

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1044 OF 2018**

Ashish Aravind Chaubey @ Bunty

..Petitioner

Vs.

The Dy. Commissioner of Police & Ors

..Respondents

**Mr. Udaynath Tripathi a/w Ms Jayashree Tripathi for the Petitioner
Dr. F. R. Shaikh Addl PP for the Respondent State**

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL,JJ**

DATE : 16th APRIL, 2018

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 2-8-2017 passed by the Appellate Authority i.e. the Divisional Commissioner, Konkan Division. By the said order the Appeal filed by the Petitioner being Appeal No.38 of 2017 came to be dismissed and resultantly the order dated 2-5-2017 passed by the Deputy Commissioner of Police, Zone-12, Mumbai came to be confirmed.

2 The Petitioner herein was issued a show cause notice dated 14-12-2016 under Section 59 of the Maharashtra Police Act calling upon the Petitioner as to why he should not be externed in exercise of powers conferred by Section 56(1)(a) and 56(1)(b) of the said Act. The said show cause notice was founded on the six cases which are registered against the Petitioner at the Kasturba Marg Police Station and Dhaisar Police Station for offences

punishable under Sections 323, 324, 354(A), 506(2), 143, 147, 148, 149 and 392 of the IPC, amongst other offences. In the said show cause notice a reference was also made to the statements of two witnesses which were recorded in-camera. The said witnesses have been referred to as A and B. It was alleged in the show cause notice that the activities of the Petitioners were detrimental of maintenance of law and order as the Petitioner was on a constant threat to the peace loving residence of the locality. The Petitioner it seems replied to the said show cause notice. The Externing Authority as indicated above has by its order dated 2-5-2017 externed the Petitioner for a period of 2 years from Mumbai city suburban District and Thane. The Externing Authority whilst passing the said externment order reached a subjective satisfaction which has been recorded in the order as regards the residents not coming forward to lodge their complaint in the police station, as also the other residents. The Externing Authority has also in its order referred to the fact that the Petitioner and his Advocate had consistently remained absent and therefore it could be presumed that the Petitioner did not desire to produce any material in support of his defence.

3 The Petitioner aggrieved by the said order dated 2-5-2017 filed an Appeal under Section 6 of the said Act before the Divisional Commissioner, Konkan Division. The Divisional Commissioner by the impugned order dated 2-8-2017 has dismissed the said Appeal. The Divisional Commissioner did not

deem it fit to interdict with the order passed by the Externing Authority having regard to the material which was on record as also having regard to the subjective satisfaction that was reached by the Externing Authority. As indicated above, it is the said order dated 2-8-2017 which is taken exception to by way of the above Petition.

4 It was the submission of the Learned Counsel Mr. Tripathi that sine-qua-non for an externment under Sections 56(1)(a) and 56(1)(b) of the said Act is the factum of witnesses not willing to give evidence. Since in the instant case the subjective satisfaction has not been reached in that regard the order stands vitiated on the said ground. Reliance was sought to be placed on the judgment of the Apex Court in the matter of **Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police & Anr.**¹ The Learned Counsel also sought to place reliance on the judgment of the Division Bench of this Court in the matter of **Imran Abdul Wahid Hasmi Vs. The Dy. Commissioner of Police & Ors.**², wherein it has been held that apart from the subjective satisfaction being reached in respect of the two witnesses whose in camera statements have been recorded, the subjective satisfaction must also be in respect of other persons not coming forward to depose in respect of the other activities of the Petitioner.

1 AIR 1973 Supreme Court 630

2 2016 ALL MR (Cri)3056

5 Having heard the Learned Counsel for the Petitioner, we are of the view that there is no merit in the above Petition. The order passed by the Externing Authority succinctly states the reasons as to why the Petitioner has to be externed by taking recourse to Section 56(1)(a) and 56(1)(b) of the said Act. The subjective satisfaction reached by the Externing Authority is exposted in the order passed by the Externing Authority and we do not deem it necessary to reiterate what has been stated by the Externing Authority.

6 In so far as the Appellate Authority is concerned, the Appellant Authority has considered the material on record and on such consideration did not deem it appropriate to interdict with the order passed by the Externing Authority. In the context of the submission made by the Learned Counsel Mr. Tripathi it is required to be noted that in the show cause notice it has been mentioned that no person is ready to come forward to complain against the Petitioner to the police station. In our view, the said statement would be sufficient compliance of the requirement of Section 56(1)(a) and 56(1)(b) of the said Act as when a person is not willing to go to the police station he can be least expected to openly depose in court of law against the Petitioner.

7 In so far as the second submission of the Learned Counsel is concerned, the order clearly states that the subjective satisfaction is also in respect of others who are not willing to come forward to give evidence in

respect of the activities of the Petitioner mentioned in the show cause notice. In that view of the matter the judgments relied upon by the Learned Counsel for the Petitioner can hardly assist the Petitioner in his endeavour to contend that the order stands vitiated on the grounds urged by the Learned Counsel. We therefore do not find any illegality or infirmity in the orders passed by the Externing Authority as confirmed by the Appellate Authority for us to interdict in our Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]