

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1061 of 2015

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Surendra Singh @ Sheth, Son of Late Damodar Singh, resident of Village - Sonbarsa, P.S. - Shambho, district - Begusarai.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Home Secretary, Government of Bihar, Patna.
3. The Collector, Begusarai.
4. The Superintendent of Police, Begusarai.
5. The Sub - Divisional Police Station - Begusarai Sadar, Begusarai.

.... Respondents

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Appearance :

For the Petitioner : M/S. Ram Bilas Mahto, Brajesh Pandey, Advocates.

For the State : Mr. Raju Giri, G.P. 30. & Mr. Santosh Kumar Mishra, AC to G.P. 30.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

5 11-02-2016 The petitioner has filed this writ application for quashing the order of externment under exercise of power conferred under Section 3 of Bihar Control of Crime Act, 1986 (hereinafter referred to as 'the Act') issued by the District Magistrate, Begusarai, contained in Memo No. 2334/Legal dated 27.09.2015 in Cr. Misc. Case No.02/2015 (Annexure-1), by which he had been directed to remove himself outside the district of

Begusarai till 08.11.2015 and to make his physical appearance recorded everyday in Laheriya Sarai Police Station within the district of Darbhanga.

In short, case of the petitioner is that he is a respectable person of the society and his wife is a member of Zila Parishad, for last 10 years, he is not an anti-social element. The petitioner had been doing business of greengrocer and subsequently he started business of Dairy and selling Cow milk but in the meantime, petitioner had been falsely implicated in three criminal cases as indicated in the order of externment passed by the District Magistrate, Begusarai, out of which, in Nayagaon (Shamho) P.S. Case No. 12/2005, the petitioner has been acquitted by the court of learned Judicial Magistrate-Ist Class, Begusarai, and two other cases bearing Nayagaon(Shamho) P.S. Case No. 58/2004 instituted under Sections 25(1-b), 26 and 35 of the Arms Act and Nayagaon (Shamho) P.S. Case No. 5/2006, instituted under Sections 147, 148, 149, 307, 386, 342 of the Indian Penal Code and 27 of the Arms Act are pending for trial. The petitioner further contends that in the General Elections of Lok Sabha and Vidhan Sabha held between the years 2006 and 2014, there had been no complain against the petitioner. The petitioner further contends that since he was not supporter of the sitting local



M.L.A. Bago Singh @ Narendra Singh, therefore, at the instance of the said local M.L.A., he has been implicated in this Criminal Miscellaneous case and the order of externment dated 27.09.2015 came to be passed against him. The petitioner submitted his explanation on 26.09.2015(Annexure-3) in terms of show cause notice dated 21.09.2015 issued by the District Magistrate, Begusarai, mentioning the entire facts and circumstances and submitting therein that he is not an anti-social element, but the District Magistrate, Begusarai, did not consider the said explanation properly and passed the order under challenge, which is illegal as well as abuse of power vested in the District Magistrate.

A counter-affidavit has been filed on behalf of the Respondent Nos. 4 and 5, contending herein that the petitioner is named, not only in three cases, rather he has a long criminal history and as many as five criminal cases are instituted on police report and one complaint case is also instituted against him. In paragraph no.8 of the said counter-affidavit, the particulars of the criminal cases are mentioned as under:-

(a) Nayagaon (Shamho) P.S. Case No. 46/1992 dated 08.07.1992 under Sections 341, 323, 447, 448 and 380 of the I.P.C. in which charge sheet has been

submitted vide Charge Sheet No. 24/1992 dated 31.07.1992.

(b) Nayagaon (Shamho) P.S. Case No. 58/2004 dated 08.11.2004 under Section 414 of the I.P.C. and 25(1-B)a, 26 and 35 of the Arms Act in which charge sheet has been submitted vide Charge Sheet No. 01/2005 dated 06.01.2005.

(c) Town P.S. Case No. 63/2004 dated 28.02.2004 under Section 363 of the I.P.C. further converted into 302, 201/34 of the I.P.C. and 27 of the Arms Act in which charge sheet has been submitted vide Charge Sheet No. 271/2005 dated 16.08.2005.

(d) Complaint Case No. 538/2003 in the court of C.J.M., Deoghar.

(e) Nayagaon (Shamho) P.S. Case No. 12/2005 dated 03.03.2005 under Sections 341, 323, 385, 387, 379/34 of the I.P.C. and 27 of the Arms Act in which charge sheet has been submitted vide Charge Sheet No. 01/2006 dated 16.01.2006.

(f) Nayagaon (Shamho) P.S. Case No. 05/2006 dated 03.01.2006 under Sections 147, 148, 149, 307, 386, 342/34 of the I.P.C. and 27 of the Arms Act in which

charge sheet has been submitted vide Charge Sheet No. 12/2006 dated 29.04.2006.

It is also contended by the State that there was great apprehension that the petitioner might have badly affected the Bihar Assembly Election, 2015. The S.H.O. of Nayagaon (Shamho) Police Station had made report to initiate the proceeding in terms of Section 110 of the Code of Criminal Procedure as well as proceeding in terms of Section 107 of the Code of Criminal Procedure, as the local B.D.O. had made report against the petitioner in respect of Polling Booth No. 165. Petitioner had been threatening the voters, thus the Sub-Divisional Police Officer, Begusarai, made report to the District Magistrate, Begusarai, for initiation of proceeding in terms of Section 3 of the Act.

And the last contention is that the order of externment was valid up to 08.11.2015 only, therefore, the writ application has become infructuous.

A counter-affidavit has also been filed on behalf of the Respondent No. 3, the District Magistrate, Begusarai, reiterating the facts and submissions made by the Respondent Nos. 4 and 5 as referred above.

We may notice here the relevant provision of the Act, which reads thus:-

“Section 3. Externment, etc., of anti-social element:-

(1) Where it appears to the District Magistrate that:-

- (a) any person is an anti-social element, and
- (b) (i) that his movements or acts in the district or any part thereof are causing or calculated to cause alarm, danger or harm to persons or property; or
(ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission of any offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or abetment of such offence;

The District Magistrate shall by notice in writing inform him of the general nature of the material allegation against him in respect of clauses (a) and (b) and shall be given him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this Section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of



examining himself, if he so desires and also of examining any other witnesses that he may wish to produce in support of his explanation unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay. The District Magistrate on being satisfied that the conditions specified in Clause(a) and (d) of sub-Section 1(1) exist, may be order in writing-

(a) Direct him to remove himself outside the district or part thereof, as the case may be, by such route, if any, and within such time as may be specified in the order and to resist from entering the district or the specific part thereof, until, the expiry of such period, not exceeding six months as may be specified in the order.

(b) (i) require such person to notify his movement, or to report himself, or to do both, in such manner, at such time and to such authority or persons may be specified in the order;

(ii) prohibit or restrict possessions or use by him of such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order;

Until the expiry of such period, not exceeding six months, as may be specified in the order.

From a bare reading of Section 3 of the Act as referred above, it is abundantly clear that a person has to be an anti-social element within the meaning of Section 2(d) of the Act, in order to bring him within the ambit of Section 3 of the Act, so that an order of externment can be made against him, otherwise a District Magistrate does not have jurisdiction, as to pass order of externment by taking recourse of Section 3 of the Act. The definition of the anti-social element as contained in Section 2(d) of the Act, which reads as under:

“ 2 (d) ‘ Anti-social element’ means a person who- (i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abates the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code;

(ii) Habitually commits or abates the commission of offences under the Suppression of immoral traffic in Women

and Girls Act, 1956;

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- (iii) Who by words or otherwise promotes or attempts to promote on grounds of religion, race, language, caste or community or other grounds whatsoever, feeling of enmity or hatred between different religions, racial or language groups or castes or communities; or**
 - (iv) has been found habitually passing in decent remarks to or teasing Women or Girls; or**
 - (v) who has been convicted of an offences under Sections 25, 26, 27, 28 or 29 of the Arms Act, 1959.**

The questions, therefore, arise of our consideration: whether in the facts and circumstances of the case, the petitioner is an anti-social element as defined under Section 2 (d) of the Act and the order of externment dated 27.09.2015 is a valid order ?

It appears from the order under challenge contained in Memo No. 2334/Legal dated 27.09.2015 passed in Cr. Misc. Case No. 02/2015, that the District Magistrate, Begusarai, has taken into account three criminal cases, being registered against the

petitioner in order to bring him within the ambit of 'anti-social element'. Those three cases are re-produced hereunder :

- (i) Nayagaon (Shamho) P. S. Case No. 85/04 dated 08.11.2004 registered under Sections 25 (1-b)a/26/35 of the Arms Act.
- (ii) Nayagaon (Shamho) P.S. Case No. 05/2006 dated 03.01.2006 registered under Sections 147, 148, 149, 307, 386, 342 of the Indian Penal Code and 27 of the Arms Act.
- (iii) Nayagaon (Shamho) P. S. Case no. 12 of 2005 dated 03.03.2005 registered under Sections 341, 323, 385, 387 and 379 of Indian Penal Code.

The said order further notices the contention of the petitioner made in the explanation dated 26.09.2015 that petitioner has been acquitted in two cases, out of said three cases and remaining one is pending for trial and further there being no case instituted against him for last ten years. The District Magistrate, Begusarai, after hearing both sides, recorded his satisfaction that petitioner is an anti-social element under Section 2 (d) of the Act and ordered the petitioner to remove himself outside the district of Begusarai till 08.11.2015 and to make his physical appearance

recorded every day in Laheriasarai Police Station within the district of Darbhanga.

From the definition of anti-social element, as envisaged under Section 2 (d) of the Act, a person who habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI & XVII of the Indian Penal Code; or who has been convicted of an offence under Sections 25, 26, 27, 28 and 29 of the Arms Act, 1959 are relevant consideration, in the present case. Rest of the conditions as envisaged under Section 2 (d) are not relevant in the facts and circumstances of the case of the petitioner.

Nayagaon (Shamho) P. S. Case No. 05 of 2006 and Nayagaon (Shamho) P. S. Case No. 12 of 2005 as referred in the order under challenge, come within clause (i) of Section 2 (d) of the Act, but with regard to the above, it is noteworthy that the said cases referred to, and relied upon by the District Magistrate, Begusarai are of the year 2005 and 2006. We unable to understand how the cases of year 2005 and 2006 could become relevant in the year 2015, for the purpose of passing an order of externmnet, especially when there is no explanation in the impugned order, nor any suggestive material being available, in this regard on record, on record.



The third case, against the petitioner being registered as Nayagaon (Shamho) P. S. Case No. 58/04 dated 08.11.2004 under the relevant provisions of Arms Act, which is mentioned in the impugned order, is of the year 2004 itself and nowhere in the order, there is any indication that the petitioner has been convicted in the said case, registered under the provisions of Arms Act as to qualify clause (v) of section 2 (d) of the Act. Thus again we failed to understand that how the case of the year 2004, registered for the offences of the Arms Act and being pending under the stage of trial, is relevant for passing the order of externment dated 27.09. 2015 against the petitioner.

Now, it is noteworthy that an order of externment cannot be passed merely because a person is an anti-social element within the meaning of Section 2 (d) of the Act unless the qualifying conditions mentioned in Section 3 of the Act, are satisfied.

From a bare reading of Section 3 of the Act, it transpires that besides being an anti-social element, it must appear to the District Magistrate that the movements or acts of the person in the district or any part thereof are causing or calculated to cause alarm, danger or harms to persons or property, or there are reasonable grounds for believing that the person is engaged or about to engage in the district or any part thereof in commission

of any offence punishable under Chapter XVI & XVII of the Indian Penal Code or under the suppression of Immoral Traffic in Women and Girls Act, 1956, or abetment of such offence.

In view of the decision rendered by this Court, reported in 2015(4) PLJR 407, on the date of passing of the order of externment, there has to be material available that the person against whom the order is to be made must be engaged or about to engage in the commission of any offence punishable under Chapter XVI & XVII of the Indian Penal Code, or under the suppression of Immoral Traffic in Women and Girls Act, 1956 or abetment of such offence, and also the movement or acts of the person in the district or any part thereof are causing or calculated to cause alarm, danger or harm to persons or property for recording his satisfaction.

The order of externment under challenge does not indicate any such fact and circumstances for reasonable belief of the District Magistrate.

The conditions above referred, require that there must have some nexus of the cases referred and relied by the District Magistrate for passing order or externment. Therefore a person act or omission of the past, which may have become stale cannot establish relevance for passing order of externment. The order of



externment does not reflect that the petitioner committed any offence between 03.01.2006 (i.e. the date of registration of last case) and 27.09.2015 and also there is no reasoning assigned in the order to show as to how the alleged commission of offences by the petitioner in the year 2006 would have any bearing in the year 2015 for passing the order of externment against him. Such absence, of any reasons mentioned in the order does not qualify the word and expression “reasonable ground for believing”, as envisaged in Clause (ii) of Section 3 (d) of the Act.

From the material available on record, we find that there was no such report made by any voters of the locality that the petitioner was threatening them and, after 2006 no criminal case has been instituted against the petitioner till passing of the externment order and the cases referred in the counter affidavits of the State besides those three cases mentioned in the order dated 27.09.2015 are also of the year 2006 and the petitioner has not been convicted in a single case either mentioned in the order impugned or in the counter affidavit even.

In Shiv Prasad Bhatnagar –Vs- State of M.P. reported in (1981) 2 SCC 456, the order of preventive detention was challenged on several grounds including the order under challenge being suffered from the vice of staleness. The relevant

observations appearing in Shiv Prasad Bhatnagar Case read thus :

“It is now well settled that grounds of detention must be pertinent and not irrelevant, proximate and not stale, precise and not vague. Irrelevance, staleness and vagueness are vices, any single of which is sufficient to vitiate a ground for detention”.

From the foregoing discussion, we are of the opinion that the petitioner could not have been regarded as anti-social element within the meaning of Section 2 (d) of the Act and further no order of externment would have been passed by the District Magistrate, Begusarai, in exercise of power conferred under Section 3 of the Act because of the fact that the cases, referred to, and relied upon, for making the impugned order of externment are not relevant rather stale and on the ground of staleness also, as has been observed in **Shiv Prasad Bhatnagar (Supra)** , the impugned order of externment requires interference.

By the impugned order of externment the petitioner was directed to report himself, every day in Laheriasarai Police Station within the district of Darbhanga, whereas he is resident of Begusarai district. Therefore, the police station as was directed for making report every day, to the petitioner was neither in the same district nor nearest to his residence. The direction referred

above regarding reporting of the petitioner in the police station, made in the impugned order of externment has been passed also in contravention of Rule 6 of Bihar Control of Crimes Rules, 1978.

We do not find any merit in the submission of learned counsel appearing for the State that the writ has become infructuous, for the simple reason that by now on account of passage of time, the order impugned has lost its force only to the extent of removal of the petitioner from the district of Begusarai, but it has still bearing in respect of the petitioner, in future.

In view of the foregoing discussions, the impugned order of externment contained in Memo No. 2334/Legal dated 27.09.2015 passed by the District Magistrate, Begusarai, is hereby quashed.

In terms of the above observations, this writ petition stands disposed of.

No order as to costs.

(Sudhir Singh, J)

I agree.
(Ramesh Kumar Datta,J)

(Ramesh Kumar Datta, J)

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