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

CRIMINAL WRIT PETITION NO.3229 OF 2018

Suraj Yallapa Pawar	... Petitioner
Versus	
Sub Divisional Magistrate, Miraj Division, Miraj and Anr.	...Respondents

Mr.U.R.Mankapure, for the Petitioner.

Mr.F.R.Shaikh, A.P.P for the Respondent-State.

Nayab Tahsildar–V.V.Pilare.

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.***

DATE : 27th JULY, 2018

P.C. :

1. The above Writ Petition has been filed for quashing of the order dated 18th July, 2018 passed by the Sub Divisional Magistrate, Miraj under Section 144 (1)(2) (3) of the Code of Criminal Procedure.

2. The said order is founded on the fact that the Petitioner has been involved in offences against the body, he has the tendency to cause rioting, cause damage to the Government Property, as a result of which he

has instilled a fear in the mind of local residents. It is mentioned that to maintain law and order the provisions of Section 144 (1)(2) (3) of the Code of Criminal Procedure are required to be invoked especially to see to it that the Election to the Municipal Corporation takes place in a peaceful manner.

3. We have in our order dated 25th July, 2018 already observed that the order passed against the Petitioner under Section 144 (1)(2) (3) of the Code of Criminal Procedure discloses non-application of mind as the contents of the order in respect of the Petitioner are identical to the contents of the order passed in respect of one Hanmant Kalappa Sangashetty. It is also required to be noted that the offences registered against the Petitioner are only under Section 12(A) of the Maharashtra Prevention of Gambling Act, which are of the year 2016. The Externment Order passed against the Petitioner by the Externment Authority was set aside by the Appellate Authority i.e. the Sub Divisional Officer, Pune Division, Pune as per the averments made in paragraph 2 of the above Writ Petition.

4. It is also required to be noted that the Petitioner's wife is

contesting the Elections to the Sangli-Miraj-Kupwad Municipal Corporation from one of the Wards. The allegation as regards the order passed against the Petitioner is that the said order has been passed for malafide and extraneous reasons so as to oust the Petitioner's wife from contesting the elections.

5. Be that as it may, it is not necessary for us to go into the said aspect. In our view the order which has been passed for the reasons, a gist of which we have reproduced herein above, has been passed on a wrong premise, as except the offence under the Maharashtra Prevention of Gambling Act, that to in the year 2016. No other offence under Chapter 16 of the Indian Penal Code has been registered against the Petitioner. Though the power under Section 144 of the Code of Criminal Procedure can be exercised by the Authority ex-parte, the said exercise of power undoubtedly would have to be reasonable having regard to the facts and circumstances of a particular case.

6. In our view in the instant case, it cannot be said that the exercise of power is reasonable and infact it borders on being arbitrary and

capricious.

7. In that view of the matter, the impugned order dated 18th July, 2018, cannot be sustained. The same to accordingly stand set aside. The above Criminal Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a).

8. The learned APP to communicate the aforesaid developments to all concerned.

9. All concerned parties to act upon an ordinary copy of the instant order duly authenticated by the Court Associate/Sheristedar.

(REVATI MOHITE DERE, J.)

(R. M. SAVANT, J.)