

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

CRIMINAL WRIT PETITION NO.3652 OF 2017

Mr. Sanjay Vitthal Lahane @ Sanjya
Versus

..Petitioner

Senior Inspector of Police
Sewree Police Station, Sewree,
Mumbai and others

..Respondents

Mr. J. H. Sawant i/by Mr. P. G. Parkar for the Petitioner.

Mrs. M. H. Mhatre, APP for the Respondent - State.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.
DATE : 21st SEPTEMBER, 2017**

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 17.07.2017 passed by the Divisional Commissioner, Konkan Division, by which order, the Appeal filed by the Petitioner came to be dismissed and resultantly, the order passed by the Extending Authority dated 15.02.2017 extending the Petitioner for a period of one year from the Mumbai city and Mumbai Suburban District came to be confirmed.

2 The Petitioner herein was issued a show-cause notice on 20.09.2016 under Section 56(1)(a)(b) of the Maharashtra Police Act, 1951 (for short "the said Act") calling upon him to show-cause as to why

he should not be externed from the Mumbai city and Mumbai Suburban District for the period mentioned in the said show-cause notice. The said show-cause notice is founded on the cases which are pending against the Petitioner in different Courts and for the offences mentioned in the charge-sheet filed therein. A perusal of the said table of the cases would indicate that most of the offences are relating to human body which include offences under Sections 323, 324, 379, 461, 427 and 307 of the Indian Penal Code, 1860 (for short "IPC"). The show-cause notice is also founded on the chapter cases which were adopted against the Petitioner in the past. It is alleged against the Petitioner that on account of his activities in the Sewree area, an atmosphere of terror is prevailing amongst the small businessmen, peacefully living people and hawkers who are hawking in person or on a cart. In the show-cause notice, the in-camera statements of two witnesses in the area of operation of the Petitioner's activities have also been mentioned. As indicated above, the show-cause notice calls upon the Petitioner to show-cause as to why he should not be externed from the two districts i.e. Mumbai city and Mumbai Suburban District.

3 The said show-cause notice was replied to on behalf of the Petitioner. The Petitioner also sought to lead evidence of two witnesses in support of his case. The Petitioner was also represented by advocate Ajay

Tripathi before the Externing Authority. The Externing Authority having regard to the material on record arrived at a subjective satisfaction that the requisites of Section 56(1)(a) and (b) of the said Act have been satisfied in the instant case and accordingly by order dated 15.02.2017 confirmed the said show-cause notice and thereby externed the Petitioner for a period of one year from Mumbai city and Mumbai Suburban District.

4 The Petitioner aggrieved by the said order dated 15.02.2017 challenged the same by way of an Appeal under Section 60 of the said Act before the State Government i.e. Divisional Commissioner, Konkan Division. The Divisional Commissioner having regard to the material on record and having regard to the consideration and the subjective satisfaction reached by the Externing Authority did not find any reason to interfere with the order passed by the Externing Authority dated 15.02.2017 and accordingly dismissed the Appeal. The Divisional Commissioner in paragraph 5.3 has adverted to the contentions which were raised on behalf of the Petitioner by his advocate before the Externing Authority as also the evidence which was sought to be led by the Petitioner in support of his case. The Appellate Authority accordingly observed that the Externing Authority has considered all the relevant material and has thereafter passed the impugned order. The Appellate

Authority i.e. the Divisional Commissioner accordingly dismissed the Appeal by the impugned order dated 17.07.2017. As indicated above, it is the said order dated 17.07.2017 which is taken exception to by way of the above Petition.

5 It was the submission of the Learned Counsel for the Petitioner, Mr. J. H. Sawant that there is a time lag between recording the in-camera statement and the incidents which have taken place on which reliance is sought to be placed by the Externig Authority. The Learned Counsel would contend that though the Petitioner has led evidence in support of his case of the two witnesses, the said material has not been considered by the Externig Authority.

6 In our view, it is not possible to accept the said contentions of the Learned Counsel. The in-camera statements in a way reflect the activities which are alleged against the Petitioner, namely of creating an atmosphere of terror in the area in question. In so far as the second contention is concerned, it is required to be noted that the Externig Authority on internal page 6 of the order in the penultimate and the last paragraph has adverted to the submissions of the learned advocate Mr. Ajay Tripathi who had appeared for the Petitioner as also the evidence which was sought to be led on behalf of the Petitioner. The observations

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of the Externig Authority that the Petitioner had not produced any witness in support of his defence or documents is therefore a observation which is not in sync with the observations made in the earlier part of the order of the Externig Authority and can therefore be said to be a observation made inadvertently by the Externig Authority whilst passing the impugned order. In our view, therefore, there is no illegality or infirmity in the orders passed by the Externig Authority as well as the Appellate Authority for this Court to interfere in its writ jurisdiction. The Writ Petition is accordingly dismissed.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]