

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

CRIMINAL WRIT PETITION NO.969 OF 2018

Kakasaheb s/o. Damodhar Kakde,
Age 37 Years, Occu. Business,
R/o. Ashoknagar, Masnathpur,
MIDC, Chikalthana, Aurangabad .. **PETITIONER**

VERSUS

- 1] The State of Maharashtra,
Through Secretary
Home Department
Mantralaya, Mumbai-32.
- 2] The Divisional Commissioner
Aurangabad Division,
Aurangabad.
- 3] The Deputy Commissioner,
Region-2, Aurangabad.
- 4] The Police Inspector,
MIDC, Chikalthana,
Aurangabad. .. **RESPONDENTS**

...

Mr.C.V.Thombre, Advocate for the petitioner
Mrs.M.A.Deshpande, APP for the respondent/State

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**CORAM: S.S. SHINDE AND
V.K.JADHAV, JJ.**

DATE : 08.08.2018

ORAL JUDGMENT: [Per S.S.Shinde,J.]

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent of
the parties.

2] This Writ Petition under Article 226 and
227 of the Constitution of India takes exception
to the impugned order dated 24th February, 2018,
passed by the Deputy Commissioner-2, Aurangabad,
and the order passed by the Divisional
Commissioner, Aurangabad on 12th July, 2018,
thereby confirming the order passed by respondent
no.3.

3] It is the case of the petitioner that, he
received show cause notice under Section 56 [1]
[a] [b] of the Maharashtra Police Act, 1951 [for
short 'the Act of 1951'] on 13th December, 2017,
stating therein that, as to why the petitioner
should not be externed from the boundaries of
Aurangabad City and Aurangabad District. The

petitioner filed reply to the said notice. Thereafter, the Deputy Commissioner of Police also issued notice in the month of January, 2018. The said notice was also replied by the petitioner. It is further the case of the petitioner that, in his reply to the show cause, he specifically mentioned that, he has been acquitted from all the offences, which have been mentioned in the show cause notice. It is the case of the petitioner that, though Crime No.190/2016 under Sections 353, 504 r/w.34 of the IPC is registered on 3rd June, 2016, same has not been mentioned in the show cause notice. However, said crime has been mentioned in the impugned order, and relying upon said crime and other material impugned order is passed by respondent no.3 on 24th February, 2018. It is also the case of the petitioner that, during the course of hearing of the said proceedings, it was brought to the notice of respondent no.3 that the petitioner has been acquitted from all the crimes, which are mentioned in the show cause notice.

However, respondent no.3 did place reliance upon those crimes and also mentioned the same in the impugned order that, those crimes are pending. Therefore, according to the petitioner, the order of an externment, and the entire proceedings initiated by the respondents for an externment of the petitioner stands vitiated, and therefore, the Petition deserves to be allowed.

4] It is the case of the respondents that, perusal of the judgments passed by the concerned Court, acquitting the petitioner reveals that, the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property. It is also the case of the respondents that, during the course of enquiry of the said proceedings, in-camera statements of the witnesses were recorded, and those statements unequivocally indicate that, the petitioner has been indulged in the alleged

activities, which would cause prejudice to the maintenance of public order, and the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property.

5] Learned APP appearing for the respondent-State has brought to our notice the statements of the witnesses recorded in-camera and relying upon the original record submits that, the reasons assigned in the impugned orders by both the authorities are keeping in view the material collected during the course of enquiry.

6] We have considered the submissions made across the Bar, and also the pleadings in the Petition, grounds taken therein, annexures thereto, and the original record in relation to the externment proceedings of the petitioner. Upon careful perusal of the contents of the show cause notice issued to the petitioner, there is no

mention about registration of Crime No.190/2016 against the petitioner. However, in the impugned order passed by respondent no.3, the said crime has been mentioned. Since there was no mention of Crime No.190/2016 in the show cause notice, the petitioner had no opportunity to putforth his contention so far as the said crime is concerned.

7] Upon careful perusal of the reply filed by the petitioner to the show cause notice issued by the concerned Authority, and also the copies of the judgments passed by the concerned Court, acquitting the petitioner from the said crimes, which have been mentioned in the show cause notice, it is abundantly clear that, before passing the impugned order on 24th February, 2018 by respondent no.3, in first three cases i.e. Crime Nos.338/2010, 238/2011 and 53/2013 the petitioner was acquitted, and in fourth case i.e. Crime No.247/2014 "B" summary report has been filed. However, upon perusal of the reasons /

findings recorded by respondent no.3 in the impugned order, those offences have been shown pending, and respondent no.3 proceeded to pass the order of an externment. It is true that, the statements of two witnesses recorded in camera, however, the order passed by respondent no.3 stands vitiated for the reasons that, though in the show cause notice, there was no mention of crime No.190/2016, respondent no.3 and also the Appellate Authority placed reliance upon the said crime while passing the impugned orders. Secondly, though the petitioner was acquitted from three cases mentioned in the show cause notice and in fourth case "B" summary report was filed, nevertheless, respondent authorities treated those offences as pending while passing the impugned orders.

8] In that view of the matter, in our considered view, the order of an externment passed by respondent no.3 stands vitiated. Hence, the

Petition deserves to be allowed. Accordingly the Writ Petition is allowed in terms of prayer clause-C. Rule is made absolute on above terms. The Writ Petition stands disposed of accordingly.

[V.K.JADHAV]
JUDGE

[S.S.SHINDE]
JUDGE

DDC