

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

CRIMINAL WRIT PETITION NO.1673 OF 2017

Anton S/o Shamsundar Gaikwad,
Age 34 years, Occu : Social Work and Business,
R/o Nagapur, Taluka Nagar,
District Ahmednagar.

... **Petitioner**

Versus

1. The Divisional Commissioner,
Nashik Division, Nashik.
2. The Sub-Divisional Magistrate,
Nagar Division, Ahmednagar.
3. The Sub-Divisional Police Officer,
Nagar Rural Division,
Ahmednagar.

... **Respondents**

...
Mr. R.M.Jade, Advocate for Petitioner
Mr. S.G.Karlekar, APP for Respondents-State
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**CORAM : R.M.BORDE AND
MANGESH S. PATIL, JJ.**

DATE : 11.10.2018

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Heard. Rule. Rule is made returnable forthwith. The learned APP waives service for all the respondents. With the consent of both the sides the matter is heard finally.

2. The petitioner is impugning the order passed by the Divisional Commissioner, Nashik dated 20.07.2017 in

Externment Appeal No.30 of 2017, thereby confirming the order passed by Respondent No.2 in Externment Serial No.22 of 2016 directing his externment from Ahmednagar District in exercise of the powers under Section 56(1)(a) as well as under Section 56(1)(b) of The Maharashtra Police Act.

3. According to the learned advocate for the petitioner, the petitioner is a Social worker and runs a N.G.O. He also owns a shop and deals in scrap. While working in the social field he has been falsely implicated in several crimes and has been acquitted in six of them. The impugned orders passed by Respondent Nos.1 and 2 are contrary to the law. They have failed to appreciate the facts and circumstances in the proper perspective. There were no sufficient and cogent reasons for initiating the externment proceeding. The notice under Section 59(1) served to the petitioner does not disclose all the necessary ingredients which could have enabled Respondent No.2 to pass the order of externment. He would point out that even the order of externment passed by Respondent No.2 does not conform to the notice inasmuch as the latter does not refer to any witness who was not ready to come forward to record statement due to fear of the petitioner and still Respondent Nos.1 and 2 have referred to

and relied upon the circumstance of recording of statements of couple of such witnesses in camera. Thus according to the learned advocate there were no sufficient and cogent reasons justifying the externment order and even Respondent No.1 has not considered the facts and circumstances and has not applied the law correctly which has resulted in depriving the petitioner of his fundamental right and personal liberty.

4. The learned APP referring to the affidavit-in-reply supports both the orders. He would point out that the very fact that various offences have been registered against the petitioner right from the year 2004 upto the recent past and the nature of the crimes alleged to have been committed by him are sufficient to demonstrate that his activities and movements had either caused or were likely to cause alarm, danger or harm to a person or property and therefore this circumstance alone was sufficient to justify the impugned orders. He would point out that simultaneously the respondents have sought to invoke the powers under clause (a) as well as clause (b) of Sub section (1) of Section 56. Therefore the orders need to be examined from both the angles. The learned APP would fairly concede that the notice

served to the petitioner under Section 59(1) no where refers to any witness who was apprehending danger to his person or property at the hands of the petitioner and was not ready to come forward to depose which is a necessary ingredient for invoking clause (b) of Sub section (1) of Section 56. However, when simultaneously the power under clause (a) has also been invoked, there were good and sufficient grounds to extern the petitioner. There is no apparent illegality committed by Respondent Nos.2 and 1 in passing the order of externment and dismissing the appeal under Section 60 respectively.

5. We have carefully considered the orders passed by the Respondent No.2 and Respondent No.1 in the original proceeding and in the appeal. We have also carefully gone through the papers including the notice issued under Section 59(1) of that Act. A careful perusal of the notice would clearly reveal that through both the clauses (a) and (b) were sought to be invoked and the petitioner was called upon to show cause as to why the powers be not invoked under Section 56, it no where referred to any witnesses having expressed their inability to come forward to give evidence against the petitioner which is a necessary concomitant for

invoking clause (b) of Sub section (1) of Section 56. Therefore to this extent the submission of the learned advocate for the petitioner deserves to be accepted. The whole purpose of issuing notice under Section 59 of the Act is to enable the proposed externee to meet the allegations. Without informing him about such witnesses having expressed their inability to come forward, the impugned order passed by Respondent No.2 and confirmed by Respondent No.1 refer to and rely upon such witnesses.

6. As has been laid down in the case of ***Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police ; 1973 Mh.L.J. 413***, one can appreciate that the respondents need not have disclosed the names of such witnesses which would have likely to prejudice their safety. However, the fact regarding existence of such witnesses atleast should have been informed to the petitioner. That having not been done, the lapse in our considered view, has resulted in causing prejudice to the petitioner and to this extent, the orders passed by Respondent Nos.1 and 2 suffer from gross infirmity and go to the root of their power to invoke clause (b) of Sub section (1) of Section 56.

7. However, as is mentioned earlier, the impugned orders also invoke the power under clause (a) Sub section 1 of Section 56 which enables a person to be externed when his movements or acts are causing or calculated to cause alarm, danger or harm to person or property. It is in this context, if one takes into account the fact that there were as many as nine crimes registered against him for variety of offences including the offences of theft, extortion, causing hurt with deadly weapon, outraging modesty, receiving stolen property and abetment of suicide etc., right from the year 2004 upto the year 2016 and when he has already been convicted in Crime No.157 of 2012 of Kotwali Police Station for the offence punishable under Section 324 of IPC and has been sentenced to suffer R.I. for six months, in our considered view, these circumstances are eloquent enough to come to a plausible conclusion that his movements and acts must have caused and were likely to cause alarm, danger or harm to person or property. We do not find any infirmity in referring to and relying upon these circumstances to justify the orders passed by Respondent Nos.1 and 2 by invoking clause (a) of Sub section (1) of Section 56.

8. It is pertinent to note that in his reply in response to the notice under Section 59(1) and before the Respondent No.2 during the hearing, the petitioner nowhere disputed about registration of so many crimes and even his conviction in one of those. An attempt was made to explain that due to his poor financial condition he was unable to prefer appeal against his conviction. Considering the fact that he has been prompt in responding to the notice and contesting the externment proceeding before Respondent No.2 and even challenging the order by preferring appeal against Respondent No.1, his explanation for not preferring appeal against the conviction does not inspire confidence. Be that as it may, the fact remains that he has been tried for the offence punishable under Section 307 and though has been acquitted of that charge, he has been convicted for the lesser offence punishable under Section 324 of the IPC is sufficient to demonstrate that his acts and movements would be dangerous. Therefore, no fault can be found with the impugned orders.

9. Apart from the above state of affairs, it is equally important to note that already a period of one and half year out of the two years of externment has been over. Though

the appeal preferred by the petitioner under Section 60 was decided on 20.07.2017, the present petition has been filed on 12.12.2017 that is after about six months of the dismissal of the appeal. This circumstance in our view, certainly indicates the nature of the petitioner of not budging to the order of externment.

10. Considering all the afore mentioned facts and circumstances, we do not find any error or illegality in Respondent No.2 passing an order of externment under clause (a) of Sub section (1) of Section 56 and the Respondent No.1 dismissing the appeal, although they were not justified in exercising the power by invoking clause (b) of Sub section (1) of Section 56.

11. The Writ Petition therefore fails and is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

(R.M.BORDE, J.)

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vmk/-