

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

CRIMINAL WRIT PETITION NO.4496 OF 2016

Samin Azim Khan : **Petitioner.**
Versus
The State of Maharashtra and ors. : **Respondents.**

Mr. Moin Khan for the Petitioner.
Mr. J P Yagnik, APP, for the Respondents/State.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 14th AUGUST 2017

P.C.

1 The order dated 25/11/2016 passed by the Appellate Authority i.e. the Divisional Commissioner, Konkan Division dismissing the Appeal filed by the Petitioner against the order dated 21/07/2016 passed by the Externing Authority is taken exception to by way of the above Criminal Writ Petition.

2 The Petitioner is the wife of one Azmi Usman Khan @ Amir Usman Khusro whose activities are centered around Varsha Nagar, Adarsh Nagar, Jagruti Nagar, Kurla (East), Mumbai – 400 071. A show cause notice came to be issued to the said Amir Khusro under Section 56(1)(a)(b) of the Maharashtra Police Act to show cause as to why he should not be externed from three Districts i.e. Mumbai City, Mumbai Suburban District and Thane. In

the said show cause notice two tables were reproduced. The first table is in respect of the offences registered against the said Amir Khusro and the cases arising therefrom, the dates when the FIRs were registered and the outcome of the criminal cases. The second table comprises of the statutory proceedings under the Criminal Procedure Code adopted against the said Amir Khusro and the result of such proceedings. The said show cause notice also refers to the in-camera statements of two witnesses amongst whom one is a vendor of bananas and the second is a rickshaw driver. The said statements according to the Externig Authority show the terror of the said Amir Khusro in the area in question which is on account of intimidation and his accomplices rendered to the people doing the small business. The said show cause notice concludes by stating that the said Amir Khusro to show cause as to why on account of the said activities he should not be externed from the aforesaid three Districts.

3 The said show cause notice was replied to on behalf of the Petitioner as the wife of the said Amir Khusro by reply which is undated, however, it is annexed to the above Criminal Writ Petition at Exhibit-E. It seems that prior to the hearing pursuant to the said show cause notice, the Petitioner had sought for the station diary entries in respect of the said two in-camera statements recorded by the police. The said statements came to be furnished to the Petitioner but wrongly instead of Station Diary Entry No.57, the Station Diary Entry No.58 was furnished, which however has been rectified

later, but before the hearing. The stand taken in the reply was that the chapter proceedings which were adopted against the said Amir Khusro under Section 110 of the Criminal Procedure Code were dropped and therefore for the same offence that is registered with the Nehru Nagar Police Station, Kurla the externment proceedings could not have been started against the said Amir Khusro.

4 Before the Externment Authority i.e. the Deputy Commissioner of Police, Zone-6, Chembur, Mumbai the Petitioner sought to rely upon the statements of about 27 witnesses. However, the Externment Authority found that the said request of the Petitioner was only to delay the proceedings and therefore permitted the statements of only 8 witnesses to be recorded. The Externment Authority adverted to the material on record and especially the fact of the FIR being registered against the said Amir Khusro being No.233/2015 under Section 354, 324, 504 and 34 of the Indian Penal Code as also the in-camera statements of the two witnesses. The Externment Authority also observed that the said Amir Khusro by his acts was terrorizing the local residents, shop-keepers, workers and rickshaw drivers. The Externment Authority also observed that the said Amir Khusro was involved in diverse offences under the Indian Penal Code including one under Section 354 of the Indian Penal Code. The Externment Authority accordingly came to the conclusion that the said show cause notice dated 19/03/2016 was required to

be confirmed and has accordingly confirmed the same by his order dated 21/07/2016. The said order passed by the Externig Authority records the fact that the Externig Authority has given due consideration to the relevant material which has come on record and thereafter has reached the subjective satisfaction.

5 The Petitioner aggrieved by the said order dated 21/07/2016 carried the matter in Appeal before the Appellate Authority i.e. the Divisional Commissioner, Konkan Division, Mumbai under Section 60 of the said Act. The Appellate Authority by the impugned order dated 25/11/2016 has dismissed the said Appeal. The Appellate Authority as can be seen from the impugned order has reiterated the findings recorded by the Externig Authority in so far as the terror of the said Amir Khusro in the area in question is concerned. The Appellate Authority has also referred to the fact that the said Amir Khusro has been involved in diverse offences under the Indian Penal Code. The Appellate Authority did not find it appropriate to interfere with the order dated 21/07/2016 passed by the Externig Authority.

6 The learned counsel appearing on behalf of the Petitioner Shri Moin Khan would seek to reiterate the case of the Petitioner as was urged before the Externig Authority as well as the Appellate Authority. It was the submission of the learned counsel for the Petitioner that once the chapter

proceedings were dropped which were on the basis of the same criminal case and which is pending against the said Amir Khusro, the proceedings for externment could not have been initiated. The learned counsel for the Petitioner would also contend that the Petitioner was not given proper opportunity in the matter of relying upon the statements of 27 witnesses and therefore to the said extent the proceedings are vitiated.

7 Per contra, the learned Assistant Public Prosecutor Shri J P Yagnik would submit that the show cause notice though based on the FIR registered at the Nehru Nagar Police Station, Kurla, is also based on two in-camera statements of the witnesses. The learned APP would contend that adequate opportunity both before the Externment Authority as well as the Appellate Authority has been given to the Petitioner and therefore the order passed by the Appellate Authority need not be interfered with by this Court in its writ jurisdiction.

8 Having heard the learned counsel for the parties, in our view, there is no merit in the above Criminal Writ Petition. It is required to be noted that the said show cause notice is based on the material which has been referred to in the said notice. The said material was inter-alia the FIR registered against the said Amir Khusro by the Nehru Nagar Police Station, Kurla as also the in-camera statements of two witnesses. The Appellate Authority has reached a subjective satisfaction that on account of the offences

which have been registered which are referable to Chapters XVI and XVII of the Indian Penal Code, the provisions of Section 56(1)(a)(b) of the said Act can be said to be satisfied.

9 In so far as the contention of the learned counsel for the Petitioner that the Petitioner has not been given proper opportunity is concerned, in our view, the Externing Authority as well as the Appellate Authority have rightly come to the conclusion that the endeavour of the Petitioner to rely upon the statements of 27 witnesses was a stratagem which was sought to be adopted by the Petitioner to delay the proceedings. The Externing Authority has therefore rightly allowed the statements of 8 witnesses in support of the offence against the said Amir Khusro.

10 In so far as the issue of the Petitioner being vexed twice i.e. one under the Criminal Procedure Code i.e. under Section 110 proceedings and secondly in the present proceedings under the Maharashtra Police Act is concerned, in our view, the contention of the learned counsel for the Petitioner does not merit any acceptance as the ambit of the said two proceedings are different and they are under two different provisions of two different statutes.

11 Having perused the orders passed by the Externing Authority as well as the Appellate Authority, we are satisfied that the said orders do not

suffer from any infirmity or illegality for this Court to interfere in its writ jurisdiction. The above Criminal Writ Petition is accordingly dismissed.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]