
Pappu Alias Akhilesh Vs The State of Maharashtra and Others

Criminal Writ Petition No. 390 of 2012

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 14, 2013

Acts Referred:

Bombay Police Act, 1951 " Section 27(1), 56, 59#Income Tax Act, 1922 " Section 3#Income Tax Act, 1961 " Section 2(19), 2(31), 40A(2)(a)

Citation: (2013) ALLMR(Cri) 2180

Hon'ble Judges: M.L. Tahaliyani, J

Bench: Single Bench

Advocate: Chaitanya G. Barapatre, for the Appellant; Rashi Deshpande, Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

M.L. Tahaliyani, J.
Heard. Admit.

2. Heard finally by consent.

3. The petitioner is aggrieved by the order passed by Deputy Commissioner of Police, Zone II, Nagpur (hereinafter referred to as "respondent No.

1") on 9th July, 2012 in exercise of his powers u/s 56 of the Bombay Police Act. The petitioner has been directed to remove himself from

territorial jurisdiction of Police Commissionerate, Nagpur and Superintendent of Police, Nagpur (for the sake of brevity "Nagpur City" and

Nagpur Rural") for a period of one year. The petitioner has already removed himself in obedience of the order passed by respondent No. 1.

4. It is admitted position that an inquiry was held by respondent No. 2 before respondent No. 1 could pass order which is impugned in the present

petition. It is also not disputed that about 21 criminal cases were pending against the petitioner in the Courts at Nagpur, mainly pertaining to

Gittikhadan Police Station, Nagpur. The said 21 cases pending against the petitioner cover variety of cases including cases under the Arms Act,

Robbery, Extortion, Mischief, Criminal Intimidation, contravention of prohibitory orders issued under the Bombay Police Act, Criminal House

Trespass, Preparation to commit Dacoity, causing hurt while committing robbery and kidnapping for ransom. It may be noted here that the

petitioner had also been prosecuted for the offence punishable u/s MCOC Act. It is submitted by learned counsel Mr. Barapatre that the petitioner

has been acquitted in majority of cases including the cases under the MCOC Act. Though certified copies of the judgments of the trial Court have

not been produced before me, it is submitted that only 8-9 criminal cases are pending against the petitioner. Mr. Barapatre has submitted that the

last offence allegedly committed by the petitioner, according to the impugned order, itself is of the year 2010 which pertains to Gittikhadan Police

Station and was recorded as First Information Report No. 3885 of 2010. The learned counsel for the petitioner has further submitted that

respondent No. 1 has not explained in his order as to what made him to pass externment order suddenly after lapse of two years from the last

offence committed by the petitioner. It is contended that the petitioner has been maintaining peace and good behavior after the year 2010.

5. Learned Additional Public Prosecutor Ms Deshpande has submitted that, according to the impugned order the petitioner had been acquitted of

the offences in five cases only and rest of the cases are pending. Since neither the petitioner nor the respondent has submitted certified copy of any

document to substantiate their respective contentions, it can safely be assumed that a considerable number of cases are pending against the

petitioner. Crime chart of the petitioner shows that the petitioner was involved in criminal cases from 2003 onwards. It is submitted by Ms

Deshpande that the petitioner has committed few more offences in the year 2012 but have not been reported to the police because of fear of the

petitioner. In brief, it is submitted by the learned counsel for the petitioner that there was no application of mind and that the impugned order has

been passed mechanically only on the basis of the report submitted by the Enquiry Officer i.e. respondent No. 2 Assistant Commissioner of Police.

6. I have gone through the impugned order. The impugned order clearly states that respondent No. 1 was satisfied that the witnesses were not

willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards safety of their person or

property. This satisfaction of respondent No. 1 is recorded in paragraph 6 of the impugned order. He has gone through almost all the documents

produced before him and has come to a conclusion that there was no improvement in the conduct of the petitioner and therefore, he was of the

view that an order u/s 56 was necessary to be passed. In my considered opinion, there is no substance in the arguments of learned counsel Mr.

Barapatre that there was no application of mind by respondent No. 1. The order clearly shows that not only respondent No. 1 has seriously

considered all the allegations made against the petitioner but he has recorded his subjective satisfaction to come to a conclusion that a case was

made out for passing externment order against the petitioner.

7. Other issue raised by Mr. Barapatre is that there was inordinate delay in passing the order from the date of last offence allegedly committed by

the petitioner in the year 2010. This argument does not hold water inasmuch as there is no hard and fast rule as to at which point of time the

authority shall exercise jurisdiction u/s 56 of the Bombay Police Act. The subjective satisfaction of the authority concerned is of the prime

importance in such cases. In the present case, it may be noted here that a large number of criminal cases are pending against the petitioner in which

the prosecution has to examine its witnesses to establish the charges against the petitioner though last offence allegedly committed by the petitioner

is of the year 2010 the cases arising out of the earlier first information reports are still pending in the Courts at Nagpur. This pendency of the cases

is the prime consideration and not last date of offence allegedly committed by the petitioner. At the same time reluctance of the witness to give

evidence has to be taken into consideration. Though the petitioner claims that the last offence alleged to be committed by him is of the year 2010,

he does not deny that a large number of criminal cases are pending against him in which witnesses are to be examined. The respondent No. 1 has

taken due note of the pendency of cases and reluctance of witnesses to give evidence. The petitioner is allowed to enter Nagpur with prior

permission of the respondent No. 1. As such he can attend his cases personally if he so desires.

8. The scope of Section 56 and the authority of the officer concerned was discussed by the Hon"ble Supreme Court in the case of Pandharinath

Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, (1). Paragraphs 9 and 10 of the said judgment run as under:

9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances.

An order of externment can be passed under cl. (a) or (b) of Section 56 if, and only if, the authority concerned is satisfied that witnesses are

unwilling to come forward to give evidence in public against the proposed externnee by reason of apprehension on their part as regards the safety of

their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of

an externment proceeding. If the show cause notice were to furnish to the proposed externnee concrete data like specific dates of incidents or the

names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or

property are unwilling to depose in public. There is a brand of lawless element in society which it is impossible to bring to book by established

methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain,

because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited

obligation on the authorities to inform the proposed examinee "of the general nature of the material allegations against him". That obligation fixes the

limits of the correlative right of the proposed examinee. He is entitled, before an order of examination is passed u/s 56, to know the material

allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material

allegations.

10. 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 Vs. The State of Bombay and Another*, 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 *Bhagubhai Dullabhabhai Bhandari Vs. The District Magistrate, Thana and Others*, . 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 examinee.

In view of the discussion of facts of the present case and rejection of all the contentions of the learned counsel for the petitioner and keeping in

view the observations made by the Hon^{ble} Supreme Court, I have come to the conclusion that there is no substance in the petition.

The petition stands dismissed. Interim order, if any, stands vacated.