

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

CRIMINAL WRIT PETITION NO. 870 OF 2017

Vikrant s/o Prabhakar Nawle,
Age 31 years, Occu. Agri.,
& Vegetable business,
Permanent r/o A/p Puntamba,
Taluka Rahata, District
Ahmednagar
At present r/o c/o Digvijay Gavli,
Ramwadi, Panchvati, Nashik

..Petitioner

Versus

1. The Divisional Commissioner,
Nashik Division, Nashik
2. The Sub-Divisional Police Officer,
Shirdi Division, Shirdi,
Taluka Rahata, Dist.Ahmednagar
3. The Sub-Divisional Officer,
Shirdi Division, Shirdi,
Taluka Rahata, Dist.Ahmednagar

..Respondents

Mr K.B. Borde, Advocate for petitioner
Mrs P.V. Diggikar, A.P.P. for respondents

**CORAM : S.S. SHINDE AND
R.M. DHAVALA, JJ.**

**DATE OF RESERVING
THE JUDGMENT : 9th August 2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 21st August 2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of order of exeternment dated 30.5.2017 passed by the Divisional Commissioner, Nashik in Externment Appeal No.24 of 2017, confirming the order passed by the Sub Divisional Officer dated 25.10.2016 externing the petitioner from

eight talukas from Ahmednagar, Nasik and Aurangabad districts for two years.

2. Mr Borde, learned Advocate for the petitioner has challenged the order on the following grounds:

(I) Three criminal cases filed against the petitioner, two of which were of 2011 and one of 2014 do not show that the activities of petitioner are prejudicial to the public tranquility and there is no proximity with the alleged activities and the order of externment.

(II) The subjective satisfaction of the competent authority that the witnesses were not ready to come forward to lodge reports has not been recorded. The in camera statements were not referred in the notice, but those were considered.

(III) The statements did not disclose the specific incident or specific place and date.

(IV) Earlier, there was externment proceedings taken on the basis of two of the three criminal proceedings and the said case ended in favour of the petitioner. Those two cases are again taken into consideration to take a contrary view.

(V) The competent authority has indulged in excessive jurisdiction. The alleged offences are registered at Rahata police station but the petitioner has been externed from eight talukas i.e. Kopargaon,

Rahata, Shrirampur, Sangamner, Yeola, Sinnar, Niphad, Vaijapur.

(VI) The impugned order is not in consonance WITH provisions of Sections 56 and 57 of the Maharashtra Police Act.

3. Learned A.P.P. supported the impugned judgment. She submitted that proper procedure was followed. There was preliminary enquiry by Sub Divisional Police Officer after issuing due notice to the petitioner. After submission of report by the Sub-Divisional Police Officer, the Sub Divisional Officer had again issued show cause notice dated 16.10.2015. Full opportunity was granted to the petitioner and due procedure was followed. The petitioner was fined twenty one times for extracting and theft of sand from the river bed of Godavari. He has formed a gang and has created atmosphere of terror. The public tranquility has been affected. The people are not ready to come forward against the petitioner on account of fear. In camera statements of two witnesses were recorded and were considered. There is no flaw in the procedure followed by the competent authority. Hence, the petition deserves to be dismissed.

4. The learned Advocate for the petitioner and learned A.P.P. for the State relied on following rulings :

1. **Yasin Khan Masum Khan Multani Vs. State of Maharashtra and ors., 2015 ALL MR (Cri) 1467**

2. **Ashraf Shamsheer Ali Jagirdar Vs. State of Maharashtra and ors., 2015 ALL MR (Cri) 2945.**

5. After considering the arguments of the parties, the issue for our consideration is, 'whether the impugned externment order confirmed by the Divisional Commissioner on 30.5.1917 is sustainable on facts and in law ?' We answer it in negative for following reasons.

6. The notice was issued under Section 56 (1) (a) (b) of the Maharashtra Police Act, which reads thus :

“ Sec. 56 (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

(c) The said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or such prejudicial act, or the outbreak or spread of such disease or notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether contiguous

or not), by such route, and within such time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as “the specified area or areas”) from which he was directed to remove himself].

7. The original record produced by the learned A.P.P. is perused. It shows that the petitioner is facing prosecution in three cases, out of which two cases are of theft of sand registered at Rahata Police Station in 2011. One case No.114/2014 is regarding obstruction to the public servant in performance of their official duty of holding auction of sand and committing riot. It is registered at Rahata Police Station in 2014.

8. When the first two cases were pending against the petitioner, an externment proceeding was initiated against him and by order dated 30.4.2013, the learned Sub Divisional Officer, Shrirampur felt that one opportunity of improvement should be given to the petitioner and the request for externment was turned down.

9. The third case was registered on 19.8.2014 for offences punishable under Sections 143, 353, 186, 323, 504, 506 read with sec.149 of Indian Penal Code. That day, Naib Tahsildar had initiated process of public auction of sand. It is alleged that The petitioner and his accomplice gathered there and intimidated the revenue Officers by opposing and by using threatening language and interfered with the process of auction. The petitioner's case is that the Tahsildar was holding the auction contrary to the provisions of law. Hence, he had attended the said auction along with his Advocate and had served

notice through his Advocate. The Naib Tahsildar at the instance of political leaders quarreled with the petitioner and his Advocate and implicated them in a case. When the Bar Association of Rahata took a morcha, the name of Advocate was deleted from the said case. He has not committed any offence.

10. The fresh process for externment was initiated with issuance of show cause notice dated 8.6.2015 by Sub Divisional Police Officer, Shirdi. The said notice indicated that the activities of the petitioner were dangerous to the people residing in the vicinity and there was fear and threat to the public at large. He and his accomplice were indulging in beating, intimidating, abusing and spreading atmosphere of terror so that the people should not make complaint against him at the Police Station. The petitioner indulged in theft of sand thereby causing loss of environmental balance. There was reference to in camera statements of two witnesses disclosing that the petitioner was using weapons, creating terror so as to have unobstructed free play in the matter of extraction and theft of sand. The petitioner was regularly committing theft of sand but due to fear of the petitioner and his accomplice, the people were not ready to disclose their names. There was breach of peace. This notice was replied by the petitioner by reply dated 14.7.2015. He claimed that Murlidhar Thorat, Ex-Sarpanch had political rivalry with him. The externment proceedings initiated on the basis of first two cases have already ended into dismissal. The third case was fabricated, as he has opposed the Tahsildar from holding illegal public auction of sand.

11. On going through the papers of enquiry, we find following material infirmities, which go to the root of the matter.

(1) Excessive Jurisdiction :

In the present case, we find that all the three cases registered against the petitioner were from the jurisdiction of Rahata Police Station. The Sub-Divisional Officer exceeded his jurisdiction while externing the petitioner from seven other taluka places namely Kopargaon, Shrirampur, Sangamner, Yeola, Sinnar, Niphad and Vaijapur. The reasons recorded that there are to justify such externment. On this ground alone, the impugned order deserves to be quashed.

There is consistent view that the externment should be from those areas or taluka places, wherein the answerable party was carrying out his illegal activities. In **Rajendra Kale Vs. State of Maharashtra ALL MR 824**, Division Bench of this Court to which one of us (Justice S.S. Shinde) was a party and in **Yasin Khan Masum Khan Multani Vs. State of Maharashtra and ors., 2015 ALL MR (Cri) 1467** and **Ashraf Shamsheer Ali Jagirdar Vs. State of Maharashtra and ors., 2015 ALL MR (Cri) 2945**, it is held that externment of persons from district places, where there are no criminal activities is a case of excessive jurisdiction in violation of Article 14 and 19 (1) (d) and 21 of the Constitution of India.

(2) Improper notice

It is also observed that the competent authority has relied on two in camera statements recorded during enquiry by subordinates, but the competent authority in his show cause notice issued under Section 56 and 59 of the Maharashtra Police Act dated 16.10.2015 did not record that the in camera statements were seen and verified by him and were found to be true and correct. There is absolutely no reference to these in camera statements, which have been used for passing the impugned order. The order does not disclose that these statements related to the third incident. As held in **Nandkishor Vs. Deputy Commissioner, 2013 ALL MR (Cri.) 3481, Yeshwant Damodar Patil vs Hemant Karkare, Dy.Commissioner of Police, 1989(3) BCR 240 and Kanifnath Radhakishan Popalghat Vs. The State of Maharashtra 2017 ALL MR (Cri) 795** Division Bench judgment of this Court to which one of us (Justice S.S. Shinde) was a party, **Rajendra Karbhari Kale Vs. The State of Maharashtra, 2017 ALL MR (Cri) 824**, Division Bench judgment of this Court to which one of us (Justice S.S. Shinde) was a member the subjective satisfaction of the competent authority that the witnesses were afraid to come forward in public and give evidence against the externment is a *sine qua non*. It is not recorded.

(3) It is also noticed that the Sub-Divisional Officer, Shirdi relied on twenty one cases of excavation of sand in which fine has been imposed on the petitioner, but the preliminary enquiry conducted by Sub-Divisional Police Officer was totally silent about the same. No

opportunity was given to the petitioner to controvert the allegations made against him.

(4) Besides, there is no close nexus between alleged activities and date of initiation of action. Two cases were four to five years old while one was almost two years old. We have gone through the in camera statements produced in sealed envelope. Holding of enquiry and giving opportunity to the answerable party is not empty formality. It should be real, genuine and not illusory. In the present case, the answerable party had raised certain defences in his reply. He has stated that on account of political enmity he has been falsely implicated by giving in camera statements. He has not committed any act which can be treated as activities dangerous or harmful to any person or property. This defence was not at all considered. We find that there is non application of mind. The facts alleged do not attract Section 56 (a) of the Bombay Police Act.

12. After carefully going through the papers, we find that though all the details about the allegations cannot be disclosed, but some details should be given and the allegations should not be extremely vague and should not be mere re-production of provisions of Section 56 (1) (a) of the Maharashtra Police Act.

13. The competent authority has not applied, its mind to the fact that two out of three cases were of 2011 and on the basis of those cases of sand theft, the answerable party was earlier enquired into for

externment and was exonerated. As far as the third incident is concerned, the explanation by the answerable party in his reply has not at all been considered. The petitioner had visited the place of auction along with his Advocate for raising legal objections to the sale of the sand without prior notice. The act of the petitioner in raising objection was not liked by the Tahsildar and he prosecuted the petitioner as well as his Advocate, but later on the name of his Advocate was required to be deleted. We find that the competent authority has not followed the proper procedure for taking action under Section 56 (1) (a) and (b) of the Maharashtra Police Act. The impugned order is, therefore, not sustainable. Hence, the writ petition deserves to be allowed. Hence, the order :

ORDER

- (I) The Criminal Writ Petition No. 870 of 2017 is allowed.
- (II) The impugned order passed by the Divisional Commissioner, Nasik dated 30th May 2017 in Externment Appeal No.24 of 2017 is hereby set aside.
- (III) Rule is made absolute in above terms. No order as to costs.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)