

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 367 OF 2015

Shaikh Razzak s/o. Shaikh Anwar,
Age 55 years, Occu. Labour,
R/o. Gadipura, Chota Darwaja,
Nanded, Tq. & Dist. Nanded.

....Petitioner.

Versus

1. The State of Maharashtra,
Through its Secretary
Home Department,
Mantralaya, Mumbai-32.
2. The Sub-Divisional Magistrate,
Nanded, Dist. Nanded.
3. The Sub-Divisional Police Officer,
Itwara, Nanded, Tq. & Dist.
Nanded.

....Respondents.

Mr. S.C. Bhosle, Advocate for petitioner.

Mr. S.B. Pulkundwar, APP for respondents.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 16th April, 2015.

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.
- 2) The petition is filed to challenge the order made by
Sub-Divisional Magistrate, Nanded in externment proceeding

which was pending against the petitioner. The Sub-Divisional Magistrate has made the order of externment and the petitioner is to remain outside Nanded district for the period of one year and the operation of order was to start after three days from the date of order. The order came to be made on 7.3.2015 in a proceeding which was already pending since the year 2011.

3) It appears that proposal was made to take aforesaid action against the petitioner by Sub-Divisional Police Officer, Itwara, Nanded in the year 2011. Around seven offences were registered against the petitioner which included the offences punishable under sections 420, 467, 471, 393, 395, 323 etc. of I.P.C. Two chapter cases were filed against him under section 107 of Cr.P.C. Those proceedings were of the year 2010. One crime was of 9.8.2011. Initially, the order of externment was made on 8.8.2013. This order was challenged by the petitioner by filing appeal. In the appeal, the order came to be set aside. The Additional Secretary of the Department has observed that there was the record which was for the period ending up to 2010 and there was the report which was prepared in the year 2011. The order was made after two years of receipt of the report and so, the appellate authority held that there was no need of making such order due to expiry of period of two years from receiving

the first report. It was observed that if, there was need felt in future, after following the procedure given in section 56 of Maharashtra Police Act, 1951, such order can be made.

4) It appears that the same file was used by Sub-Divisional Magistrate, Nanded for passing the order under challenge. It can be said that in view of the reasoning given by the appellate authority, it was not open to the Sub-Divisional Officer to make the order on the basis of record which was available. The procedure was required to be followed again like giving of the report by concerned police station, making inquiry and then passing the order. Nothing of that sort was done and even hearing was not given to the present petitioner. Thus, the order under challenge cannot sustain in law.

5) In the result, the petition is allowed. The order dated 7.3.2015 passed by the Sub-Divisional Magistrate, Nanded is quashed and set aside. Rule is made absolute in those terms.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

SSC/