

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

CRIMINAL WRIT PETITION NO.1041 OF 2016

Anna s/o. Bhimrao Dhavale,
Age 28 Years, Occu. Agri.,
R/o. Tapneshwar, Tq. Jamkhed,
Dist. Ahmednagar.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nashik Division, Nashik.
3. The Superintendent of Police,
Ahmednagar.
4. The Sub Divisional Magistrate,
Karjat Division, Karjat,
Dist. Ahmednagar.

RESPONDENTS

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Mr.Suhas R. Shirsat, Advocate for the
petitioner

Mr.M.M.Nerlikar, APP for Respondent Nos.1 to
4 – State.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL,JJ.**

Reserved on : 20.10.2016
Pronounced on : 25.10.2016

JUDGMENT: (Per S.S.Shinde, J.):

Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2. This Petition takes exception to the order dated 16.06.2016 passed by the Divisional Commissioner, Nashik Division, Nashik in Externment Appeal No.12/2016.

3. It is the case of the petitioner that respondent no.4 issued a notice on 13.05.2015 stating therein that, why the petitioner should not be externed from the limits of Ahmednagar, Beed, Osmanabad and Solapur Districts for the period of two years on the ground that the petitioner has indulged into various criminal activities causing danger and alarm to the public order. The petitioner filed a detailed reply to the said notice and denied the allegations and

also filed documents supporting his contention that the show-cause-notice is issued under the pressure of political persons. On 31st March, 2016, respondent no.4 passed an order invoking the provisions of the Bombay Police Act, 1951, thereby externing the petitioner from the limits of Ahmednagar and Beed District for the period of two years. The said order was assailed by the petitioner before the Appellate Authority i.e. Divisional Commissioner, Nashik Division, Nashik. The Appellate Authority modified the order passed by respondent no.4 and restricted its operation within the limits of Ahmednagar District. Hence this Writ Petition.

4. The learned counsel appearing for the petitioner submits that in the show-cause notice issued by respondent no.4, there are no specific allegations that due to fear the witnesses are not ready to come forward and

depose against the petitioner. If the contents of the said notice are perused carefully, those are general in nature and without referring to the specific acts of the petitioner, which are causing danger or alarm to the public order. It is submitted that unless the mandate of the provisions of Section 56 (1) (a) and (b) of the Bombay Police Act, 1951 (for short 'the said Act') is fulfilled, respondent no.4 should not have proceeded to pass an order of externment of the petitioner from Ahmednagar and Beed Districts. It is submitted that when the alleged offences are registered against the petitioner in Police Station Jamkhed, there was no reason for respondent no.4 to extern the petitioner from the limits of Beed District.

5. The learned counsel for the petitioner submits that the Regular Criminal Case No.143/2008, arising out of Crime

No.112/2008 registered with Jamkhed Police Station, for the offences punishable under Section 324, 323, 504, 506, 34 of the Indian Penal Code, Section 4 (25) of the Arms Act and Section 37 (1) (3) and 135 of the Bombay Police Act was tried and the said case is resulted into acquittal of the petitioner on 2nd September, 2013. He further submits that even the Criminal Case No.104/2013 arising out of Crime No.108/2011, registered with Jamkhed Police Station for the offences punishable under Sections 143, 147, 148, 323, 504 and 506 of the Indian Penal Code has also resulted into acquittal of the petitioner on 21st July, 2014. He further submits that even in Regular Criminal Case No.72/2012, arising out of Crime No.121/2011 registered with Jamkhed Police Station for the offences punishable under Sections 143, 147, 148, 323, 504 and 506 of the Indian Penal Code also resulted into acquittal of the petitioner by

the judgment and order dated 1st January, 2014. He further submits that the Criminal Case arising out of the Crime No.109/2014 registered with Jamkhed Police Station for the offences punishable under Sections 326, 323, 504, 341, 34 of the Indian Penal Code is pending before the Court at Jamkhed in which the original informant viz. Akash Bansi Chandan has filed Criminal Writ Petition No. 3858/2012. It is further submitted that so far Chapter Case No.35/2014 under Section 110 (e) (g) of the Criminal Procedure Code is concerned, the petitioner is ready to furnish surety and execute final bond. Therefore, the learned counsel appearing for the petitioner submits that though the petitioner is acquitted from three afore-mentioned crimes and one case is pending before the High Court in Criminal Writ Petition No.3858/2012, show cause notice issued to the petitioner makes mentioned of all these cases. It is submitted

that when the petitioner is acquitted from three cases, there was no reason why those cases have been mentioned in the impugned show cause notice. It shows non-application of mind of the respondent authorities. He further submits that though the Appellate Authority has restricted the enforcement/operation of the order of externment within Ahmednagar District, the said Authority failed to take into consideration that the order of externment passed by respondent no.4 is without complying the mandate of the provisions of Section 56 (1) (a) and (b) of the said Act. In support of the contention that the order of externment is not in conformity with the requirement of mandate of the provisions of Section 56 (1) (a) and (b) of the said Act and also the same is excessive, the learned counsel appearing for the petitioner places reliance on the decision in the case of *Iqbaluddin Ziauddin*

*Pirzade Vs. The State of Maharashtra & Ors*¹,
*Ashraf s/o. Shamsheer Ali Jagirdar Vs. The State of Maharashtra & Ors.*² and *Firoj Khan s/o. Imam Khan Vs. State of Maharashtra & Anr.*³. Therefore, the learned counsel appearing for the petitioner submits that the Petition deserves to be allowed.

6. The learned APP appearing for respondent – State relying upon the averments in the affidavit-in-reply filed on behalf of respondent no.4 and original record submits that, respondent no.4 upon appreciation of the material placed on record and in the light of the enquiry report submitted before him, has reached to the conclusion that the activities of the petitioner are harmful and prejudicial to the public at large, and therefore, it was necessary to extern the petitioner from the Ahmednagar and Beed

1 2015 ALL MR (Cri) 2298

2 2015 ALL MR (Cri) 2945

3 2014 ALL MR (Cri) 2968

Districts, and accordingly passed the impugned order of externment. The Appellate Authority modified the order passed by respondent no.4, and made it operative within the limits of Ahmednagar District. It is further submitted that, though the petitioner is externed from Ahmednagar District for one year, still he has committed offence in the jurisdiction of Jamkhed Police Station on 30.08.2016 under Sections 395, 307, 143, 147, 148, 149 of the IPC etc. and therefore FIR came to be registered as Crime No. 140 of 2016. Therefore, the learned APP appearing for the respondent – State submits that the Petition may be rejected.

7. We have heard the learned counsel appearing for the petitioner and the learned APP appearing for the respondent – State at length. With their able assistance, perused the pleadings in the Petition, grounds taken therein, annexures thereto, affidavit-in-

reply filed by respondent no.4 and also the original record made available by the APP. The section 56 (1) (a) and (b) of the said Act reads thus:

56. Removal of persons about to commit offence

(1)

(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, 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

8. Upon careful perusal of the aforementioned provisions, it is necessary for the concerned authority to form opinion that due to the movements or acts of any person, there is danger or harm to person or property and because of fear of such person, 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.

9. In the present case, upon careful perusal of the discussion and the reasons in the order passed by respondent no.4 and also the Appellate Authority, there is no reference to the contention raised by the petitioner that out of 5 offences which are shown in the show cause notice or the impugned order, he is already acquitted from

three offences. *Secondly*, there is no mention in the show cause notice that the witnesses are not willing 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. Even the concerned authority has not recorded the statements of the witnesses to form opinion that the witnesses are not willing 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. There is no mention in the show cause notice as to on what date, time and place the petitioner used force against the so called witnesses, which created fear in their minds and therefore, they did not dare to depose against the petitioner. If that be so, the petitioner cannot be said to have got an opportunity to challenge the externment proceedings.

10. If the order of externment passed by respondent no. 4 is perused carefully, it is mentioned that the Police have not mentioned in their report about registration of new offences against the petitioner in the year 2015. It further appears that respondent no. 4 thought it appropriate to extern the petitioner from the limits of Ahmednagar and Beed Districts. However, there are no reasons mentioned in the impugned order warranting externment of the petitioner from the limits of Beed District. It is true that the Appellate Authority confined operation of the order of externment within limits of Ahmednagar District, however, failed to take into consideration fact that respondent no.4 has not recorded subjective satisfaction or formed opinion that the witnesses are not willing 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. Even the Appellate Authority has not referred to the contention of the petitioner that out of 5 alleged offences, already he is acquitted from three offences. It appears that there is no proper application of mind either by respondent no.4 and/or by the Appellate Authority. There is no compliance of the mandate of Section 56 (1) (a) and (b) of the said Act. The Bombay High Court in the case of **Juber Abdul Vahid Kureshi Vs. State of Maharashtra & ors** in Criminal Writ Petition No. 1511 of 2006 decided on 10th September, 2007, in para 3 held thus:

"3. There is no doubt that the impugned order of externment has been passed under Section 56 (1) (b) of the Bombay Police Act, 1951 which indicates that there were reasonable grounds for believing that the petitioner

was engaged or was about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code or in the abetment of any such offence and in the opinion of such officer there were no witnesses 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. To support the order of externment passed on such ground, it is imperative that the Competent Authority before passing the order of externment went through such in-camera statements recorded and duly verified and reached to the conclusion that the witnesses were apprehensive to come in the open and depose against the petitioner / externee."

[Underlines added]

11. So far contention of the learned APP that the petitioner has committed offence in the jurisdiction of Jamkhed Police Station on 30.08.2016 under sections 395, 307, 143, 147, 148, 149 of the IPC etc. and therefore, FIR came to be registered as Crime no. 140 of 2016 is concerned, the respondents are free to take appropriate action/decision in that respect. The aforesaid contention of the respondents would fall beyond the scope of writ jurisdiction and therefore we decline to consider the said contention on merits.

12. In the light of discussion in the foregoing paragraphs, inevitable conclusion is that the order of externment passed by respondent no.4 and confirmed by the Appellate Authority cannot legally sustain, hence both the orders are quashed and set aside.

13. Rule is made absolute in above terms. Writ Petition stands disposed of accordingly.

Sd/-

[SANGITRAO S.PATIL]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE