



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1045 OF 2025

1. Gorakh @ Vijay s/o. Munna Jedhe,
Age : 29 years, Occ. : Labour,
R/o. Davkhar Road, Ward No.6,
Shrirampur, Tq. Shrirampur,
Dist. Ahilyanagar
- ... PETITIONER

VERSUS

1. The Divisional Commissioner,
Nashik Division, Nashik
2. The Sub Divisional Magistrate,
Shrirampur Division, Shrirampur,
Dist. Ahemadnagar
3. The Police Inspector,
City Police Station, Shrirampur,
Dist. Ahhemadnagar
- ... RESPONDENTS

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Mr. Abhinay D. Khot and Mr. N.S. Salunke – Advocates for Petitioner
Mr. D.J. Patil – APP for Respondents, State

...

CORAM : SACHIN S. DESHMUKH, J.
DATE : 04.10.2025

J U D G M E N T :

1. Rule. Rule made returnable forthwith. By consent of the learned Counsel for both the parties, the petition is taken up for final hearing at the stage of admission.
2. The petitioner has put-forth the following prayers :

- (A) *The Criminal Writ Petition may kindly be allowed.*
- (B) *By way of writ of Certiorari or appropriate writ, order or direction in the like nature, this Hon'ble High Court may kindly quash and set aside the final order dated 07.04.2025 passed by the Ld. Divisional Commissioner, Nashik Division, Nashik in Externment Appeal No.09/2025, so also, the final order dated 08/11/2024 passed by the Sub Divisional Magistrate, Shrirampur Division, Shrirampur, Dist. Ahemadnagar vide हद्दपार / एस.आर. नं. ०४/eqj - १६७ / २०२४;*
- (C) *Pending hearing and final disposal of the present Criminal Writ Petition, this Hon'ble Court may kindly stay and suspend the effect and operation of the final order dated 07/04/2025 passed by the Ld. Divisional Commissioner, Nashik Division, Nashik in Externment Appeal No.09/2025, so also, the final order dated 08/11/2024 passed by the Sub Divisional Magistrate, Shrirampur Division, Shrirampur, Dist. Ahemadnagar vide हद्दपार / एस.आर. नं. ०४/eqj - १६७ / २०२४;*
- (D) *Interim relief may kindly be granted in terms of prayer clause "C".*
- (E) *Any other suitable and equitable relief may kindly be granted in favour of the petitioner in the interest of justice.*

3. The petitioner raises an exception to the order of the Appellate Authority dismissing the appeal confirming the order of externment under Section 56 of the Maharashtra Police Act, 1951, for a period of one year from the localities of Ahilyanagar District, Tahsil Shirur, Dist. Pune, Tahsil Yewla, Dist. Nashik and Vaijapur Tahsil of Chhatrapati

Sambhajanagar District.

4. Learned Counsel for the petitioner has made following submissions:

(i) The offence which is indicated as registered against the petitioner at serial No.5, in show cause notice, is already quashed by this Court vide order dated 03.08.2023 passed in Criminal Writ Petition No.782 of 2021.

(ii) Equally the offence referred at serial No.1 in the show cause notice is still under investigation.

(iii) The other offences in the show cause notice are already considered in the previous externment order passed on 02.08.2022 by respondent No.1.

(iv) The order of externment from other district, is a case of exercise of excessive jurisdiction.

As such, prayed for allowing the petition by setting aside the order of externment which is maintained by the Appellate Authority.

5. *Per contra*, learned A.P.P., has supported the order submitting that owing to the activities in which the petitioner is involved has resulted into registration of the offences, the authority is justified in externing the petitioner. It is further submitted that a show cause notice was duly served upon the petitioner and the explanation offered by the petitioner has been considered by the authorities while rendering the externment order which is warranted to maintain law and order situation. Taking into

account the number of offences registered against the petitioner, the order has been properly passed for the reasons stated therein. Even the Appellate Authority has considered these aspects while upholding the order of externment and dismissing the appeal, therefore, prayed for rejection of the petition.

6. Having heard learned Counsel for the petitioner and learned A.P.P for the respondents, State and perused the record. It is a matter of record that the offence against the petitioner at serial No.5 is already quashed by this Court vide order dated 03.08.2023 whereas the offence at serial No.1 is still under investigation. Likewise the other offences i.e. serial No.2 to 4 and 6 are subject matter of pending trial. As such, the perusal of the order under challenge indicates non application of mind. The offences those are pending investigation cannot be considered while passing the order of externment. Moreover, the order of this Court dated 03.08.2023 in Criminal Writ Petition No.782/2021, quashing the offence against the petitioner is also ignored by the externing authority.

7. The order of externment is premised on the offences, those are at the stage of investigation. “It is trite that crimes which are still under investigation cannot be taken into consideration”, as depending upon the outcome of the investigation the authority may or may not file a charge-sheet and send the accused for trial, as has been held by this Court in the case of **Imtiyaz Hussain Sayyad Vs. State of Maharashtra and Ors.**,

reported in 2024 SCC OnLine Bom 442 in paragraph No.19, which reads as under :

*(19) The situation which thus obtains is that the externing authority had noted pendency of two cases which did not satisfy the requirement of class of cases stipulated by clause (b) and also considered the crimes which were under investigation and chargesheet had not been filed. It is trite, the crimes which are still under investigation cannot be taken into consideration as depending upon the outcome of the investigation, the investigating agency may or may not send the accused for trial. It is true, in one of the crimes, subsequently chargesheet came to be filed. However, a submission could be advanced that the chargesheet was filed with a view to justify and support the order of externment. Reliance placed by Mr. Gupta on the judgment of the learned Single Judge of this Court in the case of **Ganesh Laxman Dhabale V/s. State of Maharashtra and Ors.** appears to be well founded.*

8. Thus, the order of externment has the impact of impairing the fundamental rights of the petitioner as enshrined under Article 19 (1)(d) of the Constitution of India. Apart from the aforesaid aspects, the fact remains that there is excessive exercise of jurisdiction on the part of the respondents–authorities, as the order of externment is thus beyond jurisdiction of the respondents–authority, while externing the petitioner for a period of one year from the localities of Ahilyanagar District, Tahsil Shirur, Dist. Pune, Tahsil Yewla, Dist. Nashik and Vaijapur Tahsil of

Chhatrapati Sambhajanagar District.

9. Admittedly, in absence of material on record before the authority, to justify extending the operation of the externment order to such wide localities, the impugned order deserves to be quashed in its entirety.

10. The submission of the learned A.P.P. that the externment area can be restricted only to the area of District Ahilyanagar does not warrant consideration for the reason that this Court is not acting as a Court of appeal. This Court is exercising supervisory powers and those powers are exercised by means of issuing prerogative writs. The jurisdictional exercise of this Court is limited and the same cannot extend to the powers of an Appellate Court. This Court is concerned with the question as to whether the authority exercising judicial functions, has or has not, acted without jurisdiction or it has acted in excess of jurisdiction. If it acted in excess of jurisdiction, then the jurisdiction of this Court is to quash the order passed in excess of jurisdiction. It has no power to go further and to correct an excessive order passed by the authority concerned. The said principles are laid down in the case of **Mohamed Usman Vs. Labour Appellate Tribunal**, 54 Bom. L.R. 513.

11. Applying the ratio of the aforesaid judgment to the facts of the present case, the order rendered by the authority while externing the petitioner from three districts, is in excess of jurisdiction vested with the

authority under Section 55 of the Act of 1951. As such, the extension of the area of operation to one district and some part of other three revenue districts i.e. Ahilyanagar District, Tahsil Shirur, Dist. Pune, Tahsil Yewla, Dist. Nashik and Vaijapur Tahsil of Chhatrapati Sambhajanagar District.

12. Admittedly, the offences are registered against the petitioner within the jurisdiction of Shrirampur City Police Station, the jurisdiction of this Court under Article 226 of the Constitution of India, would be restricted to quashing the order passed in excess of jurisdiction and not to correct an excessive order while restricting the area of its operation. Resultantly, the impugned order in its entirety is unsustainable.

13. The externing authority has grossly erred while considering the offences, in relation to which petitioner is already acquitted *vis a vis* pending offences cannot be taken into consideration. Also the authority has committed overreach in externing the petitioner from four districts resulting into exercising excessive jurisdiction. The externment necessarily has to be from localities, where the externee had criminal activities and if the externment is ordered from the localities in relation to which there are no activities, would result in excessive jurisdiction, warranting interference. Resultantly, the order of externment in its entirety, deserves to be quashed and set aside.

14. For the reasons stated herein above, I am of the considered opinion

that the order of externment is unsustainable, resultantly, same deserves to be quashed and set aside. Accordingly, same is quashed and set aside.

15. Resultantly, the Writ Petition is allowed.

16. Rule is made absolute in terms of prayer clause 'B'.

[SACHIN S. DESHMUKH]
JUDGE

Pooja Kale/