

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.408 OF 2016

Bandu @ Shivdasan Vijayan Sahu

..vs..

**State of Maharashtra, through Sub Divisional Magistrate, Chandrapur, Taluka and District
Chandrapur and ors**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri A.B. Mirza, counsel for the petitioner.
Shri N.B. Jawade, Addl.P.P. for the respondents/State.

**CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.**

DATED : OCTOBER 14, 2016.

Heard.

The final order passed under Section 56(a)(b), externing the petitioner out the Chandrapur district for a period of one year, contains four offences i.e. offences at Serial Nos.38, 39, 40, and 41 which never formed part of show cause notice. Order is passed on 11.5.2016. Before that, two show cause notices were served upon the petitioner. First show cause notice is containing list of 37 offences which are shown to be pending from the year 2000, till the year 2010. The proposal for externment is dated 5.4.2014. The petitioner has replied thereto and that reply finds consideration in communication dated 27.11.2014 sent by the Sub Divisional Police Officer, Chandrapur to the Sub Divisional Officer, Chandapur. There, it is mentioned that as per reply sent by Advocate of the

petitioner, 30 matters out of 36 are shown to be acquitted. Only six offences which are disclosed by said Advocate to be pending are Crime Nos.99 of 2003; 55 of 2005; 194 of 2008; 10 of 2012; 3052 of 2012, and 3002 of 2014.

After this proposal another show cause notice dated 15.12.2014 is served upon the petitioner. Therein again, some 36 offences are mentioned and all are stated to be pending. Thus, the note of stand taken in reply, that in 30 offences he was already acquitted, is not taken. Thereafter, vide communication dated 13.4.2016, the police station officer has pointed to the Sub Divisional Officer four more offences, those are 56 of 2015; 3030 of 2015; 48 of 2016, and 46 of 2016. The request is made to include those offences in externment proceedings.

Impugned order is passed on 11.5.2016. This order, in paragraph No.1, carries list of total 41 offences and the four offences mentioned in communication dated 13.4.2016, are thus included therein. Perusal of paragraph No.4 shows that show cause notice was served upon the petitioner on 19.7.2014 and, in response thereto, the petitioner did not appear and did not produce any material. Thus, reply sent by Advocate, which finds consideration in communication dated 27.11.2014 sent by the Sub Divisional Police Officer to the Sub Divisional Officer is

lost sight of. The order does not show that after addition of four offences, mentioned *supra*, on 13.4.2016, any opportunity was given to the petitioner.

Learned counsel for the petitioner has pointed out that in offence number 56 of 2015 under Section 307 read with Section 34, he was acquitted on 25.1.2016 itself. Thus, on the date on which inclusion of this offence was sought, the petitioner was already acquitted. Hence, on the date of externment order, also he was acquitted. The fact of acquittal is not looked into either by the police station officer or then by the Sub Divisional Officer.

Learned Counsel for petitioner urges that even copies of statement allegedly recorded in camera are not made available. In the light of discussion, as the impugned order suffers from non-application of mind, we do not find it necessary to embark upon this aspect of the matter.

As the impugned order shows total non-application of mind, it is quashed and set aside.

The writ petition is partly allowed and disposed of. No costs.

JUDGE

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

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(Personal Assistant)

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