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WP-3305-2017 (SR.6)

Monday, 25.9.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3305 OF 2017

Vishal Rajnikant Sirsat

....Petitioner

V/s.

The Deputy Commissioner of
Police, Nashik and Ors.

....Respondents

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Mr. Udaynath Tripathi a/w. Ms. Jayashree Tripathi,
Advocate for the petitioner.

Mr. V.B. Konde-Deshmukh, Additional Public Prosecutor
for the respondent, State.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

25TH SEPTEMBER, 2017.

-P.C. :-

1. The writ jurisdiction of this Court, is invoked
against the order dated 31st July, 2017 passed by the

Additional Commissioner, Nashik Division, Nashik by which order, the Appeal filed by the petitioner against the order dated 17th May, 2017 passed by the Externig Authority externig the petitioner for a period of 2 years from Nashik District came to be dismissed. The petitioner was issued a show cause notice dated 28th March, 2017 by the Deputy Commissioner of Police, Zone-I, Nashik city. The said show cause notice was issued under Section 56(1)(b) of the Maharashtra Police Act, 1971. It was alleged in the show cause notice that the petitioner alongwith his accomplice is involved in the activity of threatening people causing injury to the people by weapons, carrying out extortion, making communal utterances, unlawful assembly etc. It is further alleged that, on account of the said activities of the petitioner, there is an atmosphere of terror in the jurisdiction of the Sarkarwada Police Station, Nashik on account of of which the life and the property of the peace loving citizens is in danger. It is further alleged that, on account of the terror created by the petitioner, nobody is coming forward to

depose against the petitioner.

2. In the said show-cause notice, the case registered against the petitioner at the Sarkarwada Police Station have been adverted to. There are, as many as, three cases and the common thread running in the said cases are the offences punishable under Sections 323, 324, 307, 147, 148, 354 and 504 and 506 of the Indian Penal Code. The show-cause notice also adverts to the in-camera statements of the two witnesses and it is mentioned below the gist of the said statements that the said witnesses on account of the intimidation of the petitioner, have not approached to the police to register their complaints. The said show-cause notice was replied to on behalf of the petitioner. The Externig Authority i.e. the Deputy Commissioner of Police, Zone-I, Nashik City by his order dated 17th May, 2017 externed the petitioner from Nashik District for a period of 2 years. Whilst passing the said order, the Externig Authority reached a subjective satisfaction that the requisites of Section 56(1)

(b) of the said Act, was satisfied. The Externig Authority has referred to the material on record, which inter-alia, included the material mentioned in the show-cause notice. The Externig Authority has observed in his order that, on account of the activities of the petitioner, the possibility of the atmosphere of terror being created, cannot be ruled out. It is further observed that, with a view to maintain peace and law and order, it is necessary to extern the petitioner. The Externig Authority has concluded that, on account of the intimidation of the petitioner, no witnesses are coming forward to depose against the petitioner in view of the threats to the life and property of the said witness.

3. The order passed by the Externig Authority dated 17th May, 2017 was carried in Appeal by the petitioner by filing an Appeal under Section 60 of the said Act. The Appellate Authority i.e. the Divisional Commissioner, Nashik Division considered the material which had come on record, as also, the order passed by

the Externing Authority. On such consideration, the Appellate Authority endorsed the subjective satisfaction that was arrived at by the Externing Authority. However, the Appellate Authority partly allowed the Appeal by reducing the period of externment to one year by the impugned order dated 31st July, 2017. As indicated above, it is the said order dated 31st July, 2017 which is taken exception to by way of the above petition.

4. The Learned Counsel appearing for the petitioner, Mr. Tripathi would make the following submission, firstly, that the order passed by the Externing Authority is vitiated on the ground that, though the order is passed under Section 56(1)(b), the material relating to Section 56(1)(a) is taken into consideration.

5. The next submission of the Learned Counsel was that, the date when the statements of the in-camera witnesses was verified was not mentioned in the show-

cause notice to the petitioner. The Learned Counsel, in support of the said submission, sought to place reliance on the judgments of this Court. Per-contra, the Learned Additional Public Prosecutor, Mr. Konde-Deshmukh, would support to the impugned order. The Learned APP, would draw our attention to the fact that, the subjective satisfaction reached by the Externing Authority is in terms of Section 56(1)(b) of the said Act by taking into consideration the material which has come on record. The Learned Additional Public Prosecutor, therefore submits that, the writ jurisdiction of this Court need not be exercised. Having heard the Learned Counsel for the parties, we have considered the rival submissions. At this stage, it would be apposite to refer to Section 56(1)(a) and Section 56(1)(b).

“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 (XLV of 1860), or in 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.”

6. Insofar as, Section 56(1)(a) is concerned, the said provision can be applied when the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property.

7. Insofar as, Section 56(1)(b) is concerned, the said provision would apply when there are reasonable

grounds for believing that such person is engaged or about to be engaged in commission of offence involving force or violence or an offence punishable under Chapter-XII, XVI or XVII of the Indian Penal Code and when in the opinion of such Officers, witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards th safety of their person or property.

8. As indicated above, in the instant case, the show cause notice has been issued under Section 56(1) (b). The facts on the basis of which the said provision has been invoked, have been mentioned in the said show cause notice. As indicated above, it is mentioned in the said show cause notice that, on account of the said activities of the petitioner, no person is coming forward to depose against the petitioner in view of threat to life and property of such person. The said fact is clear from the penultimate para on page-4 of the order passed by the Externig Authority. Thereafter, in the concluding part

of the gist of the in-camera statements, it is mentioned that the said witnesses have also not complained to the police on account of the intimidation by the petitioner. As indicated above, the Externing Authority has also reached a subjective satisfaction that the pre-requisites of Section 56(1)(b) of the said Act, were satisfied. The Appellate Authority has confirmed the said order passed by the Externing Authority, except for reducing the period of externment. In our view, therefore though the allegations made against the petitioner give an impression that, they are attributable to Section 56(1)(a) of the said Act. Infact, it is on the basis of the said allegations that, in the show-cause notice and in the order it is mentioned that the said activities of the petitioner are coming in the way of the witnesses coming forward to depose against the petitioner. In our view, there may be cases where there is a very thin line separating the allegations which can be a foundation for an action under Section 56(1)(a) and the allegations for an action under Section 56(1)(b). However, as indicated above, the end

result of the allegations have to be the factum of the witnesses not coming forward to depose against the proposed externee. The said fact has been mentioned in the last but one paragraph on internal page-4 of the order passed by the Externig Authority. In our view, therefore the judgment of the Division Bench of this Court in **Writ Petition No. 3432 of 2011 dated 1st August, 2012 in the matter of Shri. Kemusingh Ranbirsingh Dudhani V/s. The Deputy Commissioner of Police, Zone-II, Pune & anr.** and the judgment reported in **2014 ALL MR (Cri) 719 in the matter of Atul Prabhakar Nade V/s. The Special Secretary (Home Department) & Ors.** would not aid the petitioner, having regard to the facts of the present case. We are also not impressed by the submission of the Learned Counsel for the petitioner, that prejudice has been caused to the petitioner on account of the fact that, the date when the in-camera statements were verified has not been mentioned in the show-cause notice issued to the petitioner, in our view no prejudice is caused to the Petitioner as the substance of the allegation

mentioned in the statements is a sufficient disclosure of the particulars of the incidents. In our view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)