

(2018) 06 BOM CK 0073

Bombay High Court (Aurangabad Bench)

Case No: CRIMINAL WRIT PETITION NO.348 OF 2018

VIJAY @ AJAY MURLIDHAR DALVI,
C.NO. 16362, YERWADA CENTRAL
PRISON, PUNE

APPELLANT

Vs

THE STATE OF MAHARASHTRA

RESPONDENT

Date of Decision: June 22, 2018

Acts Referred:

- Maharashtra Police Act, 1951 - Section 56(1)(a)(b), 58

Hon'ble Judges: S.S. SHINDE, J; S.M. GAVHANE, J

Bench: Division Bench

Advocate: Quadri Taher Ali, V.N. Patil

Final Decision: Dismissed

Judgement

S.S. SHINDE, J

1. Heard learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State.

2. The Petitioner has taken exception to the order dated 4th September, 2017 passed by Respondent No.3 and the order dated 17th February, 2018

passed by Respondent No.2, whereby he has been externed from the boundaries of Aurangabad District for the period of one year.

3. It is the case of the Petitioner that on 2nd August, 2017, he has received show cause notice from the Assistant Police Commissioner, Cantonment

Area, Aurangabad. Thereafter on 9th August, 2017 the Petitioner has filed his detailed reply/ explanation to the said notice. It is the case of the

Petitioner that recently he has shifted to Padegaon locality and since last three months only he is residing there. The Petitioner has worked as driver

on tourist vehicle since last thirteen years. It is the case of the Petitioner that he is not having any criminal antecedents, inspite of that the police sub-

inspector, Chhawani police station gave false report against him. On the basis of said report, notice under Section 56(1)(a)(b) of the Maharashtra

Police Act, 1951 (for short "the Act of 1951") has been issued, which is bogus, false and baseless.

4. It is the case of the Petitioner that on 4th September, 2017, Respondent No.3 Â Deputy Commissioner of Police, Aurangabad passed an order

thereby externing the Petitioner for the period of one year from entire Aurangabad District.Â Being aggrieved and dissatisfied by the said order, the

Petitioner has approached to Respondent No.2 Â the Divisional Commissioner, Aurangabad Division, and Aurangabad by way of filing appeal.

Thereafter on 17th February, 2018, Respondent No.2 has rejected the said appeal filed by the Petitioner. Hence this Petition is filed by the Petitioner.

5. Learned counsel appearing for the Petitioner submits that the impugned orders passed by both the authorities are unjust, illegal and contrary to the

provisions of law. Both the authorities below ought to have considered that the Petitioner has no criminal antecedents and no criminal record. It is

submitted that the Petitioner is law abiding and peace keeping person and hence the impugned orders are liable to be quashed and set aside. It is

submitted that the Petitioner is project affected person. His land was taken in possession by the Government for construction of ""VandeÂMataram

Hall"" and ""Haj House"" and the Petitioner was given the place at Padegaon and he shifted there hardly about 15 days prior to the alleged incident. All

these aspects have been completely ignored by both the authorities.

6. Learned counsel further submitted that both the offences mentioned in the notice and impugned orders are lodged by one and the same person,

namely, Najir Khan Kasir Khan, within two days and except these two false complaints, there are no criminal antecedents against the Petitioner.

Hence it is prayed that the Petition may be allowed. In support of his submissions, learned counsel placed reliance upon the exposition of law in the

cases of Pandharinath Shridhar Rangnekar vs. Dy. Commissioner of Police, State of Maharashtra 1973 Mh.L.J. 413,Â Rajendra Karbhari Kale vs.

State of Maharashtra and others 2017(1) Mh.L.J. (Cri.) 479 and in the case of Praful Bhausahab Yadav vs. Shri K.K. Pathak and others

2013 ALL M.R. (Cri.) 1652.

7. On the other hand, learned A.P.P. appearing for the Respondent State, relying upon the averments in the affidavit in reply and the reasons

assigned by Respondent Nos.2 and 3 in the impugned orders, submits that the authorities, after adhering to the procedure prescribed under the

provisions of Section 56(1)(a)(b) of the Act of 1951 have rightly externed the Petitioner from the boundaries of Aurangabad District.

8. We have heard learned counsel appearing for the Petitioner, and learned A.P.P. appearing for the Respondent State at length. With their

able assistance we have carefully perused the grounds taken in the Petition, annexures thereto, reply filed by the Respondents, and original record of

the case maintained by the office of the Respondents. Upon careful perusal of the contents of the show cause notice issued by the Assistant Police

Commissioner, Cantonment Area, Aurangabad to the Petitioner, it appears that in the said notice it is mentioned that the activities of the Petitioner are

causing danger and harm to the persons in the vicinity. In the said notice, it is mentioned that the witnesses are not willing to come forward to give

evidence in public against the Petitioner by reason of apprehension on their part as regards the safety of their person or property. There is also

reference to the contents of the in camera statements of three witnesses in the proposal for externment and also in the notice.

9. Upon careful perusal of the original documents, it appears that in camera statement of the witnesses have been recorded and their signatures are

taken. Respondent No.3 passed the impugned order on 4th September, 2017. After going through the record, we have noticed that Respondent

No.3 has recorded subjective satisfaction that the facts given in the statement of witnesses and apprehension expressed is true and reasonable. Upon

careful perusal of the contents of the said order, it appears that before passing the impugned order of externment the procedure as contemplated

under the provisions of the Act of 1951 has been adhered to.

10. Upon careful perusal of the order passed by the appellate authority, it appears that both the offences which are relied by the appellate authority

are of the year 2017. Therefore, there is live link between the offences registered against the Petitioner and the initiation of externment proceedings.

There is sufficient material on record including in-camera statements of the witnesses recorded by the Assistant Police Commissioner, Cantonment

Area, Aurangabad. Perusal of the contents of the said statements would clearly reveal that the activities of the Petitioner are causing danger and

alarm to the public order.

11. Section 56(1)(a)(b) of the Act of 1951, reads thus:

56. Removal of persons about to commit offence

(1)

(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 Chapters XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence and when in the opinion of

such officer 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" [Underlines are added]

12. Considering the aforesaid provisions carefully, the order of externment can be passed against a person whose movements or acts are causing or

calculated to cause alarm, danger or harm to person or property as provided in subclause (a) of Section 56(1) of the Act of 1951. The order of

externment can also be passed against a person if there are reasonable grounds for believing that such a person is engaged or is about to be engaged

in the commission of an offence involving force or violence as provided in clause (b) of Section 56(1) of the Act of 1951. An order of externment can

also be passed against a person if that person is engaged or about to be engaged in the commission of an offence punishable under Chapter XII, or

Chapter XVI, or Chapter XVII of the Indian Penal Code. But in addition to the above, the concerned Officer, who is dealing with an externment

proceedings, should be of the opinion that the 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.

13. Perusal of the reasons recorded by the Respondent authorities reveals that, there is no room for doubt that the activities of the Petitioner are

causing danger and alarm to the public order.Â There are number of incidents which are quoted in the impugned orders, about using force or violence

by the Petitioner against general public. The contention of the counsel appearing for the Petitioner that the order of externment is excessive, in as

much as the offences are registered in Chhawani police station and the Petitioner is externed from the jurisdiction of Aurangabad is concerned, the

said argument cannot be countenanced for the reasons recorded by the authorities while arriving at the subjective satisfaction to extern the Petitioner.

14. The Supreme Court in the case of Pandharinath Shridhar Rangnekar vs. Dy. Commissioner of Police, The State of Maharashtra

Â 1973 (1) S.C.C. 372 , in Para 15 to 17, held thus:

15. As regards the last point, it is primarily for the externing authority to decide how best the externment order can be made effective, so as to subÂ-

serve its real purpose. How long, within the statutory limits of two years fixed by Section 58, the order shall operate and to what territories, within the

statutory limitations of Section 56 it should extend, are matters which must depend for their decision on the nature of the data which the authority is

able to collect in the externment proceedings. There are cases and cases and, therefore, no general formulation can be made that the order of

externment must always be restricted to the area to which the illegal activities of the externnee extend. A larger area may conceivably have to be

comprised within the externment order so as to isolate the evidence from his moorings.

16. An excessive order can undoubtedly be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the

circumstances of the case. The decision of the Bombay High Court in Balu Shivling Dombé v. The Divisional Magistrate, Pandharpur is an instance in

point where an externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case. The Activities of

externnee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as the districts of Sholapur,

Satara and Poona. These areas are far widely removed from the locality in which the externee had committed but two supposedly illegal acts. The

exercise of the power was, therefore, arbitrary and excessive, the order having been passed without reference to the purpose of the externment.Â

17. But Balu Shivling's case furnishes no analogy in the instant matter.Â A vast city like Bombay presents its own peculiar problems of law and

order.Â It is an evergrowing industrial complex and the city has spread its arms far and wide.Â A fair proportion of its teeming population is mobile,

with large multitudes streaming in and out of the city in the pursuit of their daily avocations. An order of externment restricted to the particular area

chosen by the externee for his unlawful activities and to a small periphery thereof would in such circumstances fail of its true purpose. It would be

impossible to secure obedience to such an order and its enforcement would raise practicable problems which would impair the efficacy of the order.Â

An order in the instant case if restricted, say, to the areas within the jurisdiction of the Ville Parle Police Station and its periphery would not serve its

purpose. Rather than solving a problem of law and order, it would create yet one more.

15. In the case of Balu Shivling Dambe vs. The Divisional Magistrate, Pandharpur 1969 Mh.L.J. 487, referred in the Judgment cited supra, the

Petitioner therein was externed from three Districts, namely Sholapur, Satara and Poona, though all the alleged activities of the externee therein were

confined to the city of Pandharpur and therefore in the facts of that case the Court held that the order of externment was excessive. However, in the

present case the Petitioner has been externed only from Aurangabad District and not from other adjoining Districts. Therefore, keeping in view the

statements of the witnesses recorded in camera and other material on record, we are of the opinion that no case is made out to cause interference in

the impugned orders.Â

16. In that view of the matter, we are unable to persuade ourselves to cause interference in the impugned orders. Hence the Writ Petition stands

rejected.Â Â