

(2014) 06 BOM CK 0052

Bombay High Court (Nagpur Bench)

Case No: Criminal Writ Petition No. 329 of 2014

Manish Rameshwar
Karale

APPELLANT

Vs

Sub Divisional
Magistrate

RESPONDENT

Date of Decision: June 9, 2014

Acts Referred:

- Bombay Police Act, 1951 - Section 56(2)
- Bombay Prevention of Gambling Act, 1887 - Section 12A
- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 110

Citation: (2014) ALLMR(Cri) 3588

Hon'ble Judges: C.V. Bhadang, J; B.P. Dharmadhikari, J

Bench: Division Bench

Advocate: Vipul Bhise, Advocate for the Appellant; K.S. Joshi, APP, Advocate for the Respondent

Judgement

B.P. Dharmadhikari, J.

Heard Shri Vipul Bhise, learned Counsel for the petitioner and Mrs. K.S. Joshi, learned A.P.P. for respondents. By their consent, the matter is taken up for final disposal by issuing Rule, making the same returnable forthwith. Order dated 01.04.2014 passed under Section 56B of the Bombay Police Act, 1951 externing the petitioner from Akola, Amravati and Buldhana District is being questioned in this Writ Petition filed under Articles 226 and 227 of the Constitution of India.

2. The learned Counsel appearing on behalf of petitioner states that the fact that nobody is ready and willing to come forward to depose against the petitioner does not figure in the show cause notice. It is pointed out that in the show cause notice there is no mention of any offence committed at Amravati or Buldhana District. He

contends that the offences alleged are only in relation to Akola District and petitioner is still not convicted for any of the said offences. He points out that in the show cause notice, it is specifically stated that the petitioner is not having any official business or legal means of livelihood. In reply it was pointed out that the petitioner is having agricultural business and their livelihood is dependent on the cultivation. No finding has been recorded in this respect in the impugned order. He contends that in any case there is no live link between the alleged offences and only apprehension is expressed.

3. Learned A.P.P. appearing on behalf of the respondents is relying on the reply affidavit. She also invites attention to the provisions contained in Section 56(2) to state that conviction of any persons as such is not essential. She states that the show cause notice shows that offences have been registered against the petitioner at Police Station, Nandura and Deulgaon Raja, which are in Buldhana District. It is further submitted that because of continuous apprehension only chapter proceedings were initiated against the petitioner twice. Learned A.P.P. further submits that in view of the initiation of chapter proceedings and undertaking and bond given by the petitioner to maintain peace, the question of live link does not arise.

4. We have considered the rival contentions. The show cause notice mentions Crime No. 91/2010 of Police Station, Nandura and 39/2010 of Police Station Deulgaon Raja. However, the final order does not refer to these offences. The final order refers to offences No. 216/2012, 218/2012, 219/2013 and 3078/2012. Trial for all these offences are still pending before the competent Court. Rest of the offences are under Section 12A of the Bombay Gambling Act.

5. In the final order there is reference of proceedings under Section 110 of the Criminal Procedure Code vide offence under Crime No. 32/2012 and 36/2012. Show cause notice is issued on 01.03.2014. In the said show cause notice there is mention that petitioner does not have any legal means of livelihood and there is every possibility of petitioner indulging in antisocial activities during election period. Petitioner has given reply to the said and apart from denying the same, he has also pointed out that he is in agricultural business and maintaining his family. He has also stated that he is a social worker.

6. Final order dated 01.04.2014 does not throw any light on this claim of petitioner. Moreover, the last offence is under Section 12A of Bombay Prevention of Gambling Act is of the year 2012 and thereafter twice chapter proceedings appear to have been initiated. Neither in the show cause notice nor in the final order, it is stated that though the petitioner has executed bond, it was violated. No live link is shown on record to warrant such a measure. In this situation, the impugned order is unsustainable and the same is accordingly quashed and set aside. In the result, Writ Petition is allowed by making rule absolute in the aforesaid terms. No costs.