

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION*****CRIMINAL WRIT PETITION NO.5457 OF 2017**

Shri Arun Prabhakar Rodge & Anr.] ... Petitioners

Versus

The Assistant Police Commissioner,]
Division-1, Solapur City, Solapur & Ors.] ... Respondents

Mr. U. R. Agandsurve for Petitioners.
Ms. S. V. Sonavane, APP for State.

CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE :- 12 MARCH, 2018

P. C. :-

1. In this Petition, the Petitioners have challenged the externment order dated 11/10/2017 passed by the Respondent No.2 – Deputy Commissioner of Police (Parimandal), Solapur City, Solapur as well as the Appellate order dated 02/12/2017 passed by the Respondent No.3 – Divisional Commissioner of Police, Pune Division, Pune, whereby the externment order was confirmed.

2. The Petitioners were issued notice dated 19/07/2017 by the Assistant Commissioner of Police, Zone-I, Solapur City, Solapur under Section 59 of the Maharashtra Police Act calling upon them to show cause as to why they should not be externed out of the limits of Solapur, Osmanabad and Pune districts for a period of two years. The proceedings were initiated under Section 55 of the said Act. The first notice dated 19/07/2017 issued by the Assistant Commissioner of Police was followed by the second notice dated 30/08/2017 which was issued by the Respondent No.2 – Deputy Commissioner of Police (Parimandal), Solapur City, Solapur. The said notices were issued to six persons in all, including the present Petitioners. The Petitioner No.1 is described as the leader of the gang. The notice dated 30/08/2017 mentions in all 79 cases against all the proposed externees right from the year 2002. All these cases were under Section 12(a) of the Bombay Prevention of Gambling Act, 1887. The list mentions that some of the offences had resulted in acquittal of the accused, some were pending decision before the Courts and some were pending investigation. As far as the Petitioner No.1 is concerned, the notice mentions 38 similar cases under the said Act right from the year 2003. In addition, 17 cases under various Sections

of IPC from the year 1980 were also listed out of which only 2 cases from the year 1994 and 1998 were pending and the other cases had resulted in acquittal. The show-cause notice further listed 11 preventive proceedings under Section 110 (e) and (g) of Cr.P.C. having been initiated against him right from the year 1991 and all of them were not taken to their logical end as the time for completing the proceedings had lapsed. The Petitioner No.1 was extenuated in the years 1995 and 1999 in the past.

3. There were 24 offences listed against the Petitioner No.2. Except one offence under the Copyright Act, all the other offences were under the Bombay Prevention of Gambling Act. There was one proceeding under Section 110 (e) and (g) of Cr.P.C. against him. Besides the Petitioners, the show-cause notice has mentioned the offence pending against the other members of the gang. All these offences under the said Act were registered at Fauzdar Chawdi Police Station, Solapur. The show-cause notice mentions that the Petitioners and their companions were indulging in committing offences under the said Act because of which the public at large were greatly affected and there was feeling of insecurity amongst them and that there was

law and order problem because of their activities. By the said show-cause notice, the Respondent No.2 had called upon the Petitioners to show cause as to why action should not be taken against them under Section 55 of the Maharashtra Police Act.

4. The Petitioners participated in the proceedings and filed their Written Statements and denied all the allegations. They submitted that gambling was a petty offence and was not a cognizable or a serious offence and that the proposed action against them should be dropped.

5. The Respondent No.2, however, considering the material against the Petitioners and their response, was pleased to pass the order dated 11/10/2017 in exercise of the powers under Section 55 of the Maharashtra Police Act. The Respondent No.2 considered the pending cases against the Petitioners, considered the statements of the witnesses recorded in-camera. He further considered the purpose for invoking Section 55 and recorded its subjective satisfaction that the Petitioners and their associates were not paying any heed to law and were continuing their illegal activities which were affecting the young boys in the society. The Respondent No.2 further recorded his

satisfaction that the activities of the gang were causing trouble in maintaining law and order and therefore, this was a fit case where powers under Section 55 could be invoked. The Respondent No.2, by the said order, externed the Petitioners and their associates from Solapur district, including Solapur city, for a period of one year.

6. The Petitioners and the other externees preferred Appeal before the Respondent No.3 which was dismissed vide the order dated 02/12/2017. During the course of the Appeal, the same submissions on behalf of the Petitioners were reiterated which were made before the Respondent No.2. It was mainly submitted that in any case, the offences alleged against the Petitioners were individualistic in nature and it could not be said that they have formed a gang and therefore, Section 55 of the Maharashtra Police Act was not attracted. It was further submitted that the period of two years was excessive. It was also contended that in many of the cases, the Petitioners and others were acquitted and there was no truth in the statements of the witnesses recorded in-camera. However, the Respondent No.3 did not accept the submissions made on behalf of the Petitioners and the Appeal was dismissed.

7. The Petitioners have challenged the orders passed by the Respondent Nos.2 and 3 in the present Petition.

8. We have heard Mr. U. R. Agandsurve, learned Counsel for the Petitioners and Ms. S. V. Sonavane, learned APP for State.

9. Mr. Agandsurve submitted that the list of the offences mentioned against the Petitioners go back to the year 1980 and obviously, therefore, the offences are stale and could not have been taken into consideration. He submitted that the offences alleged against the Petitioners are individualistic in nature and were not alleged to have been committed by any gang. He further submitted that there was nothing on record to show that the Petitioner No.1 was the gang leader. He further submitted that there was no connection between the Petitioners and rest of the externees and therefore, invocation of Section 55 was misplaced. Mr. Agandsurve relied on the Judgment of this Court passed in the case of ***Rajwardhan Babaso Patil Vs. Vijaysinha Jadhav; The State of Maharashtra***¹, wherein the externment order in that case was held to be unsustainable.

¹ Cri. WP No.399 of 2013 along with Cri. WP No.459 of 2013, decided on 04/09/2013

10. He further relied on the Judgment of this Court passed in the case of *Ahammad Mainuddin Shaikh Vs. The State of Maharashtra; The Superintendent of Police*², wherein it was held that the material did not make out any case that the Petitioner before the Court was a member or chief of a gang or body of persons. He further relied on the Judgment of this Court in the case of *Rama S/o. Bapurao Gujar; Santosh S/o. Bapurao Gujar Vs. The State of Maharashtra*³, wherein it was held that when the offences were mostly of individualistic character and there was no common thread in the activities, Section 55 was not applicable. Mr. Agandsurve submitted that the cases mentioned in the order were right from the year 2002 onwards against the Petitioners and in many of such cases, they were acquitted. Therefore, those offences should not have been taken into consideration by the externing authority. However, if the satisfaction recorded by the Respondent No.2 in the impugned order is perused, it can be seen that he has recorded his satisfaction in consonance with the requirements of Section 55 of the Maharashtra Police Act. The said Section reads thus :

² Cri. WP No.2385 of 2013, decided on 16/08/2013

³ Cri. WP No.664 of 2013 along with Cri. WP No.665 of 2013, decided on 18/10/2013

“55. *Dispersal of gangs and bodies of persons.-*
Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed under section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the Superintendent empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders of chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous hereto within such time as such officer shall prescribe, and not to enter to area for the areas and such contiguous districts, or part thereof as the case may be, or return to the place from which each of them was directed to remove himself.”

The Respondent No.2 has recorded his satisfaction as to how the activities of the gang are causing danger and alarm in the locality. The list of offences only shows the live link and therefore, we do not find any substance in the submission of Mr. Agandsurve that stale offences were the basis for passing of the externment order.

11. Mr. Agandsurve placed reliance on the Judgment of *Ahammad Shaikh* (*supra*). In that case, it was observed that the offences against the externee in that Petition were more individualistic in nature than collective and they did not show that those persons had got together and had indulged in a criminal act as a group. In the present case, the Petitioner No.1 is co-accused in C.R.Nos.374/2017, 410/2017 and 413/2017 with the Petitioner No.2 and the Petitioner No.1 is also co-accused in C.R.No.354/2017 with one Yashwant Shinde. In C.R.No.168 of 2016, the Petitioner No.1 is co-accused with one Kumar Deokar. Petitioner No.2 is co-accused in C.R.No.515 of 2016 with one Santosh Bhange. In C.R.No.413 of 2017, both the Petitioners are co-accused with one Kadam. Thus, it is clear that the Petitioner No.1 is the gang leader and both the Petitioners, along with others, are working in association while committing such offences under the Bombay Prevention of Gambling Act and therefore, it cannot be said that the offences committed by them are more individualistic in nature.

12. The other two cases relied on by Mr. Agandsurve which are mentioned herein, have no application to the facts of the present

case and the ratio of these Judgments is totally different and is unconnected with the present Petition.

13. We have also perused the order passed by the Respondent No.3 in the Appeal preferred by the Petitioners and we do not find any infirmity in the said order. The Appellant Authority i.e. the Respondent No.3 has considered the externment order and the submissions made on behalf of the Petitioners. The Respondent No.3 has taken into consideration the provisions of Section 55 of the Maharashtra Police Act and has observed that the externment order was properly passed under Section 55 of the Maharashtra Police Act.

14. In this view of the matter, we do not find any infirmity in both the orders impugned before us in this Petition. Consequently, we find that there is no merit in the present Petition and hence the Petition is dismissed.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)