

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4338 OF 2016

Kalimulla Abdul Mohid Idris	...	Petitioner
Vs.		
The Deputy Commissioner of Police, Zone-IV, Mumbai & Ors.	...	Respondents

Mr. U.N. Tripathi for the Petitioner.

Mr. J.P. Yagnik, A.P.P., for the Respondent-State.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 2ND FEBRUARY 2017.

P.C. :

1. Heard Mr. Tripathi, learned counsel for the Petitioner, and Mr. Yagnik, learned A.P.P., for the Respondent-State.

2. This Petition is filed challenging the orders dated 23rd April 2016 and 23rd November 2016 passed by the Deputy Commissioner of Police, Zone-IV, Mumbai and the Divisional Commissioner, Konkan Division, Mumbai, under Sections 56(1)(a) and 60, respectively, of the Maharashtra Police Act, 1951. By the said orders, Petitioner is externed for a period of two years from the jurisdiction of Mumbai Police Commissioner.

3. Mr. Tripathi, learned counsel for the Petitioner, submits that, in order to extern a person under Section 56(1)(a) of the Maharashtra

Police Act, 1951, the Externment Authority must be satisfied that, *'the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property'*. Further satisfaction is also required on the part of the Externment Authority that, *'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'*.

4. Mr. Tripathi also states that notice of such subjective satisfaction must also necessarily be given to the 'Proposed Externee' under Section 59 of the Maharashtra Police Act, 1951. He submits that, in the present case, though the Petitioner was served with a notice under Section 59 of the Maharashtra Police Act, 1951, the notice does not record subjective satisfaction.

5. We have perused the notice, issued under Section 59(1)(a) of the Maharashtra Police Act, 1951, given to the Petitioner. Upon perusal of the said notice, it is clear that the Petitioner was not given notice of subjective satisfaction by the Externment Authority stating that, 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. Mr. Yagnik, learned A.P.P., also concedes to this position.

7. By now it is settled position of law that notice of such subjective satisfaction is required to be given to the Proposed Externee, under Section 59 of the Maharashtra Police Act, 1951. A reference can be

made to the decision of the Division Bench of this Court in the case of *Yashwant Damodar Patil Vs. Hemant Karkare*, 1989 Mh.L.J. 1111.

8. In the above circumstances, the impugned orders, being vitiated, cannot be sustained and the same are, accordingly, quashed and set aside.

9. The Petition is allowed in terms of prayer clauses (b) and (c).

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]