

**(2017) 12 BOM CK 0060**

**BOMBAY HIGH COURT**

**Case No:** 1057 of 2017

Prafulla Vitthalrao Dapurkar

APPELLANT

Vs

The Sub Divisional Police Officer  
& Anr

RESPONDENT

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**Date of Decision:** Dec. 20, 2017

**Acts Referred:**

- Code of Criminal Procedure, 1973, Section 324 - Trial of persons previously convicted of offences against coinage, stamp-law or property
- Bombay Police Act, 1951, Section 56

**Hon'ble Judges:** R. K. Deshpande, M.G.Giratkar

**Bench:** DIVISION BENCH

**Advocate:** P.R.Agrawal, S.S.Doifode

**Final Decision:** Allowed

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**Judgement**

1. Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.
2. The order of externment for a period of two years from the Municipal limits of District Amravati passed on 13.10.2017 is the subject matter of challenge in this petition.
3. The order of externment is passed in exercise of the powers conferred under Section 56(1)(b) of the Maharashtra Police Act. One of the necessary ingredients of Section 56(1)(b) is that the authorities must form an opinion that the witnesses are not willing to come forward to give evidence in public against such person by receiving an apprehension on their part as regards the safety of their person or property. The requirement is mandatory. This is not found in the order. We do not

find any material on record to substantiate this part of the provision. Except stating the prosecution pending against the petitioner in different Courts for different offences and the orders of prohibitory nature passed against the petitioner, we do not find the live link to substantiate the order of externment.

**4.** Though, in the order no reference is made to incamera statement said to have been recorded, in the reply filed by the respondents in response to the present petition, reference is made to it. No opportunity was provided to the petitioner to respond the allegations in the show cause notice. Apart from this, the petitioner was acquitted in crime No. 81 of 2007 under Section 324 of Indian Penal Code, but the order impugned show that the proceeding is pending.

**5.** In view of aforesaid position, it is not possible for us to sustain the order of externment and the petition needs to be allowed.

**6.** In the result, writ petition is allowed. The order of externment passed on 13.10.2017 by the respondent No.2 is hereby quashed and set aside. Rule is made absolute in above terms. No order as to costs.