

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3508 OF 2017

Hanmant Kallappa Sangshetti : Petitioner.
Versus
The Sub Divisional Police Officer
Sangli City, Sangli and anr. : Respondents.

Mr. U R Mankapure for the Petitioner.
Mr. K V Saste, Addl. PP for the Respondents/state.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 13th September 2017

ORAL JUDGMENT : (Per R M Savant, J)

1 Rule, considering the challenge raised made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the show cause notice dated 27/02/2017 issued to the Petitioner by the Sub Divisional Police Officer, City Division, Sangli. By the said show cause notice the Petitioner is asked to show cause as to why he should not be externed from four Districts namely Sangli, Satara, Kolhapur and Solapur for a period of two years. The said show cause notice is founded on the three FIRs registered with Vishrambaug Police Station, Sangli and the criminal cases arising therefrom. In so far as first case is concerned, the same is CR No.164/2013 registered with the Vishrambaug Police Station for the offences punishable under Sections 376,

323 and 506 of the Indian Penal Code and Sections 32(b) and 33(1) of the Money Lending Act. In so far as the second case is concerned, the same is CR No.165/2013 registered with the Vishrambaug Police Station for the offences punishable under Section 384 and 506 of the Indian Penal Code and Sections 32(b), 33(c) and 34 of the Money Lending Act. In so far as the said two cases are concerned, it is mentioned that the said cases are subjudice before the concerned Court. In so far as the third case is concerned, the same is CR No.38/2016 registered with the Vishrambaug Police Station for the offences punishable under Sections 354, 504 and 506 of the Indian Penal Code. In the said case the Petitioner has been convicted with one year rigorous imprisonment and fine of Rs.10,000/- as also two months rigorous imprisonment and fine of Rs.2000/- for the offences punishable under Sections 506 and 504 of the Indian Penal Code. In so far as the said case is concerned, the Petitioner has filed an Appeal against his conviction which Appeal is pending before the Sessions Court, Sangli and the Petitioner is on bail pending the Appeal. Relying on the aforesaid cases the externing authority has invoked Section 59(1) of the Maharashtra Police Act for externing the Petitioner.

3 At this stage, it is required to be noted that a show cause notice came to be issued to the Petitioner on 19/03/2014 on an earlier occasion. The said show cause notice was founded on the first two cases which have been adverted to herein above as also one non-cognizable offence which has been

shown in the said show cause notice and a chapter case bearing No.467/2013 initiated under Section 107 of the Criminal Procedure Code. The said show cause notice was issued under Section 56(1)(a) of the Mumbai Police Act. The said show cause notice after going through the gamut of the process was dropped by the external authority by order dated 24/04/2014. In the said order the external authority had reached the subjective satisfaction that the conduct of the Petitioner could not be said to be danger to the life and property of the residents of the area.

4 It is thereafter that the instant show cause notice came to be issued to the Petitioner and as indicated above the said show cause notice was founded on the first two cases which was the foundation of the earlier show cause notice dated 19/03/2014. It is required to be noted that in so far as first two cases are concerned, though the Petitioner has been acquitted in the year 2015-2016 and on 02/05/2016 respectively, in the impugned show cause notice it is stated that the said cases are subjudiced. As indicated above, it is the impugned show cause notice dated 27/02/2017 which is taken exception to by way of the above Writ Petition.

5 The learned counsel for the Petitioner Shri Mankapure would justify the challenge to the show cause notice by way of the above Writ Petition having regard to the background facts as above. It was the submission of the

learned counsel for the Petitioner that the instant show cause notice suffers from non-application of mind inasmuch as the show cause notice proceeds on the basis that the first two cases are subjudice whereas in fact the Petitioner has already been acquitted from the said cases in the year 2015 and 2016 respectively. The learned counsel for the Petitioner would further buttress the said submission by contending that the instant show cause notice has been issued mechanically without having regard to the fact that in the earlier proceedings, a finding has been recorded that the activities or conduct of the Petitioner are not danger to the life and property of the residents. The learned counsel would therefore submit that the instant case is a case where this Court would exercise its jurisdiction under Article 226 of the Constitution of India to interdict with the show cause notice.

6 Per contra, the learned Additional Public Prosecutor Shri Saste would support the show cause notice and would question the maintainability of the Petition on the ground that after the proceedings are concluded before the external authority, the Petitioner has a remedy by way of an Appeal. The learned Additional Public Prosecutor would seek to rely upon a judgment of the Apex Court reported in (2004) 3 SCC 440 in the matter of Special Director and another v/s Mohd. Ghulam Ghouse and another.

7 We have heard the learned counsel for the parties and we have

considered the rival contentions. The question that arises for consideration is whether the interdiction of this Court in its writ jurisdiction is warranted in the matter of issuance of the show cause notice. It is well settled by the judgments of the Apex Court that the proceedings at the show cause notice stage need not be interfered with and such a challenge is to be dealt with a degree of circumspection. However, the Apex Court though after exercising the said caution has held that the proceedings can be interfered with at the show cause notice stage if the High Court is satisfied that the show cause notice was totally untenable and nonest in the eyes of law for absolute want of jurisdiction of the authority to even investigate into the facts.

8 Having regard to the said test laid down by the Apex Court that the facts in the instant case would have to be revisited. As indicated above, the earlier show cause notice dated 19/03/2014 culminated in the order dated 24/04/2014 passed by the external authority whereby the said show cause notice was dropped. As indicated above, the said show cause notice was founded on the same two cases on which the instant show cause notice is founded. The external authority in the earlier round has dropped the show cause notice on the ground that the activities or conduct of the Petitioner were not such as to cause danger to the life and property of the legal residents.

9 The instant show cause notice has therefore been issued by the

externing authority oblivious of the said finding recorded in the earlier round. Hence we find merit in the contention of the learned counsel for the Petitioner that the instant show cause notice suffers from non-application of mind. It is also required to be noted that the instant show cause notice proceeds on the premise that the said first two cases are subjudice before the concerned Court when the Petitioner was long back acquitted in the year 2015-2016. Hence the very foundation on which the instant show cause notice based is shaky.

10 Hence what remains is the third case in which case the Petitioner has been convicted and against which conviction the Petitioner has filed an Appeal and he is presently released on bail pending the Appeal. Be it noted that the said case is between the Petitioner and his neighbour. We do not deem it appropriate to further delve into the factual aspects of the said case lest it affects the parties in the Appeal. It is also required to be noted that the FIRs have been lodged against the Petitioner at only one police station i.e. the Vishrambaug Police Station, Sangli whereas the Petitioner is sought to be externed from 3 districts other than Sangli. Hence the aforesaid facts further compound the matter in respect of the non-application of mind. In our view, therefore, the instant case is a case where the writ jurisdiction of this Court is required to be exercised having regard to the conspectus of fact as above the instant show cause notice is untenable and can be said to be nonest and has been issued when there is hardly a case for externing the Petitioner under

Section 59(1) of the Maharashtra Police Act. Hence the instant case is a case which can be said to be an exception to the exercise of powers to interdict with a show cause notice.

11 In that view of the matter the above Writ Petition would have to be allowed and is accordingly allowed in terms of prayer clause (a). Rule is accordingly made absolute to the aforesaid terms. The above Writ Petition is accordingly disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]