
(2002) 4 GLR 3114

Gujarat High Court

Case No: None

Laxmanbhai
Becharbhai Kehar

APPELLANT

Vs

Dy. Commissioner of
Police and Another

RESPONDENT

Date of Decision: July 10, 2002

Acts Referred:

- Bombay Police Act, 1951 - Section 56, 56(a)(b), 59, 60
- Bombay Prohibition Act, 1949 - Section 65(E), 66(B)

Citation: (2002) 4 GLR 3114

Hon'ble Judges: C.K. Buch, J

Bench: Single Bench

Judgement

C.K. Buch, J.

Heard Mr. R.N. Ghotra learned Advocate for the petitioner and Mr. H.H. Patel learned A.P.P., for the respondents.

2. The petitioner has challenged the legality and validity of the Order of externment dated 9-3-2001 passed by the Assistant Commissioner of Police, North Division, Baroda City, Baroda and the subsequent Order passed by the appellate authority u/s 60 of the Bombay Police Act in the month of October, 2001.

3. Today, Mr. H.H. Patel learned A.P.P., has tendered the affidavit-in-reply of Vijaysinh Gautam, Deputy Commissioner of Police, North Division, Baroda City, Baroda whereby the respondents have resisted this petition on facts and on the points of law raised by the petitioner.

4. The order passed by the Assistant Commissioner of Police, Baroda City, Baroda and the order of the Deputy Secretary to Government, Home Department, Sachivalaya, Gandhinagar - the appellate authority-confirming the order of the Assistant Commissioner

of Police have been challenged before this Court on number of grounds mentioned in the memo of the petition. However, the learned Advocate appearing for the petitioner has focused his arguments mainly on two points. The first point argued and developed by the learned Advocate for the petitioner is that these authorities have passed these orders without proper application of mind and so these orders are not sustainable at law. The second point argued before the Court is that on facts, the petitioner ought not to have been externed from the district of Baroda and/or adjoining districts as the petitioner is found alleged involved in 3 different cases 2 of them are for the offences under the Bombay Prohibition Act and one is a petty non-cognizable case. So, in such fact situation, hard action of externment could not have been taken. Thus, on facts also the order of externment passed by the externing authority and confirmed by the appellate authority deserves to be set aside.

5.1. It is rightly contended by the learned Advocate for the petitioner that the prejudice in the mind of the Assistant Commissioner of Police is reflected in the affidavit-in-reply itself where the Externing Authority has referred to some subsequent events from the date of me issuance of notice to show cause in the matter including the communal riots which had cropped up in Baroda in me year 2002 in his affidavit-in-reply. Undisputedly prior to the events of communal riots in the city of Baroda, the petitioner was already externed and he was not present in Baroda city at all. However, on such facts, the order passed earlier by the authority could not be justified.

5.2. The learned Advocate for the petitioner has produced certified copies of the judgments in different criminal cases referred to in the show-cause notice served to the petitioner by the authority in order to show that he has been acquitted by the competent Criminal Court for want of sufficient legal evidence. However, one petty non-cognizable complaint is still pending. On the date of issuance of notice, the authority was very well aware of the fact that the petitioner is a resident of Baroda and is earning his livelihood from the activities within the limits of Baroda district. Even for the sake of argument, it is accepted that the petitioner is involved in some illegal activities even then there was no cause or reason whatsoever for the detaining authority to serve him with such a notice that he is required to be externed from the entire district of Baroda and other adjoining districts.

6. The learned Advocate for the petitioner by placing reliance upon a decision of this Court in the case of Mustufamiya Pirsahedmiya Saiyed v. Slate of Gujarat and Anr. reported in 1999 (1) GLH 913 submitted that me petitioner was served with such a notice mechanically, and thereafter, harsh order of externment has been passed. There was nothing on record before the authority that me petitioner is involved in any illegal activities in the areas of adjoining revenue districts. In Para 5 of the cited decision, this Court has held that notice to show cause given on similar facts was with non-application of mind. After inquiry the authority could have stated that the petitioner is required to be externed from the area of Baroda city only or entire district of Baroda but in conformity with the notice to show cause. The petitioner is Ordered to be externed from the district of Baroda

and all other around adjoining districts. In the present case, therefore, I am inclined to accept the say of the learned Advocate appearing for the petitioner that in the present case notice to show cause issued to the petitioner was without application of mind and the Order under challenge is a clear case of non-application of mind.

7. The second point is also validly raised. In the case of Suresh Mohan Sonavane v. Dy. Commissioner of Police, Surat City and Ors. reported in 1991 (2) GLR 942 the Division Bench of this Court in Para 9 of the judgment has held that where an Order is passed mechanically and without application of mind the Order is bad, the Order of externment is more drastic than the Order for executing a bond for good behaviour. So, if a notice for externment is given and if the authority is satisfied and the facts are not that grave, an Order for executing bond for good behaviour can be made. Atleast, the appellate authority before whom the Order of externing the present petitioner was placed for scrutiny u/s 60 of the Bombay Police Act could have exercised his powers because Section 60 of the Bombay Police Act envisages a power to Order a man for executing a bond of good behaviour. I would like to quote the relevant Para 9 of the decision as under:

On perusal of language of Section 56 of the Bombay Police Act, it is clear that even when the necessary ingredients of Section 56(a)(b) & (c) are complied with i.e., the externing authority is satisfied even so the externing authority has power to direct proposed externee so to conduct himself as shall seem necessary in Order to prevent violence and alarm or the outbreak of spread of such disease or 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. The bare reading of Section 56 makes it clear that the externing authority has power to pass such Order directing the proposed externee to conduct himself. Therefore, the power u/s 56 would certainly include the power of directing the proposed externee to keep good behaviour and not to indulge in commission of any offence during the period of two years and for that purpose can direct him to execute surety bond. On the contrary, this indicates that the externing authority though initiated the proceeding u/s 56 by issuing notice u/s 59 has discretely exercised powers and directed the petitioner to execute a surety bond for the purpose of keeping good behaviour and not to indulge in criminal activities for a period of two years instead of externing him. Hardly, we come across such cases where externing authority has exercised discretion. We really appreciate the keen sense of the externing authority in passing an Order of this kind so as to see that liberty of the citizen is in no way curtailed which otherwise by the externment Order would stand curtailed to some extent. Before passing the Order for keeping good behaviour, the authority has also given reason that said Order is passed instead of externment for the purpose of giving an opportunity to the petitioner to improve.

8. As mentioned above, the petitioner was found involved in 3 different cases, two of them were offences punishable under Bombay Prohibition Act and one is a petty non-cognizable case falling under Chapter 16 of the I.P.C. The petitioner is not found

involved in any major offences punishable under Chapters 16 and 17 of Indian Penal Code. Failure in exercising jurisdiction properly in the light of the facts available on record, makes the Order bad. So, I inclined to turn down the Orders under challenge, though the learned A.P.P. Mr. H.H. Patel has tried to support the stand of the respondent State. He has placed reliance upon the decision reported in 1987 (1) GLH 176 in the case of Babakhan @ Narsingh Gulammohammad Pathan v. State of Gujarat where the Division Bench of this Court has observed that Section 56 of the Bombay Police Act empowers the externing authority to extern persons not only from the area from which the person is operating but also to extern the person outside the area of his jurisdiction and also from contiguous districts. It is not necessary that activities are carried on at a particular district or a place or districts. It is also observed that it is possible for a person to operate from adjoining districts or areas. Powers u/s 56 can be exercised to prevent a person from indulging in such activities from nearby districts through his accomplices or agents. In the present case, the show-cause notice served to the petitioner contains similar allegations. So, the Order is passed after giving opportunity to the petitioner to show cause on this ground. But, on a perusal of the Orders passed by the authority and the contents of the notice, the Court finds that the petitioner cannot be said to be a person involved in such nefarious activities or a person who is able to operate through his accomplices or agents. There is no such evidence against the petitioner. The second criminal case registered against the petitioner punishable under Bombay Prohibition Act indicates that in both these cases he must have been found in a drunken condition because he was prosecuted for offences Under Sections 66(B) and 65(E) of the Bombay Prohibition Act without recovery of muddamal in some good quantity. He may be the victim of situation and circumstances like forming of habit and not a regular dealer or transporter of prohibited liquor. Mere reference of serious allegations in the show-cause notice would not make an Order legal. It is required to be established that the allegations reflected in the notice to show cause is sustainable on available set of facts. Otherwise, such an allegation could be said to be baseless allegation.

9. So, in short I am not inclined to accept the submission of Mr. Patel learned A.P.P. for the respondent-State.

10. For the reasons aforesaid this petition is allowed. The impugned Order of externment dated 9-3-2001 passed by the Assistant Commissioner of Police, North Division, Baroda City, Baroda against the petitioner-Laxmanbhai Becharbhai Kehar and confirmed by the Deputy Sectionretary to Government, Home Department, Sachivalaya, Gandhinagar by his Order dated in October, 2001 are hereby quashed and set aside. Rule is made absolute. Direct Service.