

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

CRIMINAL WRIT PETITION NO. 1639 OF 2015

Mr. Mohd. Farukh @ Akram Abdul Razak Kazi
Adult Indian Inhabitant, res.at
Room No. 468, Janata Sevak Society,
Mori Road, Mahim,
Mumbai 400 016

..Petitioner

Versus

1. The State of Maharashtra
(through Deputy Commissioner of Police,
Mahim Division, Mumbai).

2. The Hon'ble Principal Secretary,
(Appeals & Security),
Home Department,
Mantralaya, Mumbai.

..Respondents

Mr. Karan Bhosale i/b. R.B.Mungekar for the Petitioner.
Mrs. M.M.Deshmukh APP for the Respondent/State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : JULY 01, 2015.**

JUDGMENT (PER ANUJA PRABHUDESSAI, J.)

1. Rule. Rule made returnable forthwith. By consent of parties
petition taken for hearing.

2. The petitioner has challenged the order dated 17th March, 2015 passed by the respondent no.1 under Section 57(1)(a)(i) of Bombay Police Act, 1951 externing him from the limits of City of Gr. Mumbai for a period of two years, which order has been confirmed by the Appellate Authority i.e. respondent no.2 vide order dated 10th April, 2015.

3. Heard learned Counsel Shri Bhosale for the petitioner. He has submitted that the proceedings were initiated mainly on the basis of conviction in Crime No.361 of 2002 and registration of crime No. 206 of 2014. He has submitted that the crime No.206 of 2014 emanates from the family dispute and could not have been a ground for invoking provisions of Section 57(1)(a)(i) of the Maharashtra Police Act, particularly when the petitioner is not involved in activities which are likely to create terror in the mind of public.

4. He has submitted that the show cause notice does not record any satisfaction that the general public was experiencing sense of insecurity and was living in a shadow of terror of the petitioner. He has submitted

that the order is passed mechanically without application of mind. He has submitted that the order is palpably erroneous, illegal, incorrect and deserves to be set aside. In support of his contention, he has relied upon the judgment in case of *Dhondiram Appa Hatkars. State of Maharashtra & ors. reported in 1987(3) Bom. C.R.656*, and in the Division Bench judgment of this court in case of **Karan Ramesh Ghuge vs. Dy. Commissioner of Police & ors. in Writ Petition 1305 of 2013.**

5. Learned APP Mrs. Deshmukh, has submitted that the petitioner was convicted in crime No.361 of 2002. He was released from jail in the year 2012 and that even after his release from jail he is involved in Crime No. 206 of 2014. She submitted that the requirements of Section 57(1)(a)(i) are satisfied and externment of the petitioner was justified.

6. We have perused the records and considered the submissions advanced by the respective counsel. The petitioner herein has been externed under the provisions of Section 57(1)(a)(i) of Bombay Police Act which reads as under:

“57. If a person has been convicted ---

- (a) (i) of an offence under Chapters XII, XVI or XVII of the Indian Penal Code, or*
- (ii) of any offence under Secs. 65, 66-A or 68 of the Bombay Prohibition Act, 1949, or*
- (iii) of an offence under Secs. 3, 4, 5, 6 or 9 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (CIV of 1956), or*
- (iv) of an offence under Sec. 135 of the Customs Act, 1962 (52 of 1962), or*
- (v) of an offence under Sec. 4, or for accepting bets in any public street or thoroughfare or in any place to which the public have or permitted to have access or in any race course under Cl. (a) of Sec. 12, or under Sec 12-A of the Bombay Prevention of Gambling Act, 1867 , or*
- (b) twice or more of an offence under the Bombay Prohibition Act, 1949 not being an offence under Secs. 66, 66-A or 68, or*
- (ba) twice or more of an offence under section 3 or 4 of the Railway Property (Unlawful Possession) Act, 1966, or*
- (c) thrice or more of an offence under Sec- 122 or 124 of this Act, the Commissioner, the District Magistrate, or the Sub Divisional Magistrate specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the the local limits of the jurisdiction of the office or not and whether contiguous or not) by such route and within such time as the officer may specify and not to enter or return to the area or the areas so specified*

(hereinafter referred to as “the specified area or areas” from which he was directed to remove himself.

(2) An officer directing any person under sub-section (1) to remove himself from any specified area or areas in the State may further direct such person that, during the period the order made against him is in force, as and when he resides in any other areas in the State, he shall report his place of residence to the officer, in-charge of the nearest police station once in every month, even if there be no change in his address. The said officer may also direct that, during the said period, a and when he goes away from the State, he shall, within ten days from the date of his departure from the State, send a report in writing to the said officer either by post or otherwise of the date of his departure, and as and when he comes back to the State he shall, within ten days from the date of his departure, and as and when he comes back to the State he shall, within ten days of the date of his arrival in the State report the date of his arrival to the officer in charge of the police station nearest to the place where he may be staying.

Explanation. For the Purpose of this section “an offence similar to that for which a person was convicted”, shall mean--

*(i) in the case of a person, convicted of an offence mentioned in Cl. (a) (i) an offence falling under any of the chapters of the Indian Penal Code , and
(ii) in case of a person convicted of an offence mentioned in Clauses (a) [excluding sub-clause (I) thereof (b) and (c) an offence falling under the provisions of the Acts mentioned respectively in the said clauses.”*

7. The scope of Section 57 was considered by the Division Bench of this Court in Dhondiram Hatkar (supra) and upon considering several pronouncements the Division Bench held that:

“Therefore, it will be clear that the mere fact that the person has been convicted is not enough but the competent authority empowered to extern the person must have reason to believe that such person is likely again to engage himself in the commission of an offence similar to the one for which he was convicted. It is also clear that if notice under Section 59 in this behalf is to be worthwhile, then, at least general indication in the notice has to be given regarding the material in possession of the Externing Authority upon which his satisfaction is based. It may be that the fact that the person is persistently engaged in certain kind of offences or has been previously convicted itself may be the material on the ground which may enable the authority to come to the conclusion that such person is likely to engage himself again in the commission of similar offences, obviously depending upon the propensity, gravity, and magnitude of the crime and activities involved. It will all depend on the facts of each case, and no general rule can be laid down in that behalf”

8. In the case of Karan Ghuge (supra) the Division Bench of this Court has reiterated that :

“ It must be noted here that the impugned order has been passed under Section 57(1)(a)(i) of the Bombay Police Act. In order to exercise

jurisdiction under this Section, there are two necessary prerequisites, one the person must be convicted for an offence under any of the Chapters XII, XVI or XVII of the Indian Penal Code and second, the empowered officer must have reasons to believe that such person is likely again to engage himself in the commission of a similar offence. The second condition can be said to be fulfilled only when there is some additional material apart from prior conviction in a similar offence, on the basis of which a subsection satisfaction can be reached that the person has a tendency or criminality in mind or over-powering urge to indulge in a similar offence. No doubt, the satisfaction of an empowered officer is material from which any prudent man can draw similar inference.”

9. In the instant case the petitioner was issued notice dated 6th August 2014 under Section 59 of Bombay Police Act wherein it was alleged that vide judgment dated 26.4.2012 the High Court had convicted the petitioner in C.R.No.361 of 2002 for offence under Section 304 r/w. 34 of IPC and that the petitioner had undergone imprisonment 10 years. It was alleged that even after undergoing the imprisonment another offence Crime No.206 of 2014 under section 354, 323 r/w. 34 of IPC has been registered against him. By the said notice the petitioner was called upon to show cause as to why he should

not be externed from the jurisdiction of Gr. Mumbai, Thane and Raigad District for a period of two years.

10. The petitioner has submitted his reply wherein he had stated that the crime no. 206 of 2014 was lodged by one of the relatives and could not be a ground for externment. The petitioner had further stated that he was not involved in any such activity to warrant apprehension that he would engage himself in commission of an offence similar to that for which he was convicted.

11. Not being satisfied with the reply given, the externing authority by impugned order dated 17.3.2015 externed the petitioner from Mumbai City for a period of two years. A perusal of the impugned order reveals that the externment was based mainly on the conviction in crime No.361 of 2002 and subsequent registration of crime no. 206 of 2014.

12. Undisputedly, the conviction in crime No. 361 of 2002 relates to the offence committed in the year 2002, in respect of which the

Sessions Court had held the petitioner guilty of offence under Section 302 of IPC and had imposed death penalty. This court had scaled down the offence to Section 304 r/w. 34 IPC and sentence to 10 years imprisonment. The petitioner has undergone the said sentence of imprisonment and was released from jail in the year 2012. The externment proceedings were initiated in the year 2015. The conviction therefore was not proximate in time.

13. It is also to be noted that the notice under Section 59 merely spells out the details of crime no. 206 of 2014. The said notice does not state that the externing authority was satisfied that the petitioner was likely again to engage himself in the commission of an offence similar to the one for which he was convicted.

14. Be that as it may, the notice refers to only two cases i.e, conviction in crime no. 361 of 2002 and registration of crime no. 206 of 2014. The impugned order however also relies upon one N.C. Case no.1426 of 2014 relating to offence under Section 323 and 504 of IPC without giving any further details about the said crime. Needless to

state, the externing authority could not have relied upon any extraneous matter of which no notice was given to the petitioner.

15. It is also to be noted that the notice reveals that the FIR in crime no. 206 of 2014 was lodged by Nasim Qureshi, the sister-in-law of Mariam, the sister of the petitioner herein. The matrimonial dispute between Mariam and her husband Sardar Ali, the brother of Naseem Qureshi has strained the relations between the two families. The crime No. 206 of 2014 emanates from the said family dispute and the same is pending investigation. Under the circumstances we fail to understand as to how the externing authority could have formed the subjective satisfaction on the basis of the said crime which is still pending investigation.

16. It has to be borne in mind that mere conviction or commission of an offence post conviction would not *per se* justify externment under Section 57. In the case of **Hari Khemu Gawali vs The Deputy Commissioner Of Police, Bombay & Another, 1956 AIR 559, 1956**

SCR 506, the Apex Court while upholding the virus of the provision has held that :-

“The impugned [section 57](#) is an instance of the State taking preventive measures in the interest of the public and for safeguarding individual's rights. The section is plainly meant to prevent a person who has been proved to be a criminal from acting in a way which may be a repetition of his criminal propensities. In doing so the State may have to curb an individual's activities and put fetters on his complete freedom of movement and residence in order that the greatest good of the greatest number may be conserved. The law is based on the principle that it is desirable in the larger interests of society that the freedom of movement and residence of a comparatively fewer number of people should be restrained so that the majority of the community may move and live in peace and harmony and carry on their peaceful avocations untrammelled by any fear or threat of violence to their person or property. The individual's right to reside in and move freely in any part of the territory of India has to yield to the larger interest of the community.”

17. In the instant case neither the notice nor the order reveals that the petitioner was involved in any such prejudicial activities to show that

the petitioner had tendency to return to the field of crimes or that he was likely to cause breach of peace or affect public interest which necessitated the authority in taking recourse to preventive measures by curtailing the rights of the present petitioner. We are therefore of considered view that there was no sufficient material on the basis of which it can be inferred that the petitioner was likely to engage himself in commission of similar offences. Hence the externing authority was not justified in passing the impugned order on the basis of a mere conviction, which is not proximate in time and registration of crime which emanates from a family dispute.

18. In view of the above, the order of externment passed under Section 57 is not in accordance with law. For these reasons the impugned order is vitiated. Accordingly the same is quashed and set aside. Rule is made absolute.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)