

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 731/2017

(MAKSUD KHAN MANJOOR KHAN VERSUS THE SUB-DIVISIONAL MAGISTRATE, BHANDARA &
 ANOTHER)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Ms M.M. Ghatode, counsel for the petitioner.
 Shri A.M. Joshi, A.P.P. for the respondents.

CORAM : SMT. VASANTI A NAIK AND
M.G. GIRATKAR, JJ.

DATE : SEPTEMBER 07, 2017.

By this criminal writ petition, the petitioner challenges the order of the Sub-Divisional Magistrate, Bhandara, dated 02.08.2017 externing the petitioner from Bhandara district for one year.

Ms Ghatode, the learned counsel for the petitioner, submitted that only one offence is presently pending against the petitioner and the order of externment could not have been passed on the basis of the pendency of the said offence. It is submitted that the petitioner has been acquitted of the offences punishable under Sections 498-A, 323, 506 of the Penal Code that was registered against him in the year 2006 and also for the offences punishable under Sections 354 and 323 of the Penal Code that were registered against him in the year 2014. It is submitted that merely because the in-camera statements of some witnesses are recorded and they have stated that the petitioner has threatened them and there is a danger to their life and property, if they depose against him, the order of externment could not have been passed.

Shri Joshi, the learned Additional Public Prosecutor appearing for the respondents, submitted that as many as eight offences were registered against the petitioner and though the petitioner is acquitted by the trial Court in most of the crimes, it could be seen from the judgments of the trial Court that the petitioner was acquitted as some of the witnesses turned hostile and some witnesses were scared to testify against the petitioner. It is stated that the observations in the judgment of the trial Court were noted by the Sub-Divisional Magistrate before passing the impugned order. It is submitted that a finding is recorded by the Sub-Divisional Magistrate that he has a reason to believe that the petitioner would engage himself in the commission of offences involving force or violence, as are mentioned in Clause-b of Section 56(1) of the Maharashtra Police Act. It is stated that in the circumstances of the case, the impugned order may not be interfered with.

On a reading of the provisions of Section 56 of the Maharashtra Police Act and the impugned order, it appears that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. Serious offences were registered against the petitioner from the year 2006 till the year 2016. Though the petitioner is acquitted in the trials for the offences under Sections 498-A, 323, 506; Sections 341, 323, 504, 506; and Sections 354 and 323 of the Penal Code, the acquittal was in view of the fact that the eye witnesses had turned hostile or were scared to depose against the petitioner. The judgments in the case of the petitioner were considered by the Sub-Divisional Magistrate and the Sub-Divisional Magistrate also recorded the in-camera

statements of the witnesses, at least four of them, including women, who had stated that the petitioner has terrorized them and that he was involved in outraging the modesty of women and assaulting them. After perusing the material on record, the Sub-Divisional Magistrate has recorded that there was a reason to believe that the petitioner would be engaged in the commission of offences involving force or violence and the witnesses were not willing to come forward to tender evidence in public against the petitioner on the apprehension that there would be danger to their life or property. Though only one crime is pending against the petitioner at this stage, a perusal of the in-camera statements of the witnesses and the observations made by the trial Court in the judgments acquitting the petitioner, would show that witnesses are not willing to come forward to give evidence against the petitioner on the apprehension that their life or property would be in danger.

Since the order of the Sub-Divisional Magistrate appears to be just and proper, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

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