

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

CRIMINAL WRIT PETITION NO. 1452 OF 2017

Rahul @ Bala Digambar Sonwane,
Age: 28 years, Occupation- Contractor,
R/o. Shanti Complex, Shani Nagar,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

... **PETITIONER**

Versus

1] The State of Maharashtra,
Home Department,
Mantralaya, Mumbai -32.

2] The Sub-Divisional Magistrate,
Bhusawal, Division Bhusawal,
Dist. Jalgaon.

3] Sub-Divisional Police Officer,
Bhusawal Division,
Bhusawal, Dist. Jalgaon.

4] The Divisional Commissioner,
Nashik Division, Nashik.

... **RESPONDENTS**

Mr. B. S. Deshmukh, Advocate for the Petitioner.
Mrs. P.V. Diggikar, APP for Respondent / State.

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

**RESERVED ON : 06.11.2017
PRONOUNCED ON : 14.11.2017**

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JUDGMENT: (*Per Mangesh S. Patil, J.*)

. Rule. Rule is made returnable forthwith. With the consent of the parties the matter is heard finally.

2. In this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure the petitioner is seeking exception to the order of his externment passed by the respondent no.2 Sub-Divisional Magistrate, Bhusawal by invoking his powers under Section 56 (1) (b) of the Maharashtra Police Act, 1951 (hereinafter referred to as the Act), from Jalgaon and Dhule districts by the order dated 17.07.2017, which has been altered in appeal preferred by him under Section 60 of the Act by respondent no.4 Divisional Commissioner, Nashik by his order dated 22.09.2017 restricting the externment only to the extent of Jalgaon district.

3. We have heard the learned Advocate for the petitioner as well as the learned A.P.P. and perused the record and proceedings.

4. According to the learned Advocate for the petitioner, the impugned orders have been passed vindictively without any ground much less sufficient to justify the externment. According to him, the fact that out of four criminal cases referred to under the impugned orders, the

petitioner has already been acquitted in two of them but the respondent nos. 2 and 4 have completely ignored this fact. There is no discussion justifying the inference drawn by the respondent nos. 2 and 4 as to the activities of the petitioner much less to demonstrate that those are sufficient to show that he is engaged or about to be engaged in the commission of some offence, or witnesses are not coming forward to give evidence due to fear. In the absence of such ground the impugned orders could not have been passed. The learned Advocate also pointed out that the notice served on the petitioner under Section 59 does not refer to recording of any statement of witnesses in camera albeit the impugned orders refer to such fact. In the absence of any reference to the recording of statements of witnesses in view of the decision of the Supreme Court in the case of **Pandharinath Shridhar Rangnekar V/s. Dy. Commissioner of Police, The State of Maharashtra; (1973) 1 SCC 372**, the impugned orders are not legal and sustainable.

5. The learned A.P.P. supported the impugned orders and submitted that after following due process and giving suitable opportunity to the petitioner the impugned orders have been passed and the respondent nos. 2 and 4 have formed an opinion based on the criminal record and therefore, the impugned orders are legal and proper.

6. Since the impugned orders have been passed in purported exercise of the powers vesting in the respondent no. 2 under Section 56 (1) (b) of the Act, the impugned orders need to be examined by ascertaining whether all the necessary ingredients which can legally form basis for exercising the powers were available before the respondent nos. 2 and 4. Needless to state that those powers can be exercised when there is reasonable ground for believing that the person is engaged or is about to be engaged in commission of an offence punishable under Chapter XII, XVI, or XVII of the Indian Penal Code or in abetment of such offence and in the opinion of such officers, witnesses are not willing to come forward to give evidence due to apprehension.

7. It is necessary to observe at the outset that a bare perusal of the impugned orders would reveal that the respondent nos. 2 and 4 are oblivious of the powers which they can exercise under situation (a) of Sub-Section (1) of Section 56 and situation (b) under Sub-Section (1) of that Section. The impugned orders clearly show that they have considered both these grounds to justify the externment, albeit all the while, right from the notice issued under Section 59 and while passing the impugned orders they have referred to only Rule 56 (1) (b).

Grounds (a) and (b) read as under:

“56. Removal of persons about to commit offence -

(1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf -

(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 Chapter 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,

(bb).....

(c)

to remove himself outside such area or areas in the State of Maharashtra....

(2) ”

8. It is apparent that the powers under rule (a) can be invoked when the movements and acts of the person are causing alarm or harm to any person or property where as under clause (b) as is observed above the person must have engaged or about to be engaged in commission of some offence punishable under the three Chapters of the Indian Penal Code and the witnesses are not coming forward due to apprehension. Ignoring such distinction between those clauses, the respondent nos. 2 and 4 have apparently referred to the ingredients of both these clauses intermittently. Obviously, they could not have done so legally and on this ground alone the impugned orders are liable to be inferred with.

9. As has been observed in the case of **Pandharinath** (supra), the powers conferred upon the authorities under Section 56 make a serious inroad on personal liberty of a citizen. Therefore, the powers which seek to create an exception to such constitutional right need to be exercised with utmost care and caution and based on some objective and concrete material. In view of such principle, it is utmost necessary for respondent no.2 to have intimated the petitioner in the notice under Section 59 that statement of the witnesses had to be recorded in-camera due to fear, though, there was no obligation to disclose the names of the

witnesses. However, the notice dated 09.05.2017 does not refer to this fact and therefore it goes to the root of the powers exercised under Section 56 (1) (b).

10. Again, the notice under Section 59 alleges that the petitioner has been roaming on Bullet Motor Cycle causing terror and alarm to the public. He threatens them, beats them and even snatches gold ornaments and money from people. It has also been mentioned that taking advantage of the fact that he belongs to a Scheduled Caste, he has been threatening people of prosecuting them falsely under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Lastly, it has been mentioned that four criminal cases are pending against him. However, apart from the fact that there is no reference to any statement of any person having been recorded in-camera, even the record and proceedings does not show that such statements were recorded. On the contrary, the papers contain statements of couple of witnesses by name Mohit Rajendra Chousariya and Abhijeet Dilip Marathe recorded by the respondent no. 3-Sub Divisional Police Officer specifically mentioning that, though, criminal cases are pending against the petitioner there is no danger to person or property of anybody from him. In fact if such statements were recorded during the inquiry by the

respondent no. 3-Police Officer, it was expected that respondent nos. 2 and 4 should have at least cursorily referred to these statements which are in favour of the petitioner. There is absolutely no reference with orders as to why statements of these two persons should be ignored particularly when no such similar statements are forth coming against the petitioner of anybody. In our view, this is yet another circumstance which clinchingly demonstrate non-application of mind while passing the impugned orders.

11. For all these reasons, we have no hesitation in concluding that the impugned orders indeed suffer from gross illegality.

12. We therefore, allow the writ petition. The impugned orders are quashed and set aside. The Rule is made absolute.

[MANGESH S. PATIL, J.]

[S. S. SHINDE , J.]