

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

**CRIMINAL WRIT PETITION NO. 1530 OF 2016
WITH
CRIMINAL WRIT PETITION NO. 1531 OF 2016**

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CRIMINAL WRIT PETITION NO. 1530 OF 2016

Rahul @ Bala s/o. Digamber Sonavane .. Petitioner
Age. 25 years, Occ. Labour,
R/o. Shanti-Nagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

Versus

1. The State of Maharashtra .. Respondents
Through its Principal Secretary,
Ministry of Home Department,
Mantralaya, Mumbai.
2. The Collector/District Magistrate,
Office of District Magistrate,
Jalgaon.
3. The Sub-Divisional Magistrate,
Bhusawal Division, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
4. The District Superintendent of Police,
Police Head Quarters,
Tal. & Dist. Jalgaon.
5. The Police Inspector,
Bhusawal City Police Station,
Tq. Bhusawal, Dist. Jalgaon.

**WITH
CRIMINAL WRIT PETITION NO. 1531 OF 2016**

Nawab s/o. Lalmohammed Gawali, .. Petitioner
Age. 30 years, Occ. Labour,
R/o. Gawaliwada, Sutargalli, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

Versus

1. The State of Maharashtra .. Respondents
Through its Principal Secretary,
Ministry of Home Department,
Mantralaya, Mumbai.
2. The Collector/District Magistrate,
Office of District Magistrate,
Jalgaon.
3. The Sub-Divisional Magistrate,
Bhusawal Division, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
4. The District Superintendent of Police,
Police Head Quarters,
Tal. & Dist. Jalgaon.
5. The Police Inspector,
Bhusawal City Police Station,
Tq. Bhusawal, Dist. Jalgaon.

Mr.N.E. Deshmukh, Advocate for the petitioners.
Mr.A.R. Kale, A.P.P. for respondent/State.

**CORAM : Z.A. HAQ, J.
DATED : 25.11.2016**

ORAL JUDGMENT :-

. Heard. These two petitions can be disposed by a common judgment as the facts in both the cases are similar and the point raised in both the petitions is same.

02. Rule. Rule made returnable forthwith.

03. The petitioner in Criminal Writ Petition No.1530 of 2016 is facing prosecution in C.R. No.123 of 2011 for the offences punishable under sections 452, 323, 504, 506 read with section 34 of the Indian Penal Code and prosecution in C.R. No. 180 of 2016 for the offences punishable under sections 353 & 332 of the Indian Penal Code.

. The petitioner in Criminal Writ Petition No. 1531 of 2016 is facing prosecution in C.R. No.76 of 2015 for the offences punishable under sections 324, 452, 427, 504 & 506 of the Indian Penal Code and prosecution in C.R. No.41 of 2016 for the offences punishable under sections 324, 452, 427, 504, 506 of the Indian Penal Code.

. The learned A.P.P. states that as per his

instructions the petitioner in Criminal Writ Petition No.1531 of 2016 is facing prosecution for the offence punishable under section 354 of the Indian Penal Code also.

04. The Sub-Divisional Magistrate passed the orders under section 144(2) of the Criminal Procedure Code restraining the petitioners from residing at their residence or entering the Municipal limits of Bhusawal till 30.11.2016, except for casting vote on 27.11.2016 between 07.30 a.m. to 09.30 a.m. The consideration for passing the orders was that the petitioners are facing prosecutions.

05. The orders passed by the Sub-Divisional Magistrate were challenged by the petitioners before the Sessions Court in Revision under section 397 of the Criminal Procedure Code. The learned Additional Sessions Judge refused to entertain the Revision Applications on the ground that the petitioners have alternate remedy available under section 144(5) of the Criminal Procedure Code. The petitioners, being aggrieved in the matter, have filed these writ petitions.

06. The learned A.P.P. has opposed the petitions on the ground that the petitioners have alternate

efficacious remedy under section 144(5) of the Criminal Procedure Code.

07. After hearing the learned Advocate for the petitioners and the learned A.P.P., I find that the orders passed by the Sub-Divisional Magistrate are unsustainable as they are without jurisdiction. The learned Sub-Divisional Magistrate has no jurisdiction to pass order under section 144 of the Criminal Procedure Code externing the petitioners. In any case the facts on record show that there was no such urgency which necessitated the dispensing of notice to the petitioners before passing the orders, which have civil consequence and affect the petitioners aversely. In these facts I am not inclined to consider the submissions made on behalf of the respondents that the petitions need not be entertained as the petitioners have alternate efficacious remedy available to seek redressal of their grievance.

08. In view of the above, the following order is passed :-

. The orders passed by the Sub-Divisional Magistrate on 5th November, 2016 in both the cases are quashed.

09. The Criminal Writ Petitions are allowed. Rule made absolute in the above terms. In the circumstances, the parties to bear their own costs.

[Z.A. HAQ, J.]