

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

CRIMINAL WRIT PETITION NO.865 OF 2015

Purushottam S/o Nagorao Hajare

..vs..

**The State of Maharashtra, through Principal Secretary, Ministry of Home
Department, World Trade Centre, Mantralaya, Mumbai and ors**

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

Court's or Judge's Order

**Shri S.V. Manohar, senior counsel with Shri Abhay Sambre,
counsel for the petitioner.
Shri S.M. Uike, Addl.P.P. for the respondents.**

**CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.**

DATED : JANUARY 5, 2016.

**Order of externment dated 21.7.2015
passed by respondent No.3 Deputy Commissioner of
Police is questioned before this Court.**

**Learned senior counsel for the petitioner
Shri S.V. Manohar with learned counsel Shri Abhay
Sambre has stated that the order is excessive in-as-much
as all alleged offences are registered only at one police
station and still the externment from entire district has
been ordered that too for a period of two years. He
further submits that non-application of mind is
apparent because more recent offences, allegedly
committed and looked into, are on account of**

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differences between neighbours and has got no impact or affect on public piece or law and order. The report of the Assistant Commissioner of Police has been looked into by respondent No.3 while passing the impugned order, but its copy has not been made available to the petitioner. Similarly, alleged two in camera statements are also not made available to him and those statements have never been verified by respondent No.3 where subjective satisfaction plays important role. He contends that in reply, filed before this Court, unwillingness of persons to come forward to depose has been substantiated only on account of fact of registration of offences. He, therefore, prays for quashing and setting aside of the impugned order.

Learned Addl.P.P. for the respondent/State Shri S.M. Uike on the other hand places reliances upon the records with him and also reply-affidavit. He submits that five offences, looked into in the impugned order, are not stale and looking to nature thereof, the impact on general public is apparent. Because of seriousness of those offences, the witnesses are not ready to come forward and depose.

With the assistance of the Counsel, we have

perused the impugned order. We have also gone through the records produced by learned Addl.P.P.

Two sealed envelopes, which are stated to contain the statements of in camera witnesses, are seen on record. However, in the impugned order there is no reference to any such in camera statement. On the contrary, in reply-affidavit filed by respondent No.3, in paragraph No.10, he has supported his subjective satisfaction about unwillingness of witnesses to come forward and depose by relying solely upon above mentioned registered offences.

The fact that in camera statements do not figure in impugned order itself shows non-application of mind. Similarly, if there is some quarrel between two neighbours and all offences are arising out of those quarrels, the impact thereof or relevance thereof, in-so-far as extreme step of externment, is concerned must also be duly evaluated. The contention, that order, therefore, is excessive, also calls for appreciation in this background.

During hearing, we also found a statement on oath in paragraph No.14 by respondent No.3 that the

enquiry officer viz. Assistant Commissioner of Police, Lakadgang has considered all offences, in camera statements, and also each and every document submitted by the petitioner, and thereafter, submitted an inquiry report to respondent No.3 with his recommendation to exonerate the petitioner.

Respondent No.3 states that he has independently considered all documents.

However, if the Assistant Commissioner of Police has submitted any report, before accepting that report, the findings therein ought to have been made known to the petitioner.

In this situation, we find that the impugned order shows non-application of mind. It is, therefore, quashed and set aside. The respondents are at liberty to pass appropriate orders afresh in accordance with law.

The writ petition is allowed. No costs.

JUDGE

JUDGE

!! BRW !!

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