

Rane

* 1/5 * WP-2767-2017 (SR.907)
Tuesday, 22.8.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2767 OF 2017

Satish Balara Jadhav & Ors.

....Petitioners

V/s.

The State of Maharashtra
and anr.

....Respondents

* * * * *

Mr. K.S. Patil, Advocate for the petitioners.

Mrs. S.D. Shinde, APP for respondent no.1, State.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

22ND AUGUST, 2017.

P.C. :-

1. The writ jurisdiction of this Court is invoked against the order dated 20th June, 2017 passed by the Superintendent of Police, Sangli who is the externing authority, externing the petitioners from Sangli District for a period of one year. Against such an order, an appeal lies under Section 60 of the Maharashtra Police Act,

1961. However, the Learned Counsel for the petitioners sought to justify the approaching of this Court directly on the ground that, on account of infraction in the conduct of the proceedings, the impugned order passed by the externing authority is vitiated and since the same has an effect on the enjoyment of the fundamental rights by the petitioners, the petitioners have directly approached this Court.

2. We have heard the Learned Counsel for the petitioners, Mr. Patil at some length. The Learned Counsel would seek to rely upon the judgment of a Learned Single Judge of this Court dated 20th June, 2012 rendered in **Writ Petition No. 2977 of 2011 (Anilsingh R. Paredeshi V/s. The State of Maharashtra)**, wherein the Learned Single Judge has held that, the offences registered against the petitioners under Section 12(A) of the Bombay Prevention of Gambling Act would not come under the sweep of Section 55 of the Bombay Police Act.

The Learned Counsel also sought to place reliance on the Division Bench judgment of this Court in **Criminal Writ Petition No. 399 of 2013 dated 4th September, 2013 (Rajwardhan Patil V/s. Vijaysinha and anr.)**, in support of his contention that since there is no reference to the in-camera statements, the order is vitiated. In the said case before the Division Bench, the in-camera statements of the two witnesses which were recorded were not referred to in the show-cause notice. The Learned Counsel, lastly sought to place reliance on another judgment of the Division Bench dated 19th October, 2013 in **Writ Petition No. 2242 of 2013 (Ganesh Ambadas Sherla V/s. The Dy. Commissioner of Police & Anr.)**. In the said case, the Division Bench found fault with the externment order on the ground, that the respondents had not satisfied the Court as regards the fact of the contents of such statements being duly notified to the petitioners therein and the petitioners being given an opportunity to meet the same.

3. In the context of the aforesaid submissions, we have perused the show-cause notice. In the said show cause notice, a reference has been made to the in-camera statements. Insofar as, the judgments relied upon by the petitioners are concerned, the petitioners can very well rely upon the same before the Appellate Authority and it would be for the Appellate Authority to consider whether the judgments have any application having regard to the facts of the instant case. In our view, therefore by merely relying upon the judgments of this Court, which according to the Learned Counsel for the petitioners covers the case of the petitioners, would not entitle the petitioners to directly approach this Court when an alternative efficacious remedy by way of Appeal is available under the Statute. We have restrained ourselves from making any observations on merits, save and except, to the extent mentioned hereinabove, lest it affects the petitioners case before the Appellate Authority. We, therefore, do not deem it appropriate to exercise our writ jurisdiction and

by relegating the petitioners to the remedy by way of an Appeal, we dispose of the above writ petition. Needless to state that, if any Appeal is filed, the Appellate Authority may consider the same expeditiously in terms of the guidelines which have been laid down by this Court. If any application for interim relief is filed, the same may also be disposed of expeditiously.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)