

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

CRIMINAL WRIT PETITION NO.819 OF 2016

Dadarao @ Chandrakant s/o Gangaram
Harkal, Age 27 years, Occu. Agri.,
R/o Maliwada, Pathri, Taluka Pathri,
District Parbhani .. Petitioner

Versus

The Sub-Divisional Magistrate,
Pathri, Taluka Pathri, Dist. Parbhani ..Respondent

Mr M.P. Tripathi, Advocate for petitioner
Mr S.G. Karlekar, A.P.P. for respondent

CORAM : V.K. JADHAV, J.

DATE : 29th July 2016

PER COURT

Heard both sides.

2. Being aggrieved by the order passed by the Sub Divisional Magistrate, Pathari dated 1st March 2016 in File No.2014/SDO/EXT/BD and confirmed by the Divisional Commissioner, Aurangabad by order dated 23rd May 2016 in File No.2016/GAD/Sankirn/CR-19, this petition is preferred.

3. Brief facts, giving rise to the present petition are as follows :

4. The Sub-Divisional Police Officer, Sailu has submitted confidential report to Sub-Divisional Magistrate, Pathri to pass necessary orders of externment against the present petitioner on the basis of certain crime registered against the petitioner. On the basis of the said report, the Sub-Divisional Magistrate, Pathri has issued show-cause notice to petitioner on 27th March 2015. In due course,

the petitioner submitted his reply to the said show-cause notice. The learned Sub-Divisional Magistrate, Pathri, vide order dated 1st March 2016, externed the petitioner from entire Parbhani district, for one year from the date of order. Being aggrieved by the same, the petitioner has preferred appeal before the Divisional Commissioner, Aurangabad, who vide order dated 23rd May 2016 has confirmed the order passed by the Sub-Divisional Magistrate, Pathri. Hence, this writ petition.

5. Learned Counsel for the petitioner submits that three crimes which came to be registered against the petitioner, as referred in the show-cause notice dated 27th March 2016, are of the year 2014. Learned Counsel submits that so far as Crime No.8/2014, for the offences punishable under Sections 325, 323, 506 read with Sec.34 of Indian Penal Code is concerned, the petitioner had filed a complaint against the complainant of Crime No.8/2014 and on the basis of his complaint offence came to be registered in the concerned Police Station. Learned Counsel submits that in order to counter blast the complaint filed by the petitioner, the subsequent complaint came to be lodged and on the basis of which, Crime No.8/2014 came to be registered. Furthermore, as per the allegations made in the said complaint, on the basis of which Crime No.8/2014 came to be registered, there is dispute between two families and, therefore, the alleged incident shown to have been taken place. Learned Counsel further submits that so far as Crime No.35/2014 is concerned, the petitioner came to be acquitted by the Court. He further submits that no serious crimes came to be registered against the petitioner and in

fact, no crime is registered against him affecting the property. Learned Counsel submits that it has stated in the show-cause notice that because of terror created by the petitioner, the witnesses are not coming forward and the victims of the crime are not approaching the police station for lodging the complaint. He submits that there is no material placed before the Sub-Divisional Magistrate, Pathri for arriving to the said conclusion. He submits that even though the show-cause notice came to be issued on 27th March 2015, the Sub-Divisional Magistrate has passed the order on 1st March 2016. Thus, the order of externment is passed after a lapse of almost one year. Thus, there is no urgent need nor necessity to extern the petitioner from the Parbhani district. Even, in the year 2014, such type of show-cause notice was issued against the petitioner, however, in the year 2015, again show-cause notice was issued and accordingly, the impugned order came to be passed by the Sub-Divisional Magistrate, Pathri. Learned Counsel submits that the Sub-Divisional Magistrate, as well as the appellate authority have not applied their minds to the facts and circumstances of the present case.

6. Learned A.P.P. submits that after considering the report submitted by the Sub-Divisional Magistrate, Pathri, show-cause notice came to be issued to the petitioner mentioning therein the crime registered against him. It has specifically stated in the show-cause notice that the victims of the crime are not coming forward to lodge the complaint because of terror created by the petitioner. He submits that the Sub-Divisional Magistrate, after considering the entire material passed the order externing the petitioner from Parbhani district for a period of one year. Learned A.P.P. submits that upon

perusal of the record, it is revealed that the petitioner is engaged in the commission of offences under Chapter 12, 16 and 17 of the Indian Penal Code. The authorities below have rightly extenuated the petitioner considering the serious allegations made against the petitioner. There is no substance in the petition. Petition is liable to be dismissed.

7. It appears that the present petitioner came to be acquitted in Crime No.35/2014 on 27th November 2014. So far as Crime No.8/2014 is concerned, the petitioner has filed a complaint to the Police Station against the complainant, on whose complaint Crime No.8 of 2014 came to be registered and accordingly, Crime No.6 of 2014 came to be registered for the offences punishable under Sections 147, 148, 149, 452, 324, 323, 504 and 506 of Indian Penal Code. It further appears from the Crime No.6 of 2014, which is registered earlier in point of time that there is a dispute amongst two families and, therefore, the complaints came to be lodged against each other. So far as Crime No.84/2014 is concerned, there are in all seven accused in the said crime and it further appears from the allegations made in the complaint, on the basis of which the said crime came to be registered that on account of trivial reasons, the alleged incident had taken place. There is no material to show that and even the same is not reflected from the impugned order that because of the terror created by the petitioner, the victims to the crime are not coming forward to lodge the complaint against the petitioner. It appears that no crimes with serious allegations have been registered against the present petitioner. So far as provision of Section 56 of the

Maharashtra State Police Act is concerned, it makes serious inroad of personal liberty. I do not see that the material for consideration is enough before the authorities. On the basis of such a scanty evidence, the Sub-Divisional Magistrate, Pathri has externed the petitioner for a period of one year from the entire Parbhani district. Furthermore, even though the show-cause notice came to be issued in the month of March 2015, almost after one year, externment order came to be passed. It appears that there is no urgent need nor necessity to extern the petitioner from the Parbhani district. In view of above discussion, I proceed to pass the following order:

ORDER

- (I) Criminal Writ Petition is hereby allowed in terms of prayer clause (B).
- (II) Criminal Writ Petition is accordingly disposed of.

(V.K. JADHAV, J.)

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