



**THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.719 OF 2024

1. Gajanan S/o Pandurang Ghuge,
Age 37 years, Occu. Agri & Business,
2. Suresh @ Sunny S/o Mahadev Kute,
Age 35 years, Occu. Business,

Both R/o Hingani,
Tq. and District Hingoli.

... **Petitioners.**

Versus

1. The Divisional Commissioner,
Chhatrapati Sambhajnagar.
2. Superintendent of Police.
Hingoli.
3. The Police Station, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli,
Through its Police Inspector.

... **Respondents.**

...
Advocate for Petitioners : Mr. Vikram S. Kadam.
APP for Respondents-State : Mr. S. R. Wakale.

...

CORAM : S. G. MEHARE, J.

RESERVED ON : 21.06.2024

PRONOUNCED ON : 05.07.2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Learned APP
waives service for the respondents/State. Heard finally by
consent of the parties.

2. The petitioners have preferred this petition under Article 226 of the Constitution of India and take exception to the order of externment under Section 56 of the Maharashtra Police Act (“the Act” for short).

3. The brief facts of the case are as follows :

The petitioners were the residents of Hingoli. Two crimes for the offences punishable under Sections 379 R/w sec 34 of the Indian Penal Code and under Section 48(7)(8) of the Maharashtra Land Revenue Code, in the years 2020 and 2023 were registered against them. The Police Station i.e. respondent No.3 had submitted te proposal No.4 of 2023, dated 11.10.2023, for their externment to the Deputy Superintendent of Police, Hingoli. The deputy Superintendent of Police, Hingoli, conducted the inquiry and submitted his report on 05.01.2023 to the Superintendent of Police. It was proposed that the petitioners be externs for two years. Respondent No.2 had served them a notice. They have submitted their explanation. Petitioner Gajanan explained to the Authority that the so-called tractor used for carrying the unauthorized sand was sold to one of Shaikh Rafiq Shaikh Mehroom. The transfer Forms were signed. However, the consideration was not paid. Hence, the tractor was not

transferred in RTO record. However, the possession lies with him. The Superintendent of Police discarding the explanation by order dated 25.12.2023 extern the petitioners for one year from Hingoli District. A statutory appeal was preferred before respondent No.1. However, the said appeal was dismissed on 29.02.2024.

4. The petitioners have impugned the orders of externment mainly on the grounds that the proposed externment was almost three years after the first crime was registered in 2020. Since 2020 to 2023, there were no similar crimes registered against the petitioners. The charge sheets have been filed. There was no scope to tamper with the prosecution witnesses. The offences against the human body have not been registered against them. So, there is no danger or threat to the life and property of individuals or society. The subjective satisfaction of respondent No.2 was based on no material. Therefore, the externment order is perverse. After a long period, two crimes were the only material before the Authority was not the material for subjective satisfaction. Barely registering the crime is not sufficient to exercise the powers under Section 56 of the Act. There were no extraordinary circumstances that affected the livelihood of the externnee. In view of Clause (b) of Section

56(1) of the Act, there must be objective material on the strength of which the Authority must record subjective satisfaction that there was a reasonable ground to believe that the externee were engaged or is about to be engaged in the commission of offence or force or violence.

5. The State/contesting respondent has filed the affidavit-in-reply. The averments in the petition adverse to its interest have been denied. They have supported the impugned orders. It was their submissions that made registering the crime against the applicant evident. There was sufficient material for subjective satisfaction with the Authority exercising the powers. Nobody was coming forward since the applicants were involved in the illegal extracting of sand. Denying the pleadings of the petitioners, they have prayed to dismiss the petition.

6. Learned counsel for the petitioner has vehemently argued that the impugned orders are *prima facie* incorrect as no mind was applied. The principle governing exercising the powers under Section 56(1) has been totally given by. The externment orders were based upon the stale cases, which defeated the purpose of externment. There was absolutely no evidence or material with the Authority that the witnesses

were not coming forward to give the statement against the applicant. There were no regular offences registered against the petitioners. In the absence of subject to satisfaction, the orders are bad in law.

7. Learned APP would submit that the mandatory provisions of the procedural law have been complied with. Before the action was proposed, the show cause notices were served upon the petitioners. They appeared and submitted their explanation through the counsel. The witnesses were examined in camera on the condition that their names would not be disclosed. It was sufficient to exercise the powers under Section 56(1) of the Act. He also submits that the movements or acts of the petitioners/applicants were causing alarm, danger and harm to the person and property of the Government. It was an offence punishable under Chapter XVII of the IPC. The petitioners were engaged in the commission of stealing the Government's sand. Since they were involved in the serious offence of stealing the Government sand, the witnesses were not coming forward to publicly give the evidence against them, as they had created terror in the locality. He prayed to dismiss the petition.

8. It is not disputed that the offence of committing theft of the Government's sand were registered against the applicants. It is also not disputed that the externment action is based upon two crimes, which were registered in 2020 and 2023. The petitioners have no serious objections about complying with the procedures before passing the externment orders. A fair opportunity was granted to them to file their submissions. They were heard through their counsel, and then the externment orders were passed.

9. Learned counsel for the petitioners has raised the question that in the absence of cogent material, there was infirmity in the satisfaction recorded by the externment Authority. Considering the questions raised by the learned counsel which are yet to be decided ;

(i) Whether there was ample material before the Authority to arrive at such satisfaction that the witnesses are not willing to come forward to depose against the petitioners ?

(ii) Whether the impugned orders were based on cogent material required to issue such an order under Sub Clause (1) ?

(iii) Was there, infirmity in the satisfaction recorded by the externing Authority?

10. Section 56(1) has been divided into various parts. Section 56(1)(a) provides that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to a person or property. Clause (b) provides that where there are reasonable grounds for believing that such person is engaged or is about to be engaged in commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, XVII of the IPC, or in the abetment of any such offence, and when in the opinion of such officer witnesses or 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.

11. The proposal for externment is mainly on two grounds i.e. grounds (1) and (2) under Section 56 of the Act. The statements of the witnesses in camera were also recorded. However, the Superintendent of Police, by the impugned order dated 22.12.2023 recording his subjective satisfaction, externed the applicant under Section 56(1)(a) of the Act. The

Divisional Commissioner also confirmed the order of the Superintendent of Police.

12. Learned counsel for the applicant has correctly pointed out that the prosecution has no case that the witnesses are not coming forward to state against the applicant because of apprehension regarding their safety and property. However, he has vehemently argued that there was no material to arrive at the peculiar satisfaction while issuing the impugned order of the externment. The offences registered against the petitioners were stale, and there was no live link between the offences and the necessity of passing the impugned order.

13. To bolster his argument, he relied on the case of ***Deepak Vs. State of Maharashtra and others; AIR 2022 Supreme Court 1241.***

14. The Hon'ble Apex Court, in the case of Deepak (supra) has observed that the recording of such subjective satisfaction by the competent Authority is sine qua non for passing a valid order of externment. The Court, while testing the order of externment cannot go into the question of sufficiency of material based on which the subjective satisfaction has been recorded. However, the Court can always consider whether

there existed any material on the basis of which subjective satisfaction could have been recorded. The Court can interfere when either there was no material or the relevant material has not been considered. The Court cannot interfere because there is a possibility of another view being taken. As in the case of any other administrative order, the judicial review is permissible on the grounds of mala fide, unreasonableness or arbitrariness.

15. The law is well settled that the Authority shall exercise the powers under Section 56 in exceptional cases subject to satisfaction. Reference is to be made to some material on record, and if i.e. done, the requirements of law exercising such powers are met. It is not the sufficiency of material but the existence of material which is sine qua non.

16. Admittedly, there were two crimes registered against the petitioners. The first was registered in 2020 and the second was registered in 2023. In these three years, no crime was registered against the petitioners. The facts of the case of Deepak were some what identical. The crimes were registered against the externee in the year 2013, 2018, 2020 and 2023. It has been observed in the said judgment that for invoking clause (a) of Sub Section (1) of Section 56, there must be

objective material on record on the basis of which the competent Authority must record subject to satisfaction that the movements or acts of any person or causing or calculated to cause alarm, danger or harm to any person or property. In paragraph No.11, it has been observed that from 2nd June 2020 till the passing of the impugned order of externment, the appellant is not shown to be involved in any objectionable activity. The first three offences relied upon are from 2013 and 2018, which are stale offences in the sense that there is no live link between the said offences and the necessity of passing an order of externment in the year 2020.

17. Two crimes were registered in a years' gap, and during this period, there were no crimes registered against them. So it may be stated that those offences were stale in the sense that there is no live link between the offences and the necessity of passing of an order of externment in the year 2023. On examining the impugned orders, the Court is of the view that the objective material before the Authority was not the material for exercising the powers. The petitioners were not shown to be involved in any objectionable activity. Nothing was before the Authorities that the petitioners were involved in the

activities causing or calculated to cause alarm, danger, or harm to a person or property.

18. The Superintendent of Police and the Commissioner did not consider the proposal to extern them under clause (b) of Sub Section (1) of Section 56. This is another circumstance that may favour the contention of the petitioners. The cases registered against the petitioners were stale, and there was no live link between the said offences and necessity to pass the impugned orders.

19. For the above reasons, the Court is of the view that the Authorities did not properly record the subjective satisfaction.

20. In view of the above, the Court believes that the impugned orders warrant interference under the powers of this Court under Article 226 of the Constitution of India. As a result, the writ petition succeeds. Hence, the following order :

ORDER

- (i) Writ Petition is allowed.
- (ii) The impugned orders of the externment passed by the Superintendent of Police, Hingoli, dated

22.12.2023 and the Divisional Commissioner, Chhatrapati Sambhajanagar, dated 29.02.2024, stand quashed and set aside.

(iii) Rule is made absolute in the above terms.

(iv) No order as to costs.

(S. G. MEHARE, J.)

...

vmk/-