

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 655 OF 2006

The State of Maharashtra,
Through the Special Executive Magistrate,
and Police Inspector,
Local Crime Branch, Ahmednagar,
Dist. Ahmednagar.

Petitioner

-VERSUS-

Kailas Dattatraya Rashinkar,
Age : 23 years, Occu : Nil,
R/o : Kanahegaon, Tal : Shrirampur,
Dist. Ahmednagar.

Respondent

....

Mr. S. G. Karlekar, APP for the Petitioner/State.
Respondent/(Sole) – Served.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/06/2016

PER COURT :

1. The petitioner/State is aggrieved by the order dated 29.08.2006 delivered by the learned Sessions Judge, Ahmednagar in Criminal Revision No.173 of 2006.

2. The learned Sessions Judge has suo-motu taken up the proceedings after receiving a letter from the jail authorities informing the Court that the accused is in jail for the last six months in a proceeding under Section 110 of the Code of Criminal Procedure.

3. This Court while issuing notice to the respondent granted interim relief in terms of prayer clause 'C' which reads as under :-

"Pending hearing and final disposal of this Writ Petition, the order dated 29.08.2006 passed by the learned Additional Sessions Judge, Ahmednagar Dist. Ahmednagar in Criminal Revision No. 173/2006 may kindly be stayed."

By a speaking order dated 30.01.2012, this petition was admitted and interim relief in terms of prayer clause 'C' was confirmed till the disposal of this petition.

4. Though the notice of the Court was served upon the respondent, he did not choose to enter an appearance either through an Advocate or in person. This matter was adjourned on 13.06.2016

and 17.06.2016 as to enable the respondent to appear in the proceedings. However, none has appeared even today.

5. The learned APP strenuously submits that the respondent is involved in a series of criminal cases. The record reveals that an application was moved by the Assistant Police Inspector Tofkhana Police Station on 13.01.2006 requesting the Special Executive Magistrate to initiate proceedings against the respondent Mr. Kailas Dattatraya Rashinkar. The Special Executive Magistrate (SEM) sought permission of the Superintendent of Police of Ahmednagar and after receiving permission, issued a notice to Mr. Kailas Dattatraya Rashinkar dated 30.01.2006 under Section 111 of the Code of Criminal Procedure and the same was served on the respondent herein on 31.01.2006. Thereafter the proceedings were conducted.

6. Learned APP submits that the impugned order dated 29.08.2006 is passed on the assumption that the respondent was lodged in jail since 31.01.2006 at the behest of the Special Executive Magistrate.

7. He submits that the record indicates that the respondent was produced before the Special Executive Magistrate on 06.02.2006. After apprising him of the reasons the of summons, he was called upon to state whether, he received the necessary papers. He had answered that he had received the papers and he pleaded guilty. The Special Executive Magistrate, therefore, directed that he should execute a personal bond for a sum of Rs.10,000/- (Rupees ten thousand) and two surety bonds for an amount of Rs.15,000/- (Rupees fifteen thousand) each.

8. The matter was adjourned to 15.02.2006 to enable the respondent to comply with the directions. The learned APP, therefore, submits that the respondent prayed for an adjournment to produce the surety on 15.02.2006, 23.02,2006, 02,03,2006, 13.03.2006, 20.03.2006, 01.04.2006 and 10.04.2006. He further submits that on 16.04.2006 the respondent produced one surety.

9. Learned APP submits that after the respondent presented one

surety, the Special Executive Magistrate directed the M.I.D.C. Police Station to scrutinize the said surety and make a statement on the next date. On 19.04.2006, it was informed that the said surety was not residing on the address which was mentioned for the purpose of giving surety. In this back drop, the Special Executive Magistrate concluded that a person, who was not available at the place where the respondent is residing, cannot be accepted as a surety. It was, accordingly, informed to the respondent that the said surety was not acceptable.

10. The learned APP further submits that pursuant to the above, the respondent again sought time to produce a surety on 26.04.2006. On 26.04.2006, the Police report from the Police Station indicated that the same person, who was produced earlier as surety, had stood as a surety on 2 to 3 occasions in the past and is now not residing on the said address. The respondent sought an adjournment on 06.05.2006, 19.05.2006, 05.06.2006, 19.06.2006 and 28.08.2006.

11. He further submits that the Roznama further reveals that the

proceedings were adjourned on 10.07.2006, 17.07.2006 and 02.08.2006 as the Police party was not available in order to present the respondent before the Special Executive Magistrate.

12. The learned APP strenuously submits that the impugned order of the learned Additional Session Judge, Ahmednagar does not reflect that the above factors have been considered by the learned Judge while passing the impugned order. He further submits that the Special Executive Magistrate had not ordered the detention of the respondent though the same was possible for a maximum period of six months under Section 116 (3) and the proviso below Section 116 (6) or till he furnished the Personal Bond and two sureties, whichever was earlier.

13. Learned APP further submits that as on 02.02.2008, the respondent was already under detention in another crime. It is, therefore, necessary for the learned Additional Sessions Judge to scrutinize as to whether, the respondent was kept in illegal detention by the orders of the Special Executive Magistrate and that he was

already under detention, not on account of the proceedings before the Special Executive Magistrate, but on account of the proceedings in some other crimes. Had these aspects on the basis of the record been scrutinized by the learned Judge, the impugned order would not have been passed.

14. The learned APP further points out that the petition from jail authorities was received by the learned Judge on 28.08.2006, it was registered on 28.08.2006 and was decided within 24 hours on 29.08.2006.

15. I have considered the submissions of the learned APP and I have gone through the record available.

16. Section 110, 111, 112, 113, 114, 115 and 117 of the Code of Criminal Procedure read as under :-

110. Security for good behaviour from habitual offenders.- When [an Executive Magistrate.] receives information that there is within his local jurisdiction a person who-
(a) is by habit a robber, house-breaker, thief, or forger,

or,

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489-A, section 489-B, section 489-C or section 489-D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of-

(i) any offence under one or more of the following. Acts, namely : -

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973] (46 of 1973);

(c) the Employees' Provident Funds [and Family Pension Fund] Act, 1952; (19 of 1952).

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 or (52 of 1962);

[(h) the Foreigners Act, 1946 (31 of 1946); or]

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

111. Order to be made.- When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

112. Procedure in respect of person present in Court.- If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

113. Summons or warrant in case of person not so present.- *If such person is not present in Court, the Magistrate shall issue in a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court :*

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

114. Copy of order to accompany summons or warrant.- *Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.*

115. Power to dispense with personal attendance.- *The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and may permit him to appear by a pleader.*

117. Order to give security.- *If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made*

*should execute a bond with or without sureties, the with Magistrate shall make an order accordingly:
Provided that-*

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.”

17. It is, therefore, apparent that when the Special Executive Magistrate receives information as regards any person, who is a habitual robber, house-breaker, thief or forger etc. as is set out in Section 110, the Special Executive Magistrate is required to issue notice to such person to show cause as to why an action should not be ordered to execute a bond with surety of good behavior for a period not exceeding three years.

18. The Roznama placed on record indicates that on 30.01.2006, a show cause notice under Sections 111 and 113 was issued to the

respondent. Roznama indicates that the said notice was served on him on 01.02.2006. As the respondent was detained in an offence registered with Ahmednagar Taluka Police Station and was in Police custody remand, an order was passed by the Special Executive Magistrate under Section 267 of the Code of Criminal Procedure to present the respondent on 06.02.2006.

19. The Roznama indicates that on 06.02.2006, the respondent was made aware about the charges. The respondent replied that he had received the papers and he admitted the charge levelled upon him. Therefore, the Special Executive Magistrate directed the respondent under Section 117 to tender a bond and produce two sureties. The adjournment sought by the respondent is evident from the Roznama which has been referred by the learned APP as is noted above.

20. It is, therefore, apparent that out of 20 dates in the proceedings before the Special Executive Magistrate, the respondent had always sought adjournment except on two occasions, one being on 16.04.2006 when he produced a surety and on 19.04.2006 when the

verification report was presented indicating that the surety was not available for more than two years at the address which was mentioned and hence, that surety was rejected.

21. Surprisingly, it is observed in the impugned order that the proceedings were conducted ex-parte and no hearing was given to Mr. Kailas Dattatraya Rashinkar. It is also observed that no enquiry was conducted.

22. I find that the factors/ aspects appearing from the record, have not been dealt with by the learned Additional Session Judge, Ahmednagar while passing the impugned order dated 29.08.2006. I also find that the learned Court has referred to the undertaking given by the Government to this Court in Criminal Writ Petition No.428 of 2002 at its Nagpur Bench. It was said to be violated by the Special Executive Magistrate and that he committed contempt of the undertaking. Neither such details are discussed in the order, nor is the undertaking discussed so as to indicate as to what was the undertaking and which act of the Special Executive Magistrate could

be said to be contemptuous act.

23. Considering the above fact situation in its totality, I find that the learned Judge, though has acted promptly, has failed to deal with the said issue in depth and has passed the impugned order in a single day after the proceedings were registered.

24. I, therefore, find that it would be in the interest of justice to set aside the impugned order dated 29.08.2006 and remand the Criminal Revision No.173 of 2006 to the learned Session Judge at Ahmednagar, to be considered afresh in the light of the factors recorded above. The learned Judge would be at liberty to seek proper assistance from the State and hear the respondent as well.

25. In the result, this petition is partly allowed. The impugned order dated 29.08.2006 is quashed and set aside. Criminal Revision No. 173 of 2006 is remitted back to the learned Additional Sessions Judge at Ahmednagar for consideration afresh. Needless to state, the learned Judge shall issue notice to the State and the respondent and

after considering their submissions and record available, shall decide the matter afresh by considering all the factors which have been noted hereinabove.

(RAVINDRA V. GHUGE, J.)