Further, perusal of the statements would show that there is an endorsement by the respondent No.2 with" ,,,,,,

regard to the verification of the statements. This remark is vague. It does not mention that respondent No.2 had secured the presence of the witnesses ,,,,,,

and after securing their presence verified those statements with them. In my view, this is one more lacuna in this case. It is further seen on perusal of" ,,,,,,

the statements that the statements are vague with regard to the dates, time and month of the alleged incident involving the petitioner. The witnesses" ,,,,,,

were expected to tell with certainty the time, date and place of the incident. If the date, time and place of the incident is not mentioned in the" ,,,,,,

statements then, it must be dealt with in the order. It is not the case of the respondent No.2 that for one reason or the other these particulars were not" ,,,,,,

mentioned in the statements. There was no reason for the witnesses not to mention these facts. In my view therefore, the proposition in the case of" ,,,,,,

Ganesh Balasaheb Chagule (supra) is squarely would apply to this case. Similarly, the proposition in this case would substantiate the submissions of" ,,,,,,

the learned Advocate on the point of placing reliance on the case in which the petitioner had already been acquitted. ,,,,,,

21. The next important point is with regard to the excessive nature of the order. As per the provisions of Section 56 of the Act of 1951 the maximum ,,,,,,

period provided for externment is of 2 years. In the case in hand, the respondent No.2 ordered the externment of the petitioner from the entire" ,,,,,,

Amravati District for a period of two years. It is not out of place to mention that the externment order apart from making inroads on the fundamental ,,,,,,

right of the movement, makes the said person leave separate from his family members. Similarly, the externment order can deprive the said person of" ,,,,,,

his livelihood. Depending upon the financial position, it can make the dependent family members to starve. In this background, in order to justify the" ,,,,,,

externment for maximum period of two years, the Authority is required to consider the objective material to record subjective satisfaction on this point." ,,,,,,

The order passed by the respondent No.2 is woefully silent on this point. No reasons have been recorded by the respondent No.2 to extern the ,,,,,,

petitioner for a period of two years from the entire Amravati District. The crimes relied upon were committed within the jurisdiction of Frezarpura and ,,,,,,

Rajapeth Police Station in the city of Amravati. The respondent No.2 has, therefore, failed to deal with this point positively. The order passed by the",,,,,,

respondent No.2 and confirmed by respondent No.1 in my view, therefore, suffers from virus of excessiveness. The law laid down on the point in the",,,,,,

cases of Shaikh Mukhtyar S/o Mustafa Shaikh .vs. State of Maharashtra and others, reported in 2017 All M.R. (Cri.) 268 ; and Bhagwat Dadasaheb",,,,,,

Landge and another .vs. State of Maharashtra and others, reported in 2020 (5) Mh.L.J. (Cri.) 546, would equally apply in this case. In my view, this",,,,,,

would be one of the facts which would weigh in favour of the petitioner. This would also reflect upon non-application of mind to the material on record,,,,,,

to arrive at subjective satisfaction.,,,,,,

22. I, therefore, conclude that the order passed by the respondent No.2 and confirmed by the respondent No.1 does not satisfy the basic requirements." ,,,,,,

The order has curtailed the fundamental right of the free movement of the petitioner guaranteed by the constitution without following the provisions of,,,,,,

law. The law laid down in the cases of Deepak Laxman Dongare, Shaikh Mukhtyar S/o Mustafa Shaikh .vs. State of Maharashtra and others",,,,,,

reported in 2017 ALL M.R. (Cri.) 268 ; and Bhagwat Dadasaheb Landge and another .vs. State of Maharashtra and others, reported in 2020(5)",,,,,,

Mh.L.J. (Cri.) 546 would squarely apply to the case of the petitioner. On the basis of law laid down in these decisions, the externment order cannot be",,,,,,

sustained.,,,,,,

23. Accordingly writ petition is allowed. The order dated 16.03.2022 passed by respondent No.2-Deputy Commissioner of Police, Zone 2 Amravati",,,,,,

City externed the petitioner from Amravati District for a period of two years and the order dated 25.08.2022 passed by the respondent No.1-Divisional,,,,,,

Commissioner of Amravati confirming the said order of externment are quashed and set aside.,,,,,,

Rule is made absolute. The Criminal Writ Petition is disposed of accordingly.,,,,,,