

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 1773 OF 2019**

Kacharu S/o Laxman Chothe,
 Age : 39 Years, Occ. Agricultur
 and Social Works,
 R/o. Avhane Bk. Tq. Shevgaon,
 Dist. Ahmednagar

.. PETITIONER**VERSUS**

1. The State of Maharashtra,
 Through its Principal Secretary,
 Home Department,
 Mantralaya, Mumbai- 32
2. The sub- Divisional Magistrate,
 Pathardi Division, Pathardi,
 Tq. Pathardi, Dist. Ahmednagar
3. The Police Inspector,
 Shevgaon Police Station,
 Tq. Shevgaon Dist. Ahmednagar
4. The Sub Divisiona Police Officer,
 Shevgaon Division, Shevgaon
 Tq. Shevgaon Dist. Ahmednagar
5. The Superintendent of Police,
 Ahmednagar.

.. RESPONDENTS

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Advocate for the Petitioner : Mr. N. B. Narwade
A.P.P for respondent-State : Mrs. V. S. Chaudhary

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WITH**CRIMINAL WRIT PETITION NO. 1759 OF 2019**

Sanjay S/o Mohan Kolage,
 Age : 37 Years, Occ. Agriculture and Politics,
 R/o. Avhane Bk. Tq. Shevgaon,
 District Ahmednagar

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Sub Divisional Magistrate,
Pathardi Division, Pathardi
Tq. Pathardi, Dist. Ahmednagar
3. The Police Inspector,
Shevgaon Police Station,
Tq. Shevgaon, Dist. Ahmednagar
4. The Sub Divisional Police Officer,
Shevgaon Division, Shevgaon,
Tq. Shevgaon Dist. Ahmednagar

..RESPONDENTS

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Advocate for the Petitioner : Mr. N. B. Narwade
A.P.P for respondent-State : Mrs. V. S. Chaudhary

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**CORAM :T.V. NALWADE AND
S. M. GAVHANE,JJ.
DATE : 27.11.2019.**

JUDGMENT(PER T.V. NALWADE, J.] :-

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. Both the proceedings are filed to challenge the order passed by respondent No.2 The Sub Divisional Magistrate, Pathardi Division, Pathardi, District Ahmednagar, under Sections 144(1) and 144(2) of the Code of Criminal Procedure. Both the petitioners are residents of village Avhane Bk. Tahsill Shevgaon, District Ahmednagar. In the first proceeding, by

the impugned order the Sub Divisional Magistrate has directed the petitioner to remove himself from Shevgaon Tahsil between the period 19.10.2019 and 21.10.2019. As there was election of the Maharashtra State Legislative Assembly on 21.10.2019, to enable him to vote for that election, he was allowed to come back to Shevgaon Tahsil between 7.30 a.m and 9.30 a.m . This order was made ex-parte. In the order two crime registered in Shevgaon Police Station as Crime Register Nos. 211 of 2017 and 208 of 2018 are mentioned. The first crime is registered for the offence punishable under Sections 324, 341, 504 and 506 read with Section 34 of the Indian Penal Code and Section 3(1) (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. The second crime is registered for the offences punishable under Sections 143, 147, 148, 149, 323, 504 and 506 323 read with Section 149 of the Indian Penal Code. It is contended that, as the petitioner is likely to cause breach of public peace, during the period of election and he is likely to cause damage to the property, such order was required to be passed against him. Copy of FIR given in C.R. No. 211 of 2017 is on record and it shows that, there was some private dispute over agricultural land between the informant Kadubal Kharat and petitioner Sanjay Kolge. The land was mutated in the name of Sanjay

Kolge and he was Sarpanch of village. The allegations are made in the FIR that on the day of incident, the informant was intercepted by the petitioner and the informant was assaulted by giving fist blows. The report was given against the petitioner and his brother. On 25.05.2017, supplementary statement was given and in that supplementary statement the informant contended that abuses were given by taking the name of the caste which is a scheduled caste. It can be said that second FIR involved the offence punishable under Section 323 of the Indian Penal Code but particulars of that crime are not mentioned in the impugned order.

3. In the second proceeding, it is mentioned that, crime register No. 66/2014 registered with Shevgaon Police Station was for the offences punishable under Section 341, 148 of the Indian Penal Code and few sections of the Maharashtra Police Act like Section 37 and 135 of the said Act. In this order, it is mentioned that due to the activity of the petitioner, there is possibility of breach of peace during the election period and he may cause damage to the property and so such order was required to be made. This order was also in respect of the same period and similar concession was given for allowing the petitioner to vote in the election.

4. The learned counsel for the petitioner submitted that the petitioner from the first proceeding was Sarpanch and to prevent him from working for his political party such order is made and it was malafide. It was submitted by the learned counsel for the petitioner from the second proceeding that the petitioner is a social worker and the crime which was registered in the year 2014 was used against him, which had nothing to do with the breach of the public peace and it was filed due to his social activities. The learned counsel for the petitioner submitted that one petitioner belongs to Nationalist Congress Party and other petitioner was worker of political party Bhartiya Janta Party and at the relevant time both of them were working for political party Nationalist Congress Party and only to prevent them from working for particular political party such order was made.

5. If the aforesaid circumstances are considered, it can be said that there is force in the submission made by the learned counsel for the petitioners. By the order under challenge the petitioners are virtually directed to go away from their places of residents and they were asked to keep themselves away from the entire Tahsil. This is nothing but externment order. Whether such order can be passed under Section 144 of the Code of Criminal Procedure is a question, that needs to be

decided in the present matter. This Court had occasion to consider this point, while deciding Criminal Writ Petition No. 1575 of 2018, (*Narendra Parshuram Patil and another Vs. The State of Maharashtra and others*) decided on 24.07.2019. The observations on the present points are made by this Court and they are as under :-

(7) The provision of Section 144(2) of the Code of Criminal Procedure runs as under :-

“ 144. Power to issue order in urgent cases of nuisance or apprehended danger :-

(1) In case where, in the opinion of a District Magistrate, a Sub- Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or any affray.

(2) An order under this section may, in case of emergency or in cases where the circumstances do

not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.”

(8) The aforesaid provision shows that a person can be prevented from entering a particular area under the aforesaid provision but the provision does not provide for asking a person living in particular area and particularly at his native place to leave that place for a particular period. Though preventive measures can be taken of the nature mentioned in the provision, under this provision a person cannot be externed from his native place. There are provisions under the Maharashtra Police Act like sections 56 to 59 providing for externment proceeding. That proceeding was dropped already by other Sub Divisional Magistrate. Thus, under the aforesaid provision it was not possible to issue such order and further the grounds given were held to be not tenable in the past for externment order. The order is also set aside by the Sessions Court and that order has become final.

(9) When the order of aforesaid nature is made it affects fundamental rights under Article 19 and Article 21 of the Constitution of India. Though some restrictions can be put on those rights, there needs to be some legislation in place for putting such restrictions and that legislation needs to be in accordance with the restrictions provided by the

Constitution itself. Due to all these circumstances this Court holds that the petitioners are entitled to get compensation. They are interested only in declaring that the action of the Sub Divisional Magistrate was illegal and such action involving breach of fundamental rights is not expected from the authorities. On this point, learned counsel for the petitioners placed reliance on observations made by the Apex Court in some reported cases like **S. Nambi Narayanan V. Siby Mathews (2018) 10 SCC 804**), **Damji Tingsa Pada Vs. Superintendent, Nagpur Central Prison [(2012 (4) Mh. L. J. (Cri.) 609]** and **Hardeep Singh Vs. State of M.P. [2012(2) Mh. L.J. (Cri.188)]**. Though the facts and circumstances of the aforesaid cases are different, the fact remains that in the present matter also there was the violation of fundamental rights of the petitioner due to the aforesaid order. Unless some compensation is awarded, the authorities will not realise the seriousness of such actions and possibility of making them liable for such action. “

6. In the aforesaid matter not only observations were made to hold that the order was illegal but the respondents were directed to give compensation of Rs. 10,000/-. In the present matter, such relief is not claimed. This court holds that the relief claimed viz to set-aside the order under challenge needs to be granted. In the result, following order :-

ORDER

1. Both the petitions are allowed.
2. Relief is granted in both the petitions in terms of prayer clause 'B'.
3. Rule made absolute in aforesaid terms.

(S. M. GAVHANE, J.)**(T.V. NALAWADE, J.)**

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