

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4780 OF 2014

Deepak Namdev patil.

..Petitioner.

Versus

The dy. Commissioner of Police
Panvel and Others.

..Respondents.

Mr. U. N. Tripathi for the Petitioner.

Mr. S. K. Shinde, Public Prosecutor for the Respondent – State.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **February 12, 2015.**

P. C. :

1. Heard Mr. Tripathi, learned Counsel appearing for the Petitioner and Mr. Shinde, learned PP for the Respondent-State. This writ petition under Articles 226 and 227 of the Constitution of India seeks to challenge the legality and validity of the externment order dated 17th August 2014 made by Respondent No.1 under section 56 of the Maharashtra Police Act and the order dated 28th November 2014 passed by the appellate authority under section 60 of the said Act. By the first order, the Petitioner was externed from Raigad, Thane Greater Mumbai and Mumbai Suburban Districts. By the second order, the Petitioner's appeal came to be dismissed.

2. Mr. Tripathi, learned Counsel appearing for the Petitioner challenges the orders solely on the ground that the subjective satisfaction that witnesses are not coming forward to give evidence in public against the Petitioner by reason of

apprehension on their part as regards the safety of their person or property is not recorded either in the first order as well as order of the appellate authority. Mr. Shinde, the learned Public Prosecutor fairly concedes this position.

3. Section 56(1) of the Maharashtra Police Act reads as follows :

“Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Sec. 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, or XVII of the Indian Penal Code (XLV of 1860), or in the abetment of any such offence, and when in the opinion of such officer witnesses are 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, or (bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980, or (2) in any manner prejudicial to the maintenance of supplies of commodities essential of the community as defined in the Explanation to sub-section (1) of Sec. 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (VII of 1980), or (c) that an outbreak of epidemic disease is likely to result from

the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm [or such prejudicial act] or the outbreak or spread of such disease or [notwithstanding anything contained in this Act or any other law for the time being in force, outside to remove himself outside such area or areas in the State of Maharashtra [whether within the local limits of the jurisdiction of the officer or not and whether contiguous or not], by such route and within such time as the said officer may specify and not to enter or return to the said area or areas specified [hereinafter referred to as "the specified area or areas"] from which he was directed to remove himself. "

4. In the context of present matter, the observations of the Division Bench of this Court in Sudhir Raviraj Choudhary v. State of Maharashtra [2013 All MR (Cri) 175] are relevant, which read thus :

"7. Perusal of the impugned order of externment shows that there is a complete absence of such subjective satisfaction of the fact that the witnesses are unwilling to come forward to give evidence in public against the Petitioner by reason of apprehension on their part as regards the safety of their person and property.

8. In our view, in absence of such subjective satisfaction in the order of externment, the order is rendered illegal and deserves to be quashed and set aside....."

5. With the assistance of the learned Counsel appearing for the respective parties, we have perused the first order as well as the order passed by the appellate authority

under which the Petitioner is externed for the period of one year. Perusal of the same shows that there is absence of subjective satisfaction by the officer that witnesses are not coming forward to give evidence in public against the Petitioner by reason of apprehension on their part as regards the safety of their person or property. In above facts and circumstances, we have no alternative but to quash and set aside the impugned orders and same are hereby accordingly quashed and set aside.

6. Before parting with the matter, we want to put on record that it is a matter of great concern that most of the externment orders were required to quashed and set aside for want of recording of subjective satisfaction by the concerned authority of the fact that witnesses are unwilling to come forward to give evidence in public against the Petitioner by reason of apprehension on their part as regards the safety of their person or property. Responding to our concern, Mr. Shinde, the learned PP assured that he will take up the matter with higher authorities and appropriate instructions will be issued to all concerned officers. We hope and trust that appropriate instructions with regard to above will be issued to all concerned.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]