

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 96 OF 2016

Kakasaheb s/o Ananda Shinde
aged 50 years, occ. Pensioner
r/o Vanjar Umrad, Tq. & Dist. Jalna
at present Aurangabad
Tq. & Dist. Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary
Home Department,
Mantralaya, Maharashtra 32.
2. The Superintendent of Police
Jalna District, Jalna.
3. The Police Inspector,
Taluka Police Station,
Jalna Taluka and District Jalna.

.. RESPONDENTS

Mr. R.R. Imale, advocate for petitioner.
Mr. K.S. Patil, APP for the State.

=====

**CORAM : R.M. BORDE &
P. R. BORA, JJ.
DATE : 28th APRIL, 2016.**

ORAL JUDGMENT : ([PER R. M. BORDE, J.])

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the respective parties.

2. Petitioner is objecting to the order passed by the Sub-Divisional Officer, Jalna on 11.09.2015, directing his removal out of the boundaries of Jalna district for a period of two years. The order issued by the external authority has been confirmed by the Divisional Commissioner, Aurangabad,

the appellate authority, while considering the appeal presented by petitioner.

3. Petitioner is alleged to have been involved in commission of six offences, details of which are recorded in the show cause notice issued on 12.09.2013. The first entry relates to Crime No. 162/1988 for commission of offence under section 429 r/w section 34 of the Indian Penal Code. According to petitioner, the police authorities have presented B summary which has been accepted by the Magistrate. Second entry relates to Crime No. 205/1994 in respect of offence punishable under sections 353, 143, 147, 447, 336, 504 of the Indian Penal Code r/w section 135 of the Bombay Police Act. Petitioner is stated to have been acquitted of the charges levelled against him. Third entry is in respect of Crime No. 176/2008 for offence punishable under section 354 of the Indian Penal Code. Petitioner is stated to have been acquitted of the charges levelled against him. The only criminal case that is pending against petitioner is for offence punishable under section 143, 447, 427, 504, 506 of the Indian Penal Code. There are two non-cognizable offences registered in the year 2009 and, the petitioner has been directed to execute bond at the relevant time for keeping peace. It has not been reported that petitioner at any point of time, violated the conditions of bond and indulged in criminal activities during the relevant period. Offences alleged against petitioner relate to the years 1988, 1994, 2008 and, non-cognizable cases of the year 2009 do not have any proximate connection to the action taken i.e. externment of petitioner in the year 2015. Apart from this, delay of about two years in taking action against petitioner

after issuance of notice in the year 2013, is also quite unreasonable and the notice itself cannot be said to be proximate in time which can form a basis of action in the year 2015. In order to take action under section 56 of the Act, it is to be demonstrated that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or 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 violation or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, 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. As stated above, there can be no proximate connection with reference to the offence in respect of which involvement of petitioner was alleged and the action that has been taken in the year 2015. The offences which form basis for the action pertain to the year 1988, 1994, 2008 and 2009 which cannot form basis for the action in the year 2015 i.e. after period of six years from the last offence or criminal activity in which petitioner is alleged to have involved himself. So far as the criminal case pending against the petitioner is concerned, it cannot be concluded that the witnesses are not willing to come forward and depose against petitioner. In respect of offences at serial nos. 2 and 3, the petitioner has been acquitted whereas in in Crime No. 162/1988, the investigating machinery has presented B summary. It has not been demonstrated that acquittal of petitioner in the aforesaid offence was as a result of reluctance of witnesses to come forward to depose against him.

Petitioner contends that there is some civil litigation initiated by certain villagers concerning the property of which petitioner claims to be the owner. According to petitioner, the villagers who claim to have interest in the property are instrumental in initiating action against him. On perusal of record, we are of the opinion that apprehension expressed by petitioner may bear some truth.

4. For the reasons recorded above, we are of the opinion that order passed by the Sub-Divisional Officer curtailing liberty of petitioner without there being any proper foundation is liable to be quashed and the same is accordingly quashed. In view of quashment of order passed by the Sub-Divisional Officer, appellate order also shall be deemed to have been quashed. Rule made absolutely accordingly.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

dyb