

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

WRIT PETITION NO.1696 OF 2024

Vikrant @ Bundi Dinkar Shinde

...Petitioner

vs.

Divisional Commissioner, Konkan Divisional
and Others

...Respondents

Mr. Irfan Shaikh, for the Petitioner.

Mr. Tanveer Khan, APP for the Respondent-State.

Mr. Wanjane, API, MFC police station, Kalyan (w).

CORAM : N. J. JAMADAR, J.
RESERVED ON : MARCH 6, 2024
PRONOUNCED ON : MAY 9, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India takes exception to an order dated 12th October, 2023 passed by the Divisional Commissioner, Konkan Division in Appeal No. 108 of 2023 preferred by the petitioner under section 60 of the Maharashtra Police Act, 1951 (the Act, 1951) whereby the appellate authority dismissed the appeal and affirmed the order of externment passed by the competent authority under section 56(1) (a)(b) of the Act, 1951 thereby externing the petitioner from the limits of Thane and Mumbai Suburban Districts and Panvel and Karjat Taluka of Raigad District for a period of 18 months.

3. Shorn of unnecessary details, the background facts can be stated as under.

On 8th November, 2022 a notice under section 59 of the Act, 1951 was served on the petitioner calling upon him to show cause as to why the petitioner should not be externed for a term of two years from the limits of Thane District, Mumbai Suburban and Panvel and Karjat Taluka of Raigad District. It was contended that the movements or acts of the petitioner were causing or calculated to cause alarm, harm or danger to the person and property in Ashok Nagar, Kalyan (E), Subhash Chowk, Railway Colony, Kalyan (w), Waldhuni, Katemanivali and Pune Link Road. The petitioner has engaged in or was about to engage in the commission of offences involving force or violence or offence punishable under Chapter XII, XVI and XVII of the Penal Code. On account of the reign of terror created by the petitioner along with his associates, the witnesses were not willing to come forward to give evidence in public against the petitioner due to an apprehension on their part regarding the safety of their persons and property.

4. In the said notice, reference was made to pendency of two crimes registered against the petitioner and a prohibitory action taken against the petitioner under section 107 of the Code of Criminal Procedure, 1973 (the Code). Reference was also made to

two statements of confidential witnesses who stated that the petitioner along with his associates had created a reign of terror and was extorting money by giving threats of causing hurt by means of a deadly weapon.

5. The petitioner gave reply to show cause notice.

6. The competent authority after appraisal of the material on record including the crimes registered against the petitioner and the statements of confidential witnesses recorded a satisfaction that on account of the criminal activities and terror created by the petitioner, there was imminent danger of breach of law and order, and public tranquility. The acts and movements of the petitioner had caused alarm, danger or harm to persons and property in the area of influence of the petitioner and, thus, the witnesses were not willing to come forward to give evidence in public, fearing reprisal by the petitioner. Externment authority, thus, directed the petitioner to remove himself from the limits of Thane and Mumbai Suburban Districts and Panvel and Karjat Taluka of Raigad District for a period of 18 months.

7. Being aggrieved, the petitioner preferred an appeal before the Divisional Commissioner. By the impugned order, the appellate authority found no reason to interfere with the order passed by the externing authority.

8. Being further aggrieved, the petitioner has invoked the writ jurisdiction.

9. I have heard Mr. Irfan Shaikh, the learned counsel for the petitioner, and Mr. Tanveer Khan, learned APP for the respondent-State at some length. The learned counsel took the Court through the pleadings and the material on record.

10. Mr. Irfan Shaikh, took a slew of exceptions to the externment order. Firstly, the externing authority had not recorded a subjective satisfaction on the basis of objective material. On the basis of only two crimes registered against the petitioner the competent authority proceeded to extern the petitioner impinging the fundamental rights of the petitioner guaranteed under Article 19 and 21 of the Constitution of India. One of those crimes arose out of a dispute with a friend over a trivial issue. There was an interval of about 18 months in the registration of the first and second crime. Thus, there was no live link between the crimes which were taken into account and the externment order.

11. Secondly, the externing authority could not have placed reliance on the statements of confidential witnesses as those statements were not verified by the sponsoring authority or the competent authority that passed the externment order. Thirdly, the externing authority did not record the satisfaction that on account

of the acts and movements of the petitioner, witnesses were not coming forward to give evidence in public. In the absence of such satisfaction, the externment order is wholly vitiated.

12. To bolster up these submissions Mr. Shaikh placed reliance on the judgment of this Court in the case of **Harikesh @ Guddu Madan Kattilwar v. Deputy Police Commissioner and Ors.**¹; a Division Bench judgment of this Court in the case of **Balu Shivling Dombé v. Divisional Magistrate, Pandharpur and Another**² and a decision of the Supreme Court in the case of **Deepak Laxman Dongre v. State of Maharashtra and Ors.**³.

13. As against this, Mr. Khan, learned APP, submitted that no fault can be found with either the externment order or the order passed by the appellate authority. An endeavour was made to demonstrate that on the basis of objective material, in the nature of registration of two crimes against the petitioner, the initiation of prohibitory action and the statements of two confidential witnesses, the externing authority had recorded a subjective satisfaction. Mr. Khan submitted that such subjective satisfaction is not amenable to interference in exercise of writ jurisdiction.

14. I have given careful consideration to the submission canvassed across the bar.

1 2023 (1) ABR (Cri) 914

2 1969 AIR (Bombay) 351

3 AIR 2022 Supreme Court 1241

15. To begin with, it is necessary to note the nature and consequences of the order of externment. The Petitioner was ordered to be externed by invoking the provisions contained in Section 56(1)(a) and (b) of the Act, 1951. The measure of externment by its very nature is extra-ordinary. It has the effect of forced displacement from one's home and surroundings. Often it affects the livelihood of the person ordered to be externed. The order of externment, therefore, must be strictly within the bounds of the statutory provisions. Under clause (a) of sub-Section (1) of Section 56, the externing authority must be satisfied on the basis of the objective material before it that the movements or acts of the person to be externed are causing or calculated to cause alarm, danger or harm to person or property. Under clause (b), there must be objective material on the strength of which the externing authority believes that such person is engaged in the commission of offences involving force or violence or its abetment.

16. Mere registration of a number of offences by itself does not sustain an externment under Section 56(1)(b) of the Act. The offences must either involve elements of force or violence or fall under Chapters XII, XVI and XVII of the Indian Penal Code. In addition, the externing authority must record satisfaction that the witnesses are not willing to come forward to give evidence in public

against the externee by reason of apprehension on their part as regards the safety of their person or property.

17. In effect, to sustain an action of externment under sub-clause (b), the offences, the externee has engaged in, must be under one of the Chapters enumerated therein and that the acts or conduct of the externee is such that the witnesses are terrified and dissuaded from giving evidence against the externee in public fearing safety of their person or property.

18. In the light of the aforesaid conspectus of the requirements of section 56(1)(a) and (b), the aforementioned challenges deserve to be appreciated. The externing authority took into account the following crimes registered against the petitioner.

Sr.	Police station	C.R.No.	Sections	Stage
1	Mahatma Phule Chowk	04/2021	324, 504, 506 read with 34 of IPC	Pending
2		367/2022	392 read with 34 of IPC	

19. A prohibitory action initiated against the petitioner vide Chapter Case No. 4 of 2021 under section 107 of the Code on 13th January, 2021 was also adverted to. In addition, the externing authority banked upon the statements of two confidential witnesses.

20. At this stage, it may be necessary to note the nature and accusation against the petitioner in the two crimes registered

against him. C.R. No. 4 of 2021, for the offences punishable under sections 324, 504 and 506 read with 34 of the Penal Code came to be registered against the petitioner and his associates, with the allegations that the petitioner was staring at the first informant and the latter questioned the petitioner as to why he was staring at the first informant. Enraged due to the said altercation, the petitioner and his associates again allegedly accosted the first informant and assaulted him by means of a knife. C.R. No. 367 of 2022 came to be registered against the petitioner and others with the allegations that they tried to commit theft of the iron rods from the building which was under demolition and when the watchman of the building resisted, Saddam Khan, the associate of the petitioner, pointed a knife on the neck of the watchman and the petitioner and his associates committed a robbery of iron rods worth Rs. 95,000/-.

21. The submission of Mr. Irfan Shaikh that the first crime arose out of an altercation over a trivial issue amongst the friends carries some substance. The aspect of interval of time between the registration of first and second crime also assumes significance. There was an interval of about one and half year in the registration of the first and second crime. It does not appear that the external authority adverted to the said fact so as to assess as to whether there was a live link between the first and second crime and an

element of continuity in the alleged acts and movements of the petitioner which caused harm, danger and alarm.

22. Mr. Khan, the learned APP submitted that the externment order is not based on the registration of crimes only. Attention of the Court was invited to the statements of two confidential witnesses.

23. I have perused the statements of confidential witnesses. The witnesses have adverted to the alleged act of extortion by the petitioner and his associates. However, a procedural infirmity in consideration of the said statements of confidential witnesses is evident. The statements were recorded by the Police Sub Inspector, Hill Line police station. It does not appear that either the Sponsoring Authority/ Inquiry Officer / Dy. Police Commissioner, Zone-III, Kalyan or the externing authority had verified the statements of confidential witnesses.

24. In the case of **Harikesh Kattilwar** (supra), a learned single Judge of this Court interfered with the order of externment on the ground of improper verification of the statements of confidential witnesses. The learned single judge found that the perusal of the statements in that case would show that at the bottom of the said statements, there was endorsement 'verified'. The said cryptic manner of endorsement created doubt about actual verification. In

paragraph 12 of the said order, it was observed as under:-

12] The next important aspect is with regard to the reliance placed on the statements of the confidential witnesses. The statement of the first confidential witness was recorded on 10th February, 2022 and the statement of the second witness was recorded on 11th February, 2022. The statements were recorded by the Senior Police Inspector, Frezarpura, Amravati City. The statements were, therefore, admittedly not recorded by the respondent No.1. The respondent No.1 was, therefore, required to verify those statements. Perusal of the statements would show that at the bottom of the statements, there is endorsement "verified". The stamp below the signature clearly spells out that those statements were not verified by the respondent No.1, but those statements were verified by the Assistant Commissioner of Police. Even if it is assumed that there was verification, the cryptic manner of the endorsement to indicate the verification, creates a doubt about actual verification. The statements were verified on 28th February, 2022. The notice in question was issued on 4th March, 2022. There is no reference of this in-camera statements of the confidential witnesses in the notice.

25. In the case at hand, there is nothing to indicate that, the statements of confidential witnesses were verified by the Inquiry Officer or the externing authority. No endorsement of verification finds place on the statements which were tendered for the perusal of the Court. In the absence of such verification, the externing authority could not have banked upon the statements of confidential witnesses.

26. The conspectus of the aforesaid consideration is that on the one hand, the externment order was based on two crimes, first of

which appears to have arisen out of a trivial issue. Secondly, the reliance on the statements of confidential witnesses, was also not free from infirmity. In these circumstances, the satisfaction arrived at by the externing authority cannot be said to be based on objective material.

27. Resultantly, the externment order deserves to be quashed and set aside as it impinged upon the fundamental right of the petitioner without there being objective material to justify the restraint on the exercise of his fundamental rights. Since the appellate authority did not correct the mistake, which the externing authority had committed, that order also deserves to be quashed and set aside.

Hence, the following order.

ORDER

1] The petition stands allowed in terms of prayer clause (a).

2] Rule made absolute in the aforesaid terms.

(N. J. JAMADAR, J.)