

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1684 OF 2017

Ahmed Khan Karim Khan Pathan,
Age-43 years, Occu:Electronic Mechanic,
R/o-House No.4-12-57, Khas Gate,
Near Hamja Masjid, Roshan Gate Road,
Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Divisional Commissioner,
Aurangabad Division, Aurangabad,
- 2) The Police Deputy Commissioner,
Region-1, Aurangabad,
- 3) The Police Inspector,
Police Station, Begampura,
Aurangabad.

...RESPONDENTS

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Mr.Mohsin Latif Khan Pathan Advocate for
Petitioner.

Mr.K.S. Hoke Patil, A.P.P. for Respondent
Nos. 1 to 3.

...

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

DATE OF RESERVING JUDGMENT : 5TH JUNE, 2018.

DATE OF PRONOUNCING JUDGMENT: 14TH JUNE, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. The Petitioner has taken exception to the order dated 22nd August, 2017 passed by the Deputy Commissioner of Police, Aurangabad and the order dated 24th November, 2017 passed by the Divisional Commissioner, Aurangabad, whereby he has been externed from the boundaries of Aurangabad District for the period of one year.

3. It is the case of the Petitioner that he is the peace loving and law abiding person. The Petitioner is doing the work of electronics repairs in the name and style as "Ahmed

Electronics", and earns for the livelihood of his family. The Petitioner is also a Mutawali of Dargah Hajrat Syed Shah Mahemood Sahab (R.H.) situate near University Gate. He is having good reputation in the vicinity and his character and integrity was never in question.

4. It is the case of the Petitioner that on 29th June, 2017, Assistant Police Commissioner, City Region, Aurangabad has issued notice to the Petitioner under Section 59 of the Maharashtra Police Act, 1951 (in short "the Act of 1951"), thereby seeking explanation from the Petitioner as to why he should not be externed from the limits of Aurangabad and Jalna Districts for two years. In the said notice there is reference of nine cases registered against the Petitioner.

5. It is the case of the Petitioner that he has filed detail reply to the said show cause notice on 21st July, 2017, wherein it is stated

that, out of nine offences mentioned in the notice, seven cases are non cognizable and filed by one and the same person on the allegation of preventing him from grazing his goats in the land of Dargah. It is the case of the Petitioner the another cognizable offence was registered against the Petitioner at Kranti Chowk Police Station, Aurangabad for the offence punishable under Section 392 of I.P.C., in which "B Summary Report has been filed on 12th December, 2016. It is the case of the Petitioner that only cognizable offence which is pending against the Petitioner has been registered with Begampura Police Station for the offence punishable under Section 420 and 406 of the I.P.C. in respect of encroachment and illegal alienation of wakf property. The Petitioner has filed several complaints against the encroacher.

6. It is the case of the Petitioner that thereafter again on 7th August, 2017, the

Assistant Commissioner, Aurangabad issued show cause notice. On 18th August, 2017, the Petitioner had filed reply to the said notice. It is further the case of the Petitioner that on 22nd August, 2017, the Deputy Commissioner of Police, Range-1, Aurangabad has passed the impugned order externing the Petitioner from the boundaries of Aurangabad District for the period of one year. Being aggrieved by the same, on 29th August, 2017, the Petitioner has filed an appeal against the said order of externment. Thereafter on 24th November, 2017, the Divisional Commissioner has passed the order confirming the order of externment passed by the Deputy Commissioner of Police, Aurangabad. Hence this Petition is filed by the Petitioner.

7. Learned counsel appearing for the Petitioner submits that the impugned orders passed by both the authorities are against the law, equity and good conscious. Both the authorities failed to follow the principles of natural

justice. It is submitted that out of nine offences mentioned in the notice, seven are non-cognizable offences which are registered by one and the same person and only two offences are cognizable. This fact is totally ignored by the authorities while passing the impugned orders. Learned counsel further submitted that so far as Crime No.1283 of 2016 mentioned in the notice is concerned, B Summary Report is already filed by the police authorities, and the said fact is also ignored by the authorities. It is submitted that all the complaints have been filed against the Petitioner because he is trying to stop the encroacher from encroaching the wakf property. It is submitted that the orders passed by the authorities are only on assumption and presumption and hence the same are liable to be quashed and set aside. Hence it is prayed that the Petition may be allowed. In support of his submissions, learned counsel placed reliance upon the exposition of law in the case of Balaji s/o Ganpati Chame vs. the State of

Maharashtra and others¹, and Sopan Satappa Kore vs. the State of Maharashtra and others²

8. On the other hand, learned A.P.P. appearing for the Respondent - State, relying upon the averments in the affidavit-in-reply and the reasons assigned by Respondent Nos.1 and 2 in the impugned orders, submits that the authorities, after adhering to the procedure prescribed under the provisions of Section 56(1)(a)(b) of the Act of 1951, have rightly externed the Petitioner from the boundaries of Aurangabad District.

9. We have heard learned counsel appearing for the Petitioner, and learned A.P.P. appearing for the Respondent - State at length. With their able assistance we have carefully perused the grounds taken in the Petition, annexures thereto, reply filed by the Respondents, and original record of the case maintained by the office of the

1 2017 ALL M.R. (Cri.) 719

2 2017 ALL M.R. (Cri.) 764

Respondents. Upon careful perusal of the contents of the show-cause notice issued by the Assistant Police Commissioner, Aurangabad to the Petitioner, in the said notice in all nine offences have been mentioned. It appears that, out of said nine offences, six offences are non cognizable, and as many as five offences have been filed by one and the same person namely, Raju Khan Chand Khan. It is specifically stated by the Petitioner in the reply to the show-cause notice that, as the Petitioner had prevented said Raju Khan from grazing his goats in the land of Dargah, false complaints have been filed against him. Upon perusal of the impugned orders passed by Respondent Nos.1 and 2, it appears that while passing the impugned orders both the authorities have not considered the fact that almost five non cognizable complaints have been filed by said Raju Khan. So far as Crime No.02 of 2012 registered with Phulambri police station for the offence under Section 420, 465, 466, 467, 471 read with

34 of the Indian Penal Code is concerned, the same has been registered way back on 30th April, 2012, and therefore there is no live link between the registration of the said crime and initiation of externment proceedings against the Petitioner.

10. So far as Crime No.1283 of 2016 registered with Kranti Chowk police station for the offence punishable under Section 392 of the Indian Penal Code, mentioned at serial No.2 in the notice is concerned, upon perusal of the original record it reveals that the police authorities have already filed "B Summary Report" in the said offence on 12th December, 2016. The said fact is not at all taken into consideration by the authorities below while passing the impugned orders. Non-consideration of filing of "B Summary Report" by the police in the afore said crime, amounts to total non-application of mind by both the authorities.

11. While passing the externment order, the authorities have relied upon another cognizable offence registered with Begampura Police Station bearing Crime No.122 of 2017, for the offence punishable under Section 420 and 406 of the I.P.C. Pursuant to the show-cause notice issued to the Petitioner, he did file reply wherein it is categorically stated that, the Petitioner has filed several complaints against the encroachment on wakf property and to counter the said complaints, false complaints have been filed against the petitioner.

12. The Appellate Authority i.e. Respondent No.1 has confirmed the order of externment passed by Respondent No.2 externing the Petitioner from the boundaries of Aurangabad District. The Appellate Authority did not consider the procedural irregularities and illegalities committed by Respondent No.2 while passing the impugned order. As observed earlier, it shows

complete non-application of mind to the facts of the case by Respondent No.1.

13. In that view of the matter, we are of the considered view that, the impugned orders passed by Respondent Nos.1 and 2 cannot legally sustain. Hence impugned orders are quashed and set aside. Rule made absolute in terms of Prayer Clause "B)".

14. The Writ Petition stands disposed of accordingly. No order as to costs.

[V.K. JADHAV, J.]

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[S.S. SHINDE, J.]