

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 700 OF 2017

Mohammad Yakub Imtiyaz ShaikhPetitioner
versus
The Dy. Commissioner of Police Zone-II,
Bhiwandi, District Thane and ors.Respondents

Mr. M. S. Mohite i/b. RHY Juris Law Associates, advocates for the
petitioner.
Mr. J. P. Yagnik, APP for the State.
Mr. Rohan P. Surve, advocate for the intervenor.

CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : 5th APRIL, 2017.

P. C. :

Heard Mr. Mohite, learned counsel for the petitioner and Mr.
Yagnik, learned APP for the State.

2. By this petition under Article 226 of the Constitution of India,
the petitioner has challenged the orders of respondents/competent
authorities, whereby he has been externed for a period of two years
from Thane District.

3. Mr. Mohite, learned counsel for the petitioner, made
following submissions :

1. That the chapter proceedings initiated against the petitioner were
taken into consideration while passing the impugned orders.

2. The impugned orders are passed not only under Section 56(1) (a) and (b) but also under Section 56(1) (bb) of the Maharashtra Police Act, when there is no notice to that effect to the petitioner.
3. The competent authorities have not recorded the subjective satisfaction that witnesses are not coming forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property.
4. Mr. Yagnik, learned APP, opposed the petition vehemently. He submitted that the chapter proceedings against the petitioner initiated earlier is not the basis to pass the order impugned. He also submitted that the impugned order is passed under Section 56(1)(a) & (b) and not under Section 56(1)(bb) of the Maharashtra Police Act. Lastly he pointed out that in the impugned notice, there is subjective satisfaction of the competent authority to the effect that witnesses are not coming forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property.
5. We have gone through the petition along with compilation thereof. We have also considered the submissions of the learned

counsel for the petitioner and learned APP. So far as the first submission is concerned, Mr. Mohite relied upon the decision of the Apex Court in ***Umar Mohamed Malbari versus K.P. Gaikwad, Dy. Commissioner of Police and anr. 1988 Mh.L.J. 1034*** and especially the observations made paragraph 4 thereof. The Division Bench held that reference of chapter proceedings in an order under Section 56 or 57 by itself will not vitiate the order unless it is shown that irrelevant allegations had influenced the minds of the external authority while passing that order. In the present case, in an impugned order under Section 56(1) (a) and (b), the competent authority has referred that earlier, chapter proceedings were initiated against the petitioner. However, that is referred as past history and we are of the opinion that this reference is not the basis for passing the order under Section 56(1) (a) and (b).

So far as second submission viz. the impugned orders are passed not only under Section 56(1)(a) and (b) but also under Section 56(1)(bb) when there is no notice to that effect to the petitioner, is concerned, we do not find any merit in the same. The submission is made on the basis of observations of the competent authority in paragraph (1) in the impugned order at page 35. In the said paragraph, the competent authority has observed that the petitioner has committed

five crimes during the period between 2013 and 2016 punishable under Chapters 16 and 17 of the Indian Penal Code, 1860. It is also stated that the petitioner along with his associates also tried to create terror and rift between Hindu and Muslim communities. We, however, find that there are 5 CRs registered against the petitioner. There is reference of communal rift at the hands of the petitioner in in-camera statement of the first witness. So the said observation, in our opinion, is in respect of the crime under Indian Penal Code, 1860, committed by the petitioner and, therefore, we find that the order is not passed under Section 56 (1)(bb). As a matter of fact, the order is passed under Section 56(1)(a) and (b) of the Maharashtra Police Act.

As far as the 3rd submission that subjective satisfaction is not recorded is concerned, we have perused the notice as well as the impugned orders, we find that such satisfaction is recorded by the competent authority. This submission is also, therefore, devoid of any merit.

6. We find that there is sufficient material against the petitioner so as to warrant action under Section 56(1)(a) and (b). Subjective satisfaction is also recorded by the external authority that that witnesses are not coming 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. In the above circumstances, we are not inclined to entertain the petition. The writ petition is, accordingly, dismissed.

7. In view of dismissal of the writ petition, criminal application No.151 of 2017 will not survive for consideration and the same is also disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]