

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2502 OF 2018**

Umer Altaf Mujawar & Ors.	...Petitioners
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. V. D. Patil a/w Mr. S. R. Kapre for the Petitioners

Mr. K. V. Saste, A.P.P for the Respondent-State

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
THURSDAY, 19th JULY, 2018***

P.C. :

1 Rule. Considering the challenge raised, with the consent of the learned counsel for the Petitioners and the learned A.P.P, made returnable forthwith and heard.

2 The above Writ Petition takes exception to the order dated 20th April 2018 passed by the In-charge, Divisional Commissioner, Pune Division, Pune, by which order, the appeal filed by the Petitioners came to be dismissed and resultantly, the order dated 20th February 2018 passed by the Externing Authority under Section 55

of the Maharashtra Police Act, 1961 (for short, 'the Police Act'), came to be confirmed. The Petitioners herein who are 15 in number, were served with the show-cause notices under Section 59 of the Police Act, calling upon them to show-cause as to why they should not be externed under Section 55 of the said Police Act. In the said show-cause notices, the offence registered against the Petitioners, amongst whom, was the purported gang leader and a member were mentioned in a tabulated form in respect of each of the above 15 Petitioners, who are amongst the 22 persons who have been externed. The said offences are under Section 12A of the Mumbai Prevention of Gambling Act now the Maharashtra Prevention of Gambling Act. The tabulated form discloses that the offences registered are against the gang leader one Umer Altaf Mujawar and the alleged members who are the other Petitioners. The Petitioners showed cause to the show-cause notices issued to them. The Externing Authority after giving an opportunity to the Petitioners of being heard, ultimately passed the order dated 22nd February 2018 externing the Petitioners for a period of one year from 6 talukas of Satara District and 3 talukas of Sangli District.

3 Being aggrieved by the orders of the Externing Authority, the Petitioners filed an Appeal before the Appellate Authority under Section 60 of the Police Act. As indicated above, the said Appeal came to be dismissed by the In-charge Divisional Commissioner by the impugned order dated 20th April 2018. The challenge to the order passed by the Externing Authority as confirmed by the Appellate Authority, is on the touch stone of the non-existence of the jurisdictional fact for exercise of powers under Section 55 of the said Act. The *sine qua non* for exercising powers under Section 55 is the movement of a gang or body of persons on account of which movement, there is alarm or danger or reasonable suspicion of the unlawful designs being entertained by such a gang.

4 In the fact situation of the present case, the question that begs an answer is whether on account of an offences being registered against the purported gang leader and a member of the gang, the same would constitute a gang so as to come within the sweep of Section 55. The answer has to be in the negative. The said issue is no more *res*

integra and is covered by a decision of this Bench dated 12th July 2018 in Writ Petition No. 2454 of 2018 and companion matters (Altaf Rajekhan Pathan & Ors. vs. The Divisional Commissioner, Pune Division, Pune and others). This Bench in the said Judgment has held that to constitute a gang or a body of persons, they have to act in concert towards a common unlawful object and just because an offence is registered against the gang leader and one member of a gang, would not mean that they constitute a gang so as to come within the sweep of Section 55 of the Police Act.

5 A useful reference could be made to para 21 of the said judgment, which is reproduced hereinunder for the sake of ready reference :

“21 In the context of the aforesaid issue, Section 55 would have to be revisited, the said provision has already been reproduced in the earlier part of this Judgment. The said provision as can be seen can be invoked against the movement or encampment of any gang or body of persons in the area of a Commissioner in the commissionerate area, in a district by the District Magistrate, the Sub-Divisional Magistrate or the Superintendent empowered by the State Government in that behalf. Therefore the sine-qua-non for Section 55 to apply is the movement or encampment of any gang or body of persons. Hence the Section contemplates that there has to be a collective action or concerted action on the part of the gang members.

Only when there is a collective or concerted action that the action of dispersal or removal of each of the gang members can be taken. The word “gang” has not been defined in the police act. It would therefore be useful to refer to the dictionary meaning of the said word “gang”.

Black's Law Dictionary “Gang” means :-

“A group of persons who go about together or act in concert, esp. for antisocial or criminal purposes.”

Oxford Dictionary “Gang” means :-

“an organized group of criminals or disorderly young people.”

Hence going by the dictionary meaning of the word “gang” the same also indicates that a gang has to be a collection of persons or a body of persons who are acting in concert towards a common unlawful object and, just because an offence is registered against a gang leader and one member of a gang would not mean that they constitute a gang so as to come within the sweep of Section 55 of the police act. Even the meaning of the word “gang” in the Law Lexicon on which the learned Additional Public Prosecutor sought to place reliance cannot be said to be in deviation to the meaning in the other dictionaries as above. In fact the learned Additional Public Prosecutor sought to rely upon a line from the meaning in the Law Lexicon which in our view would be reading the said line out of context.

It is required to be noted that in all the above Petitions, the offence under the gambling act is registered against the gang leader “A” with the alleged member of the gang being “B”, against “A” with “C”, “A” with “D”, “A” with “E”, but not against A, B, C, D, or E collectively or even against a substantial number of gang members collectively. It is also required to be noted that in some cases the offence registered against “A” and “B” is much anterior in point of time to the offences registered against “A” and “E” and therefore there is

no proximity between the offences and therefore the test of there being a collective participation is not satisfied as they are all individualistic cases registered against the alleged gang leader and a member.”

6 In the instant case, the fact situation is identical to the fact situation which was in existence in the Writ Petitions which have been decided by this Bench. In our view, therefore, the Petitioners cannot be said to constitute a gang. Hence, the jurisdictional fact for the Authorities to invoke the provisions of Section 55 of the Police Act is absent. The consequence of the same would be that the Authorities could not have exercised jurisdiction under Section 55 to extern the Petitioners.

7 Though other contentions have been raised on behalf of the Petitioners, namely that the gang leader having been acquitted in as many as 16 cases out of the 20 registered against him, is not taken into consideration, the said aspect did not detain us, as the Petitioners are entitled to succeed on the ground of the non-existence of the jurisdictional fact in the instant case. The above Petition is, therefore,

required to be allowed and is accordingly allowed in terms of prayer clause (b) restricted to the 15 Petitioners above named.

8 Rule is accordingly made absolute. Parties to bear their respective costs.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.