

## Sanjay Shriwas Vs MP Paschim Kshetra Vidyut Vitaran Company Ltd. & another

**Court:** MADHYA PRADESH HIGH COURT

**Date of Decision:** April 7, 2017

**Acts Referred:** [Constitution of India, Article 226](#) - Power of High Courts to Issue certain writs  
[Indian Penal Code, 1860, Section 435, Section 506,](#)

**Hon'ble Judges:** [Vijay Kumar Shukla](#)

**Bench:** [Single Bench](#)

**Advocate:** [Sankalp Kochar, D.K. Bohrey, Ashutosh Tiwari](#)

### Judgement

1. In this petition under Article 226 of the Constitution of India the legality and validity of the orders dated 7/12/2016 passed by respondent no.2

and 29/09/2016 passed by respondent no.3 have been challenged by the mother of the respondent no.6 whereby the respondent no.6 has been

externed in terms of the provisions of section 5 (a) and (b) of the M.P. Rajya Suraksha Adhiniyam, 1990 (hereinafter shall be referred as ""the

Adhiniyam""? in short) and the respondent no.6 has been prohibited from entering in District Jabalpur and surrounding District Seoni, Mandla,

Dindori, Damoh, Katni and Narsinghpur for a period of one year.

2. While assailing the legality and validity of the impugned orders, counsel for the petitioner putforth the following submissions:-

(a) That the order of externment has been passed in abuse of the powers conferred u/s 5 (a) of the Adhiniyam as on the basis of almost same

material, on earlier three occasions, the authority had instituted the proceedings for externment and the authority did not find sufficient material to

pass an order of externment. Hence, on the basis of the same material the authority could not have passed the order of externment.

(b) The impugned order is passed on the basis of criminal cases which are old and stale and the offences which have been taken into consideration

do not have close proximity to the date on which the order is passed. Thus, the orders impugned are arbitrary and suffer from non-application of

mind.

(c) The new six cases registered against the respondent no.6 during the pendency of the externment proceedings are registered at the instance of

one person/objector Deepu Patel who holds a political grudge against the respondent no.6. All those cases are minor offence and bailable.

(d) In view of the law laid down by the Apex Court in the case of Ashok Kumar Patel Vs. State of M.P. and others, 2009 (4) MPLJ 434 the

orders impugned are further bad in law as the authorities have failed to consider the compliance of the second condition of section 5 (b) of the

Adhiniyam, 1990 as the District Magistrate has to record his satisfaction for passing an order of externment 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 safety of person or property.

3. Per contra, the respondents denied the case of the petitioner and submitted that the externment order and the appellate order passed on the

basis of the material available against the respondent no.6. They relied on the report of the Superintendent of Police, dated 19/06/2015 (Annexure

R/1). It is also submitted that the orders have been passed after giving an opportunity of hearing to the petitioner and with due application of mind

taking into consideration the six cases which were registered against the petitioner during pendency of the proceedings. He was served with show

cause notice and reply was filed by him. The authority has found that in the interest of persons of the society and to maintain peace and tranquility,

the proceedings were taken up u/s 5 (a) and (b) of the Act, 1990.

4. Though no one appeared on behalf of the Objector Deepu @ Deepak Patel but in the written objection it is submitted that objector has lodged

a FIR on 15/09/2016 for commission of offences u/s 506 and 294 of IPC. It is alleged that the said matter is pending for investigation. It is also

alleged that the mother of the objector has also made a complaint against the petitioner's son. It is stated that petitioner has filed a PIL before this

Court and the same has been disposed of by this Court with an observation to the Superintendent of Police to look into the grievance of the

objector.

5. The brief facts of the present case, in short, are that on the basis of a police report dated 2/05/2008 an externment case no. 19/2008 was

registered against the respondent no.6 by the District Magistrate, Jabalpur. In the said police report as many as 23 cases were shown to be

registered against him. It is stated from the year 2000 till 21st of February, 2008. Most of the cases have been shown under the Gambling Act

and they were decided by imposition of fine. Some cases were shown pending. Except two cases at serial no. 1 and serial no.15 all the cases were

registered under the Gambling Act. On the basis of the said material the authority instead of passing an order of externment directed the petitioner

to report on every 17th of the month for a period of one year.

6. In the year 2010 on the basis of the report of Superintendent of Police dated 18/08/2010 again proceedings for externment no. 45/2010 were

registered by the District Magistrate, Jabalpur. In the said report a list of 34 cases were submitted before the authority. Out of 34 cases, 23 were

the same which formed the part of the material sent in the earlier externment proceedings. The new 11 cases year, 2008 onwards were mentioned

in which all cases were under the Gambling Act except one case at serial no.27 for commission of offence u/s 294, 506, 427 of IPC, that too was

of trivial nature. Most of the cases were closed with the fine amount and the some were reported to be pending. In this externment case, the cases

from the year 2000 up to 23/07/2010, including earlier 23 cases of the list were taken into consideration and on the basis of the material, the

authority found that no case is made out for passing an order of externment. The relevant portion of the order dated 24/11/2010 is reproduced as

under:-

VERNACULAR MATTER OMITTED

7. In the year 2011 again a report dated 21/09/2011 was submitted by Superintendent of Police, Jabalpur against the respondent no.6 for taking

proceedings for externment before the District Magistrate, Jabalpur. This time in the list of cases, total 40 cases were mentioned. Serial no. 1 to 23

were the same which had formed the basis of the report dated 2/05/2008 and the cases from serial no. 23 to 35 were the same cases which were

part of the report dated 18/08/2010. In the list of the cases, five new cases were added from 7/08/2010 till 18/09/2011.

8. After taking into consideration the material placed before the authority, reply of the respondent no.6 and the evidence, the District Magistrate,

Jabalpur recorded a specific finding that in view of the earlier proceedings of externment, he did not consider it proper to take up the proceedings

for externment third time. The relevant portion of the order dated 31/03/2012 is reproduced as under:-

VERNACULAR MATTER OMITTED

9. In addition to the three proceedings for externment, one order was passed against the respondent no.6 under the provisions of National Security

Act, 1980 (hereinafter shall be referred as "the Act, 1980" in short). The detention order passed under the provisions of the Act, 1980 was

revoked by the Government of Madhya Pradesh, Home Department by its order dated 24/10/2013 in exercise of the powers conferred by sub-

section (2) of section 12 of the Act, 1980.

10. Thus as many as four preventive proceedings were under the Adhiniyam, 1990 and one under the Act, 1980 were taken up against the

respondent no.6 but in all the proceedings the material was not found to be sufficient to pass the externment order the Adhiniyam or detention

order under the Act, 1980. In the year 2013, the Superintendent of Police, Jabalpur by his report dated 20th of August, 2013 requested the

District Magistrate, Jabalpur to take up the externment proceedings against the respondent no.6 under the Adhiniyam, 1990. In the said list of all

the cases were 40 petty offences shown to be registered against the respondent no.6 from year 2000 to 2011 which were already taken into

consideration by the District Magistrate in the previous proceedings for externment. During the pendency of the proceedings, another report dated

19/06/2015 was submitted before the District Magistrate passed on the same facts and grounds. Those proceedings which were initiated on the

police report dated 20/08/2013 and 19/06/2015 but remained pending before the authority. Though, the reply was filed on behalf of the

respondent no.6 on 10/01/2014 and submitted that in the old cases, either he has already been acquitted or the cases have been closed with

imposition of fine as most of the cases were relating to Gambling Act. It was also submitted that on the basis of the same reports and on

consideration of the same criminal cases, the externment proceedings have already been closed on 7/02/2009, 24/11/2010 and 31/03/2011. The

Superintendent of Police, Jabalpur had written a letter dated 31/08/2016 to the District Magistrate, Jabalpur whereby six new offences were

stated to be registered against the respondent no.6 in the year 2016. The details of the new six cases which were reported against the respondent

no.6 vide letter dated 31/08/2016 is reproduced as under:-

#### VERNACULAR MATTER OMITTED

11. It is relevant to mention here that out of six cases one case at serial no.3 was registered for commission of offence u/s 435 of IPC and the

proceedings at serial no. 6 were under section 110/16 of Cr.P.C., the other 4 cases were under the Gambling act. All these cases are alleged to be

registered at the instance of one person Deepu Patel. This fact has not been disputed, on the contrary in the objection filed by the Deepu Patel it is

stated that the cases were registered at his instance.

12. On the basis of the report submitted by respondent no. 5 SHO, Police Station Gorakhpur District Jabalpur and additional six cases levelled

against the respondent no.6, the respondent no.2 District Magistrate, Jabalpur passed impugned order of externment for a period of one year.

Being aggrieved by the said order, an appeal was filed before the respondent no.3 which was also dismissed vide order dated 1/10/2016.

13. Before advertng to the contentions of the counsel for the petitioner as discussed earlier and examining them on the anvil of the law prevailing in

the field of externment, it is apt to refer the provisions of the Adhiniyam, 1990. Section 5 of the Act under which the order of externment has been

passed is quoted hereinbelow:-

5. Removal of persons about to commit offence.- whenever it appears to the District Magistrate

(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 Chapter XII, XVI, or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of

1860) or in the abetment of any such offence, and when 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; or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant; the District Magistrate, may by an order in

writing duly served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant

(a) so as to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease; or

(b) to remove himself outside the district or any part thereof or such area and any district or districts or any part thereof, contiguous thereto by

such route within such time as the District Magistrate may specify and not to enter or return to the said district of part thereof or such area and such

contiguous districts, or part thereof, as the case may be, from which he was directed to remove himself."?"

14. A plain reading of Section 5 (b) of the Act 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.

15. At this stage, I think it condign to survey the authorities on the legal issues canvassed on behalf of the petitioner.

16. Division Bench of this Court in the case of Ashok Kumar Patel vs. State of M.P. & others, 2009(4) MPLJ 434 after considering Section 5 of

the Act held thus:

8. The expression is engaged or is about to be engaged"" in the commission of 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, shows that the

commission of the offence or the abetment of such offence by the person must have a very close proximity to the date on which the order is

proposed to be passed under Section 5(b) of the Act of 1990. Hence, if a person was engaged in the commission of offence or in abetment of an

offence of the type mentioned in section 5 (b), several years or several months back, there cannot be any reasonable ground for believing that the

person is engaged or is about to be engaged in the commission of such offence.

17. In the case of Ramgopal Ragjhuwanshi vs. State of M.P. and others, 2014(4) MPLJ 654 this Court after considering the earlier judgments in

respect of Section 5 of the Act held that the order of externment cannot be passed on the basis of old and stale cases. A co-ordinate Bench of this

Court at Indore in the case of Bhim @ Vipul vs. Home Department, (W.P. No.4329/2015, decided on 14-09-2015) has also considered the

judgments rendered in the cases of Ashok Kumar (supra) and Ramgopal Ragjhuwanshi (supra) and held that the expression ""engaged or is to be

engaged""? used in Section 5(b)(i) shows that commission of offence or the abetment of such offence by the person must have close proximity to

the date on which the order is proposed to be passed under Section 5(b) of the Act.

18. In the present case I do not find any case within the close proximity on the date of the order impugned and, therefore, if a person was engaged

in commission of the offence or in abetment of offence of type mentioned under Section 5(b) of the Act several years or several months back,

there cannot be any reasonable ground for believing that the person is engaged or is to be engaged in commission of such offence.

19. Under the provision of Section 5 of the Act, if a detention order has to be passed, there has to be sufficient material for passing the order as

fundamental right of freedom of a person is involved. The order passed by the appellate Authority is nothing but repetition of the order passed by

the District Magistrate without any application of mind.

20. In the case of Sanju @ Sanjay Ben Vs. State of M.P. And others, 2005 (4) MPHT 102 while considering the provisions of the Adhiniyam,

1990, the court held that the provision is not punitive in its nature and a person cannot be externed for his past acts. Although past activities of a

person may afford a guide as to his behaviour in future, they must be reviewed in the context of the time when the order is proposed to be made.

The past activities must be related to the situation existing at the moment when the order is to be passed. In the present case from the facts it is

noted that the same cases were being repeatedly considered by the authority and on earlier occasions, he found that the same material cannot

formed a basis for passing an order of externment but by the impugned order is passed on the basis of most of the same cases which are old and

stale which has already been held by this Court in number of cases as discussed above that the old and stale activities cannot be grounds of

externment.

21. The opportunity of hearing and application of mind by the competent authority have been held essential requirements before passing an order

of externment or detention under the Adhiniyam, 1990 or the Act, 1980. The Division Bench in the case of Ravi Tiwari and another Vs. Union of

India and others, 2003 (3) MPHT 528 held that the authorities cannot pass orders or cannot grant approval mechanically by filling the gaps in

cyclostyle order. Another Division Bench in the case of Shri Sayeed alias Aslam Vs State of M.P., 2003 (4) MPHT 312 (DB) held that in the

cases of detention order passed under the Act, 1980 subjective satisfaction of the authority cannot be lightly recorded by reproducing the words

and the sentences of the statute. There has to be proper consideration and appreciation for recording the satisfaction which has to be passed on

true materials.

22. In the light of the aforesaid authoritative pronouncement of judgments, the contentions of the petitioner have to be examined on the anvil of

facts of the present case and the law as discussed above.

23. As discussed in the preceding paragraphs that in the year 2009 on the basis of the 23 cases of year 2000 to year 2007 were taken into

consideration and were not found sufficient to pass order of externment. Again in the second proceedings in the year 2010, further 11 cases were

added from the year 2008 to year 2010 and the authority did not find sufficient material to pass an order of externment and the case was rejected

considering the police report. In the year 2011, third time, considering almost the same list with addition of six cases, the District Magistrate

rejected the proceedings after extensive examination of the police report and documents. The relevant portion of the finding is again repeated as

under:-

VERNACULAR MATTER OMITTED

24. Apart from these three proceedings under the Adhiniyam, 1990, one proceeding under the National Security Act, 1980 was also taken up and

the order of detention passed by the District Magistrate, Jabalpur was revoked by the State Government by its order dated 24/10/2013. Thus, the

detention proceedings under the National Security Act, 1980 also did not sustain against respondent no.6. By order dated 31/03/2012 the District

Magistrate, Jabalpur has specifically held that there is no material to take up the externment proceeding for third time on the basis of police report

and the documents. In the report of the year 2013, some cases registered of the year 2011 to 2013 were included and another report was

submitted vide letter dated 19/06/2015 making the list of the criminal cases up to 51 and included the same list of the criminal cases which were

part of the previous police reports which were already taken into consideration by the authority and were not found sufficient to draw the

externment proceedings.

25. The six new cases which were reported by letter dated 31/08/2016 by Superintendent of Police, Jabalpur during the pendency of the

proceedings of externment have already been considered in the earlier paragraphs as discussed above except one case which is relating to the

offence u/s 435 of IPC all the other case were of Gambling Act and the one proceeding was of 107/116 of Cr.P.C. It is also relevant to mention

here that undisputedly these cases were got registered at the instance of complainant Deepuy Patel who has also made an objection in the writ

petition. Counsel for the petitioner also submits that due to political rivalry he has made complaint against him and even got filed one PIL against

him. The cases under Section 435 of IPC and proceedings of Section 107/116 of Cr.P.C. cannot be held "sufficient material" to pass order of

externment in absence of other cogent material.

26. It is also stated by him that against the complainant also 25 cases are registered however, I do not deem it proper to go into this controversy as

from the material made available before the competent authority do not satisfy the passing of the order of externment on the touchstone of the law

laid down by this Court.

27. Counsel for the petitioner filed an application I.A. No. 245/2017 alongwith copies of the order to prove that in most of the old cases the

applicant has been acquitted/discharged. These orders have not been denied or disputed by the counsel for the State or the Objector. Thus, prima

facie it is established that there was no sufficient material on 4th time before the District Magistrate to pass order of externment hence, the exercise



of power in absence of sufficient material can be held that the impugned proceedings lack bonafide and due application of mind.

28. In the instant case, upon perusal of the impugned orders, it is also found that the District Magistrate has only baldly stated the list of the

offences registered against the petitioner to reflect that the petitioner is a daring habitual criminal but he did not record any opinion on the basis of

the materials that in his opinion witnesses are not willing to come forward to give evidence in public against the petitioner by reason of

apprehension as regards to their safety. Hence, in absence of any existence of material to show that witnesses are not coming forward by reason of

apprehension to give evidence against the petitioner in respect of the alleged offences, an order u/s 5 (b) of Adhiniyam, 1990 cannot be passed by

the District Magistrate as held in the case of Ashok Kumar Patel Vs. State of M.P. (Supra) by the Division Bench that for a passing an order of

externment against the person both the conditions mentioned under section 5 (b) (i) and (ii) have to be satisfied.

29. In the present factual matrix as tested on the the anvil of the aforesaid judgment there remains no iota of doubt that the order of externment has

not been passed on sufficient material as required under the provisions of section 5 of the Adhiniyam, 1990 and the same could not have been

passed merely on the basis of the old and stale cases and also the six cases which are registered under the Gambling Act at the instance of the

Objector Deepu Patel in which the respondent no.6 has been punished with imposition of fine. This view of this Court is fortified by judgments of

this Court in the case of Sanju @ Sanjay Ben Vs. State of M.P and others (supra) referring the case of Bala @ Iqbal Vs. Additional Collector,

Indore and another, 1995 Cr.L.J (MP) 72 that the petty offences which are still being under investigation cannot be held to be sufficient for passing

an order of externment. It is also held that the externment order cannot be sustained on account of old and stale activities alleged to have been

committed by the person. Further, the authority has failed to show application of mind that in the number of cases the respondent no.6 has already

been acquitted. The cumulative effect of the aforesaid spectrum would go to a long way to expose the error in the order passed by the

respondents.

30. These cases were already taken into consideration by the District Magistrate in earlier proceedings and were not found sufficient to pass an

order of externment. In the case of Tabib Ahmad Vs. State of Madhya Pradesh passed in W.P. No. 15017/2011 dated 31/10/2011 the Division

Bench after taking into consideration the judgment passed by this Court in the case of Shri Sayeed alias Alam Vs. State of M.P. (supra) held that

when a person is sought to be detained by way of prevention, which is a detention without trial, the Detaining Authority has to be more

circumspect and careful in verifying the facts on the basis of which such detention without trial is ordered.

31. In the aforesaid circumstances, the impugned orders of externment as affirmed in the appeal are unsustainable having been passed in violation

of the requirements of the Adhinyam and the judgments of this Court which have been noted hereinbefore. Accordingly, the writ petition is

allowed. The impugned order dated 29/09/2016 passed by respondent no.2 in Jila Badar No. 49/2013 and its affirmation by the respondent no.3

by order dated 7/12/2016 in case no. 0024/A-02/2016-17 are quashed and set aside.

32. The writ petition is allowed. No order as to costs.