



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1267 OF 2023

Akash Laxman Reel
Age-26, Occ- Safai Karmchari,
R/o Nagar, Raver,
Tq. Raver and Dist. Jalgaon

...Petitioner

Versus

1. The State of Maharashtra
2. Divisional Commissioner of
Police, Nashik, Commissioner
Office, Jail Road, Nashik
Tal and Dist. Nashik
3. Sub Divisional Police Officer,
Sub Division Office, Faizpur,
Tal Raver & Dist. Jalgaon.
4. Sub Divisional Magistrate,
Sub Division Office, Faizpur,
Tal Raver & Dist. Jalgaon.
5. The Police Inspector of Raver
Police Station, Tq. Raver,
Dist. Jalgaon.

...Respondents

Mr. N. R. Shaikh, Advocate for Petitioner.
Mr. N. B. Patil, APP for Respondents.

CORAM : R.M. JOSHI, J.

RESERVED ON : DECEMBER 01, 2023
PRONOUNCED ON : DECEMBER 05, 2023

JUDGMENT

1. Rule. Rule made returnable forthwith. With
consent, heard finally.

2. This Petition takes exception to the order of

externment of Petitioner in Externment Case No. 03/2023 which order is modified in Externment Appeal No. 48/2023 vide order dated 12.07.2023.

3. According to Petitioner, Respondent No. 4 issued externment order under Section 56(1)(a)(b) of the Bombay Police Act, 1951 (for short '**said Act**') on 23.03.2023 whereby the Petitioner is externed from Districts Jalgaon, Buldhana, Dhule, Nashik and Aurangabad in the State of Maharashtra and from Districts Khargon and Burhanpur in State of Madhya Pradesh and 100 kms radius from Raver City. Petitioner takes exception to the said order by preferring Appeal under Section 60 of the said Act by filing Appeal No. 48/2023 before the Divisional Commissioner of Police, Nashik. The said appeal came to be partly allowed, whereby order of externment is maintained to the extent of Raver City for period of two years.

4. It is the case of the Petitioner that externment proposal was forwarded on the basis of five criminal cases i.e., Crime No. 06/2021 for offence under Section 399 of IPC, Crime No. 331/2022 under Section 188 IPC, Crime No. 368/2022 under Sections 384,

385, 342, 102-B, 323, 506 IPC and Crime No. 97/2017 of Bombay Prohibition Act. It is also claimed therein that NC complaint bearing no. 600/2022 for the offence under Section 504, 506, 510 of IPC and three preventive actions were taken against him. Petitioner replied notice. According to him, order of externment is passed on surmises and conjectures and the same is not tenable in the eyes of law. He claims that in Crime Nos. 97/2017 and 331/2022 he is already acquitted and hence, in any case, the said crimes could not become basis for passing order of externment. It is claimed that the only alleged serious offence pending against Petitioner is Crime No. 368/2022 under Section 384 of IPC, which is registered against him by his neighbour who is running illegal gambling den. It is claimed by the Petitioner that the order of externment is harsh and excessive and without recording reasons for extending the same for two years.

5. Learned Counsel for the Petitioner submitted that except for one crime i.e., Crime No. 368/2023 registered with Raver Police Station, there is no other offence which could be considered for the purpose of

externment of the Petitioner. It is submitted that except for the Raver Police Station, there is no offence registered against him in any other police station and as such, the order of externment from five districts in State of Maharashtra and two districts in State of Madhya Pradesh is not justified. It is also submitted that the alleged confidential statements of witnesses were not provided to the Petitioner in order to enable him to meet the same. According to him, in notice under Section 56(1)(a) of the said Act there is no allegation about any confidential statements being recorded. In order to support his submissions he placed on the judgments of this Court in case of Paramjitsingh @ Jantil Sardar Vs. State of Maharashtra and Ors, 2023 ALL MR(Cri) 1284 and Sheikh Munnu Sheikh Salim Vs. Divisional Commissioner, Amravati Division and Ors, 2023(1) Bom C.R. (Cri) 815.

6. Learned APP opposed the Petition by contending that it is within the jurisdiction of the concerned authority to initiate externment proceedings under Section 56 of the said Act and as such, there is no jurisdictional error committed by the said authority.

By filing affidavit-in-reply it is pointed out that the crimes mentioned in the notice are sufficient in order to invoke the said provisions. It is submitted that the confidential statements recorded of the witnesses indicate that there is terror of present Petitioner and hence, the order of externment for two years is justified.

7. In order to appreciate the submissions made across the bar and before considering factual matrix of the present case, it would be relevant to take into consideration the scope of judicial interference in the matters of administrative decision such as the decision in the present case of externment of the Petitioner in exercise of powers Section 56(1) of the said Act. In case of Deepak Laxman Dongre Vs. State of Maharashtra and Others, AIR 2022 SC 1241 the Hon'ble the Apex Court has laid down guidelines for deciding Petitions challenging order of externment passed by competent authority. It is held that for invoking the said provisions there must be objective material on record on the basis of which competent authority must record its subjective satisfaction. It is further observed

that in a given case even if multiple offences have been registered against an individual that by itself is not sufficient to pass an order of externment. Moreover, there must be satisfying material on record to indicate the reasonable apprehension of the witnesses of their safety and for that reason they are not coming forward to give statement against the externee.

8. In case of State of NCT of Delhi Vs. Sanjeev @ Bitto, 2005, DGLS (SC) 320, it is held that the Courts will be slow in interfering in the matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Keeping in mind the guidelines laid down by the Hon'ble Apex Court, impugned orders are considered in the facts and circumstances of the case.

9. There is no dispute about the fact that there were four offences registered against Petitioner at Police Station, Raver. Though in the order of externment it is observed that Crime Nos. 331 of 2022 and 97 of 2017 are subjudice, however undeniably the

Petitioner was already acquitted in those crimes. Thus, only two offences being Crime Nos. 06/2021 and 368/2022 remains for consideration for the purpose of justification of order of externment. Crime No. 06/2021 is for offence under Section 399 of IPC wherein involvement of the Petitioner is sought in the crime on the basis of statement of co-accused. Undisputedly, Petitioner was not accosted at the spot. Thus, the only offence which could have been taken into consideration by the competent authority for the purpose of taking decision in respect of exterment of the Petitioner is offence being Crime No. 368/2022.

10. Perusal of the impugned order shows that statements were recorded of the witnesses who claims fear in their mind of the petitioner and therefore, they are not willing to come forward to record their statement. In this regard, it is pertinent to note that one statement pertains to the incident dated 09.12.2022 in respect of incident occurred in a public procession taken out at Raver. The witness claims that the Petitioner came and manhandled and abused him. If such incident has occurred in a procession attended by

people at large, there has to be police bandobast/permission for such procession and presence of the police is not excluded. There is no corroborating statement recorded in order to ascertain correctness of the incident mentioned by the witness. Apart from this, statement of another witness speaks about the Petitioner while drunk has threatened him. As rightly argued on behalf of Petitioner, this statement by no stretch of imagination would be sufficient to hold that out of fear and terror of the Petitioner the witnesses are not coming forward to record their statements.

11. Perusal of order dated 23.03.2023 externing the Petitioner shows that in order to protect the life and property of the people in Taluka Raver, the order is essential, however, in the operative part, the Petitioner is externed from five districts of State of Maharashtra and two districts of State of Madhya Pradesh or 100 radius air kms distance from Raver. In order to pass said order there is absolutely no explanation is given. The order passed by concerned authority indicates pre-meditation and bias.

12. The Appellate Authority though has interfered into the order passed by competent authority and maintained the order of externment to the extent of tq. Raver, the said order of externment is for the maximum period of two years. The Appellate Authority while passing impugned order has observed that competent authority while externing the Petitioner for the period of two years from number of districts has not recorded reasons, however, for the purpose of upholding the period of externment of two years even from Tq. Raver, no reason is recorded by the Appellate Authority.

13. Hon'ble Apex Court in case of Deepak (cited supra) has held that for the purpose of externment of any individual for the maximum period of two years, the reasons must be recorded. The order passed by the Appellate Authority even for the externment of the Petitioner for period of two years *sans* any reasoning. Hence, even the said order is not sustainable.

14. In the light of above discussion, orders impugned cannot sustain. The Petition, therefore, deserves to be allowed. Resultantly, order dated

23.03.2023 passed by Sub-Divisional Magistrate, Faijpur Division, Faijpur in Externment Case No. 03/2023 and order dated 12.07.2023 passed by Divisional Commissioner, Nashik Division, Nashik in Externment Appeal No. 48/2023 are hereby quashed and set aside.

15. Petition stands allowed in terms of prayer clause 'a'. Rule made absolute in above terms.

(R.M. JOSHI, J.)

Malani