

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 0239 of 2018

District : Jalna

Kamalkishor s/o. Pusaram Bang,
Age : 57 years,
Occupation : Business,
R/o. Kalikurti Road, Jalna,
Taluka & Dist. Jalna.

.. Petitioner.

versus

1. The Superintendent of Police,
Jalna, Taluka & Dist. Jalna.
2. The State of Maharashtra,
Through Police Inspector,
Local Crime Branch, Jalna,
Taluka & Dist. Jalna.
3. Sub-Divisional Police Officer,
Jalna, Taluka & Dist. Jalna. .. Respondents.

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Mr. R.R. Chandak, Advocate, for the petitioner.

*Mr. S.W. Munde, Addl. Public Prosecutor, for
respondent nos.01 to 03.*

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**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 12TH APRIL 2018

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :

Heard learned Advocate for the petitioner
and the learned Addl. Public Prosecutor for the
respondents.

02. Rule. Rule made returnable forthwith. By consent, heard finally.

03. By this writ petition, the petitioner is challenging the legality and validity of the order dated 27.10.2017, passed by Superintendent of Police, Jalna i.e. respondent no.01 and the order dated 09.02.2018, passed by Divisional Commissioner, Aurangabad, confirming the order of the respondent no.01, externing the petitioner under Section 55 of the Maharashtra Police Act, 1951 [**hereinafter referred to as "the said Act"**], for a period of one year from entire Jalna District.

04. The petitioner has contended that the orders those have been passed against him, externing him from the entire Jalna District, suffer from serious illegalities and arbitrariness. He submits that he is in the business of general stores, by name, Suman General Stores. It has been renamed as Suman Saree Centre and Saraswati Collection. He received show cause notice under Section 59 of the Maharashtra Police Act, thereby seeking explanation from him and other 24 persons on 05.08.2017. It was alleged in the said notice, that the present petitioner and other members of his gang are engaged in illegal activities under the Maharashtra Prevention of Gambling Act, 1887 and, therefore, why they should not be externed. The petitioner gave reply to the said notice on 22.08.2017 denying all the contents in

the said notice. A proposal for externment was initiated by the police authorities on the imaginary ground. The petitioner does not represent any gang nor he is involved in illegal activity in Jalna city. A fresh notice was issued under Section 59 of the Maharashtra Police Act on 27.08.2017 to the petitioner only and he was directed to file reply within a period of five days. The notice was received on 05.09.2017 and he has replied the same on 09.09.2017. He reiterated the facts which he had already contended in his notice reply dated 27.08.2017. The petitioner was not supplied with the report submitted by respondent no.03 nor the statements of confidential witnesses were recorded. A reasonable hearing was not, therefore, afforded to the petitioner. However, the respondent no.01 passed the impugned order dated 27.10.2017 externing him from entire Jalna District for a period of one year.

05. The order dated 27.10.2017 was challenged by the petitioner before the Divisional Commissioner, Aurangabad. Initially stay was granted by the learned Commissioner. Thereafter, hearing took place. Without considering the material on record and without following the principles laid down by this Court in the catena of judgments, the Divisional Commissioner by order dated 09.02.2018, dismissed the appeal and confirmed the impugned order passed by respondent no.01.

06. It is the contention of the petitioner, that

sufficient record of satisfaction as contemplated under Section 55 of the Maharashtra Police Act is not reflected in both the orders. In fact, though show cause notice was issued to many persons, at the time of final order, the action of externment is taken against few persons only. Such kind of pick and choose method cannot be adopted under Section 55 of the said Act. At the time of passing the order, the petitioner was acquitted from some of the offences and the said fact has not been considered by both the authorities. He, therefore, submitted that the orders passed by the authorities are illegal and, therefore, liable to be quashed.

07. Affidavit on behalf of respondent nos.01 to 03 has been filed. It has been submitted that the petitioner is engaged in illegal activities, such as, running Bombay/Kalyan Matka in Jalna city and nearby area. The social environment is polluted due to such gambling acts. The public at large is affected having ill impact on young generation, labours, agriculturists, etc. because they have fascinated in playing the gambling. During the period of 2015 to June 2017, in all 47 gambling crime cases have been registered against the present petitioner. In some of the offences, charge-sheets have been produced before the court of law and some are yet under investigation. The petitioner is repeating the crime and, therefore, the Local Crime Branch had prepared a proposal for externing the petitioner from Jalna District. Even after giving notice, the petitioner

did not stop. Even after giving notice to the petitioner, 21 gambling cases were registered against him. Thus, at present, 72 crime cases against the present petitioner are pending which are under the Maharashtra Prevention of Gambling Act. The orders passed by the authorities are perfectly legal.

08. It has been submitted on behalf of the petitioner, that the show cause notice was in fact issued against 24 persons. However, final order that has been passed by respondent no.01 is only against five persons. The impugned order of respondent no.01 does not give any reason as to why the action initiated against other persons has been dropped. He placed reliance on the decision in the matter of *Ahammad Mainuddin Shaikh Vs. The State of Maharashtra & another* [2013(4) Bom.C.R.(Cri.) 559]. The Division Bench of this Court has observed that *upon careful reading of Section 55, it becomes clear that, whenever it appears to the competent authority that the movement or encampment of any gang or body of persons in the area under his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body of persons or by its members, such officer may by notification addressed to the leaders or chief men of such gang or body of persons and suitably published, issue two types of directions. The first direction is about regulating of conduct of such gang or body of persons in a manner prescribed in the direction in order to prevent violence and alarm. Such direction, in the alternative, can also be in the form of an order for dispersal of*

members of such gang or body of persons. The second direction which follows the first one, is about removal of each of the members of the gang or body of persons outside the area within the local limits of jurisdiction of the competent authority. It has been further observed thus :-

"9. It may not be out of place to mention here that, in the case of Suraj Ramsing Bire & thers Vs. State of Maharashtra & others, Writ Petition No. 3572 of 2010 with Writ Petition No. 3573 of 2010, decided on 7th January, 2011, learned Single Judge of this Court has taken a view that for invoking the provisions of section 55 of Bombay Police Act, it has to be shown that persons are acting as gang or body of persons. This view commends to us."

Same decision was relied by this Court further in the matter of *Vijay Lalso Jadhav Vs. State of Maharashtra* [Mh.L.J. (Cri.) 2014(1) 457 = ALL MR (Cri.) 2014 (0) 1277].

09. It has been further submitted by the learned Advocate appearing for the petitioner, that if we peruse the list of cases which have been shown to be pending against the present petitioner, they all are in respect of offence under Section 12(a) of the Maharashtra Prevention of Gambling Act. The externment order cannot be only on the basis of offences under the Maharashtra Prevention of Gambling Act. He relied on the decision of this Court in the matter of *Nitin @ Babloo s/o. Bhagwant Gade Vs. Deputy*

Commissioner of Police, Amravati & others [2016(4) Mh.L.J. (Cri.) 156]. Learned Advocate for the petitioner also submitted, that both the orders show that in-camera statements were recorded but the show cause notice had not mentioned about the same. For this purpose, he relied on the decision of this Court in the matter of *Nitin @ Babloo s/o. Bhagwant Gade (supra)*.

10. Learned Advocate for the petitioner further relied on decision of this Court at Nagpur Bench, in the matter of *Sagarsingh Kesharsingh Bawari Vs. Ministry of Home Department, through its Principal Secretary (Special), Mantralaya, Mumbai, and 02 others*, in Criminal Writ Petition No. 0355 of 2013. In the said case, perusal of the impugned orders showed that except one prosecution, all other prosecutions were under the provisions of the Bombay Prohibition Act and Maharashtra Prevention of Gambling Act, 1887 and, therefore, it was observed that *the consideration of the prosecutions under the Bombay Prevention Act and Maharashtra Prevention of Gambling Act, 1887 by the authority vitiates the impugned order; inasmuch as it is the settled law that for the purposes of passing the externment order, these prosecutions cannot be taken into consideration*.

11. Learned Advocate for the petitioner further submitted that the co-accused / co-externee, namely, Suresh s/o. Babulal Agrawal had filed an appeal before the same Divisional Commissioner. The Divisional Commissioner has allowed the appeal partially on the basis that the externment order

cannot be passed only on the basis of offences registered under the Maharashtra Prevention of Gambling Act.

12. Learned Addl. Public Prosecutor for the respondents submitted that a hearing was given to the present petitioner after the show cause notice was issued and the procedure that has been adopted is perfectly legal. The petitioner was running a gang and all of them were indulging in gambling activities. Though initially the proposal was against 24 persons, some of them had improved their behaviour and, therefore, further proceedings has not been taken up against them. That cannot be the ground for setting aside the impugned orders. The entire behaviour of the petitioner indulging in gambling activities is a threat to the society and, therefore, the said action was taken against him.

13. We find much substance in the arguments advanced on behalf of the petitioner. It can be seen from the record, that initially show cause notice was issued on 05.08.2017 against the petitioner and in all 24 persons. However, thereafter again, a fresh show cause notice came to be issued on 27.08.2017, though the petitioner had given reply to the earlier show cause notice on 22.08.2017. The petitioner has also replied to the second show cause notice on 09.09.2017. Perusal of the show cause notice does not show that statements of in-camera witnesses were recorded. However, in the appeal, it has been

specifically stated on behalf of Superintendent of Police, that because of the fear of the petitioner, the witnesses are not coming forward to give statement. The observations in the matter of *Nitin @ Babloo s/o. Bhagwant Gade (supra)* are definitely applicable to the present case. If there is no reference made to the in-camera statements of witnesses and only vague statement is made that the witnesses were not willing to come forward to depose against the petitioner, in the order, such order cannot be said to be legal one. A fair opportunity ought to have been given to the petitioner to put forth his say in respect of in-camera statements of the witnesses. Reliance of such statement only at the time of order is unjustified.

14. As regards dropping of the externment proceedings against other persons and only passing final order against five persons is also illegal and arbitrary. The order passed by respondent no.01 does not specifically state as to why action was dropped against other persons and in what way they had shown improvement in their behaviour. Therefore, the ratio laid down in the matter of *Ahammad Mainuddin Shaikh (supra)* would be applicable here.

15. The most important point is that, if we peruse the offences, those are against the present petitioner, they are only under Section 12(a) of the Maharashtra Prevention of Gambling Act. In the matter of *Sagarsingh Kesharsingh Bawari (supra)*, this Court

has taken a view that the prosecutions under the Bombay Prohibition Act and Maharashtra Prevention of Gambling Act cannot be the basis for passing externment order. Based upon the said decision, in fact, appeal of the co-accused has been allowed by the Divisional Commissioner. He cannot take different views in respect of similarly situated appellants. Under such circumstance, the order that has been passed by respondent no.01 and the order of the appellate authority confirming the order of respondent no.01 suffer from illegality, hence liable to be quashed and set aside.

16. In the result, the criminal writ petition is allowed.

The impugned order dated 27.10.2017, passed by respondent no.01 i.e. Superintendent of Police, Jalna, in file no. Outward/S.P./LCB/Externment/2017-5033 and order dated 09.02.2018, passed by the Divisional Commissioner, Aurangabad, are hereby quashed and set aside.

17. Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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