

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2455 OF 2018

Salim Maqbul Mujawar ... Petitioner

VS.

The Sub-Divisional Magistrate, Miraj
Sub-Division, Miraj & Anr. ... Respondents

Mr. Umesh R. Mankapure, Advocate for the petitioner.
Mr. A.D. Khamkhedkar, APP for the respondent-State.

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: 17th September, 2018**

ORDER (PER S.S. SHINDE, J.)

1. Rule. Rule made returnable. Heard forthwith with the consent of the parties.

2. This Petition under Articles 226 and 227 of the Constitution of India is filed with following prayer:

“(a) That this Hon'ble High Court by exercising powers under section 482 of Cr. P.C. read with Articles 226 and 227 of the Constitution of India be pleased to quash and set aside the impugned order dated 12th April, 2018 passed by respondent no.1 under section 56(A)(1) of Maharashtra Police Act, 1951.”

3. The learned counsel for the petitioner invites our attention to the impugned order and submits that, the impugned order has been passed relying upon two offences, i.e., Crime No. 170 of 2014 registered with Sangli Police Station under sections 143, 452, 427 of Indian Penal Code and Crime No. 183 of 2014 registered with Sangli Police Station under sections 353, 332, 186, 504 and 506 of Indian Penal Code. It is submitted that said crimes were also relied upon by the Sub-Divisional Magistrate, Miraj Region, Miraj in an earlier externment proceedings initiated against the petitioner. It is submitted that two new offences have been added in the show cause notice in the present proceedings, which are under challenge. It is submitted that, when the earlier/first proceedings were initiated against the petitioner to extern him from Sangli District, two offences, i.e., Crime No. 156 of 2012 under section 307 of Indian Penal Code and Section 3, 25 of Arms Act, and Crime No. 170 of 2014 under sections 143, 452, 427 of Indian Penal Code, were already registered and pending for the investigation. In short, it is the contention of the counsel appearing for the petitioner that, all the four offences which are mentioned in the second show-cause notice, and also in the impugned order, were registered prior to the date when the first proceedings were

disposed of on 11th May, 2017 by the Sub-Divisional Magistrate, Miraj Region, Miraj.

4. Being aggrieved by the aforesaid order passed in first/earlier proceedings by the Sub-Divisional Magistrate, Miraj Division, Miraj, the petitioner approached the Bombay High Court, and the Division Bench of the High Court was pleased to quash and set aside the said/first externment order. It is submitted that, on the basis of same offences/material and also similar facts, second proceedings are initiated, which are under challenge in this petition. It is submitted that on the basis of similar facts and offences registered prior to disposal of an earlier/first proceedings, second proceedings which are under challenge in this petition are not tenable and deserves to be quashed and set aside.

5. On the other hand, learned APP appearing for the State, relying upon the reasons assigned in the impugned order, submitted that keeping in view the material placed on record and also the provisions of section 56(1)(A) of the Bombay Police Act, the impugned order has been passed by the Sub-Divisional Magistrate, Miraj Region, Miraj and therefore, the petition deserves

to be rejected.

6. We have given careful consideration to the rival submissions. With the assistance of the counsel appearing for the parties, we have carefully considered the pleadings in the petition, grounds taken therein, show-cause notice issued on 16th March, 2017 to the petitioner and also the order passed by Sub-Divisional Magistrate, Miraj on 11th May, 2017, so as to compare the contents of the said show-cause notice and reasons assigned in the order dated 11th May, 2017 with the contents of the show cause notice issued to the petitioner on 8th February, 2018 by the Sub-Divisional Police Officer, Sangli and the reasons assigned in the impugned order dated 12th April, 2018 passed by the Sub-Divisional Magistrate, Miraj Division, Miraj. Upon careful perusal of chart wherein crimes registered against the petitioners are mentioned in show-cause notice issued on 16th March, 2017 and on 8th February, 2018, we find that so far as Crime No. 170 of 2014 and Crime No. 183 of 2014 are concerned, same are common in both the show cause notices. It appears that, two Crimes, i.e., Crime No. 156 of 2012 and Crime No. 67 of 2017, were not mentioned in the show cause notice which was issued on 16th March, 2017.

However, if the contents of both the show-cause notices and also the reasons assigned in both the impugned orders are carefully perused and compared, more or less, similar reasons/contents have been mentioned/assigned in the show cause notice and also in the order impugned in the present petition. It appears that, by the impugned order, the petitioner has been externed from the revenue boundaries of Sangli and Kolhapur Districts for six months. Upon careful perusal of the discussion in the impugned order, we do not find any specific reasons for the externment of the petitioner from the Kolhapur District. So far as externment of the petitioner from Sangli district is concerned, it appears that earlier proceedings initiated by issuing show-cause notice dated 16th March, 2017 to the petitioner, were quashed and set aside by the High Court. It is not necessary for us to elaborate the reasons. Suffice to say that the order impugned in this petition is not legally sustainable in view of the discussion made in foregoing paragraphs. Accordingly, Writ Petition succeeds and same is allowed in terms of prayer clause (a).

7. Rule made absolute on above terms.

8. The Writ Petition stands disposed of accordingly.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)

Vidya
Suresh
Amin

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by Vidya
Suresh Amin
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2018.09.21
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