

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 683 OF 2024

Gopal s/o Govind Lakade,
Age :- 43 years, Occ. Agri.,
R/o Borwati, Tq. & Dist. Latur
At present R/o Datta Temple,
Tokwadi Phata, Sirsala Road,
Parali, Dist. Beed.

...Petitioner

VERSUS

1. The Divisional Commissioner,
Aurangabad Division, Aurangabad
2. The Sub Divisional Magistrate
Office of Sub Divisional Magistrate,
Near Ashok Hotel, Latur
3. Superintendent of Police,
Office of S. P. Ambajogai Road,
Latur
4. The Deputy Superintendent of Police
Latur Rural Division, Barshi Road,
Latur
5. The Police Inspector,
Latur Rural Police Station,
Tq. & Dist. Latur

...Respondents

Advocate for Petitioner : Mr. V.H. Dighe h/f Mr. H.D. Deshmukh
APP for Respondent Nos.1 to 5/State : Mr. S.D. Ghayal

...
CORAM : S.G. MEHARE, J.

RESERVED ON : JULY 30, 2024

PRONOUNCED ON : AUGUST 09, 2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith.

2. The Petitioner has impugned the orders of externment passed under Section 56(1) of the Maharashtra Police Act by the Sub Divisional Magistrate, Latur, dated 08.12.2023 in Proceeding No. 2023/ MAG/ Externment/ CR-127 and the order of Divisional Commissioner, Aurangabad dated 27.03.2024 passed in Externment Appeal Outward No. 2023 / GA / Desk-1 / Pol-1/ Externment/ CR-133.

3. The SDPO, Latur placed a proposal against the petitioner for externment under Section 56(1) of the Maharashtra Police Act. A show cause notice under Section 56(1) was served upon the petitioner on 19.05.2023. In a show cause notice issued by the Sub Divisional Magistrate, two crimes of 2019, 2022 and 2 N.C. of 2022 and 2023 were quoted.

4. The petitioner was called upon to explain the externment proposal. The petitioner had submitted his say on 05.10.2023. He denied the proposal of externment against him. The notice does not mention the place of the incident and time. No details have been given that his movements were caused or calculated to cause alarm, danger or harm to persons or property. Barely the crimes are pending. Taking illegal action under Section 56 violates the liberty of the applicant. A common man has no concern nor any disturbance from him. The crimes registered against him were not related to law and

order. Some individuals have registered the crimes against him. Hence, the proposal against him should be dropped.

5. By the impugned order, the learned Sub Divisional Magistrate recorded the finding that the action under Section 149 of the Criminal Procedure Code was taken against the petitioner. The crimes registered against him fall under Sections 15 and 16 of the Indian Penal Code. The opportunity of hearing was granted to the petitioner. The SDPO recorded the reasons that considering the frequent crimes registered against him and its number corroborates the proposal. His movements were causing or calculated to cause alarm, danger or harm to the persons and property. Considering the material before it, the impugned order is passed. The Divisional Commissioner, Aurangabad, agreeing with the order of the Sub Divisional Magistrate and going through the papers, hold that there is material against the petitioner to take action under Section 56 of the Maharashtra Police Act has recorded the finding that even after the proposal of externment was moved, there were no changes in his behaviour. He confirmed the order of the Sub Divisional Magistrate. However, he has reduced the area of externment.

6. Learned counsel for the petitioner has vehemently argued that the first crime registered against the petitioner was within the family. It was a counter case. Therefore, it would not be material to consider for an action of externment. After the externment order was

passed, the authority granted him leave to enter Latur which shows that his movements were not harmful to the public or the public property. The Appellate Authority had stayed the externment orders. The authorities should have considered that the petitioner was not convicted of any crime. There was no live link or proximity between the registration of the offences and the initiation of the action of externment. One offence is of 2019, and another is of 2022. The rest of the offences were non-cognizable. The externing authority did not personally verify the camera witnesses. Section 56(1)(a)(b) has not been strictly complied with. The fundamental rights and liberty guaranteed under Article 19 of the Constitution of India have been violated. The norms laid down by the judicial pronouncements have not been considered.

7. Per contra, the learned APP would submit that for an action under Section 56 of the Maharashtra Police Act, the conclusion of the trial is not essential. On the contrary, repeated registration of crime is the best material to initiate action under Section 56 of the Maharashtra Police Act. He would submit that Section 56(1) was complied with. There was a live link and proximity between the registration of the crime and initiating the action against the petitioner. His movements were dangerous to the public and public property. Article 19 of the Constitution of India has not been violated. There was objective material to record subjective satisfaction. None of

the required provisions of the law have been violated. Hence, the petition deserves to be dismissed.

8. The law is well settled that while exercising the powers under Section 56 of the Maharashtra Police Act, the Externment Authority has to bear in mind the fundamental right of the externee under the Constitution of India. No such orders should be mechanically passed. The provisions of Section 56 are strictly complied with. Appropriate show cause notice should be served upon the petitioner, making him aware of the crimes registered against him. That would be an objective material before the authority to record the subjective satisfaction. Extraneous material should not be considered in such cases. For exercising the powers under Section 56(1)(b), the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the externee by reason of apprehension on their part regarding their safety or property. Recording the subjective satisfaction by the competent authority is *sine qua non* for passing valid orders of externment.

9. The show cause notice shows that the petitioner was informed that a crime under Section 354(b), 452, 294, 324, 323, 504, 506 r/w 34 of the Indian Penal Code was registered in the year 2019. In 2022, another crime under Sections 420, 466, 467, 468 and 471 of the Indian Penal Code was registered. Two N.C. cases were registered in 2022 and 2023, for which notice under Section 149 of the Criminal

Procedure Code was served upon the petitioner. The petitioner was also informed that the witnesses are not coming forward openly against him due to apprehension of their safety and the safety of their property.

10. The papers placed before the Court reveal that Crime No.57/2019 was registered against the petitioner. Since then, no crime has been registered till 2022. The petitioner explained about the crime of 2019, that it was a counter case against the assault on his sister-in-law and brothers. He explained that the crime of 2022 was a counter case registered in his report as a money lender. The crime was registered after passing the order under Section 156(3) of the Criminal Procedure Code. N.C. of 2022 was registered again filed on the false report of the complainant in Crime No.57/2019. N.C. of 2023 was registered falsely. A dispute arose out of the sale transaction. Another N.C. of 2023 was registered on the false complaint of the gazetted officer. He made the complaint against the said officer that his mother was landless and he had purchased the land. He raised the objection against the mutation. The objection of the petitioner is that his submissions were not properly appreciated. Therefore, the impugned orders are illegal.

11. Perused the papers produced before the Court. It appears that the petitioner has a dispute with Ghogre family. In a crime registered against him in 2018 on the report of the Ghogre family, he

was acquitted. As far as Crime No.216 of 2022 is concerned, it was a crime registered after the order of the Court under Section 156(3) of the Criminal Procedure Code by a private person about transferring the property in the name of his brothers, which was sold to him. Prima facie it appears that it was a civil dispute. Therefore, the explanation of the petitioner that it was a transaction arising out of money lending has been corroborated. Both impugned orders are silent about the findings on the submissions made by the petitioner except for the word that it is not satisfactory.

12. Since the powers under Section 56 were exercised casually, the Government has issued a circular dated 15.03.2013, which was a part of the record. All officers concerned were directed that while externing the accused for the offence of cheating and economic offence, the concerned officer has to record the finding that the general public has danger because of personal disputes, the proposal for the externment could not be presented. But N.C.s were again registered by the family of Ghogre. Both authorities did not record the correct findings based on objective satisfaction. Objective satisfaction would be a basis for recording the subjective satisfaction of the externing authority. In a show cause notice, the petitioner was informed that the witnesses are not coming forward to give evidence in public against the petitioner due to apprehension about the safety of their person and property. However, both authorities are silent on

this fact. So, it can be said that the show cause notice was issued mechanically. The Externinig Authority had no material as such. The first crime was registered against the petitioner in 2019. Till 2022, there were no crimes registered against him. The crimes registered against him arose from the parties' private rights. Therefore, it could not be said that there was a live link and proximity between the registration of the offence and initiation of the action of the externment proceeding. There was no objective material before the authority to record the subjective satisfaction that the movements or the acts of the petitioner were causing or likely to cause alarm, danger or harm to a person or property. In the circular mentioned above, it was clear that the externing authority should mention specifically the reasons for the externment, that out of the crimes of cheating and economic offences, the general public was in danger. No such reasons were cited in both impugned orders.

13. Examining both orders with the required conditions to exercise power under Section 56 of the Maharashtra Police Act have not been strictly adhered to. Hence, the Court believes that the petition deserves to be allowed. Hence, the following order :

ORDER

- (i) Writ Petition is allowed.
- (ii) The order of externment of Sub Divisional Officer cum Sub Divisional Magistrate, Latur dated 08.12.2023 passed

in Proceeding No. 2023/ MAG/ Externment/ CR-127 and the order of Divisional Commissioner, Aurangabad dated 27.03.2024 passed in Externment Appeal Outward No. 2023 / GA / Desk-1 / Pol-1/ Externment/ CR-133 stand quashed and set aside and the bond executed by the petitioner also stands quashed and set aside.

(iii) Rule is made absolute in above terms.

(S.G. MEHARE, J.)