

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION (WP) NO. 519/2019

Rahul s/o Uttamram Madame

..VS..

State of Maharashtra and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S. G. Karmarkar, Advocate for the petitioner

Shri A. D. Sonak, APP for the respondents/State

CORAM : Z. A. HAQ & M. G. GIRATKAR, JJ.

DATED : 27/11/2019

The petitioner is externed for two years from the limits of Nagpur city under Section 59 of the Maharashtra Police Act, 1951. The appeal filed by the petitioner to challenge the order of externment is also dismissed.

2] The contention of the petitioner is that the respondent no. 2 – Deputy Commissioner of Police has taken into consideration the fact that preventive action was taken against the petitioner as per Section 110 (e) and (g) of the Code of Criminal Procedure, reference of which proceeding was not given in the show cause notice served on the petitioner. Another ground of challenge is that the documents submitted by the petitioner alongwith

his reply to the show cause notice has not been considered by the respondent no. 2 – Deputy Commissioner of Police while passing the order of externment.

3] According to the petitioner, he has filed a Character Certificate issued by the Principal of College where he was studying from 18.07.2005 till 30.04.2007. The Certificate is dated 14.06.2008. Show cause notice came to be issued to the petitioner on 15.12.2018. Hence, the Character Certificate submitted by the petitioner to the respondent no. 2 – Deputy Commissioner of Police is not helpful to the petitioner. The petitioner claims that he has filed certain photographs alongwith his reply. It is not explained, as to how, those photographs assist the petitioner to show that the charges levelled against him in the show cause notice are not correct.

4] The order passed by the respondent no. 2 – Deputy Commissioner of Police on 14.01.2019, shows that the reply submitted by the petitioner was looked into by the respondent no. 2 – Deputy Commissioner of Police. The order further shows that though opportunity of hearing was granted to the petitioner by fixing the matter on 09.01.2019, he failed to appear or give any intimation

regarding his absence. Moreover, on going through the reply filed by the petitioner before the respondent no. 2 – Deputy Commissioner of Police, it cannot be said that any relevant and material aspect pointed out in the reply is not considered by the respondent no. 2 – Deputy Commissioner of Police while passing the impugned order.

5] Undisputedly, Crime No. 71/2018 for the offences punishable under Sections 452, 324, 323, 504, 506 and Section 34 of the Indian Penal Code, Crime No. 45/2018 for the offences punishable under Sections 324, 504 and Section 34 of the Indian Penal Code, and Crime No. 79/2018 for the offences punishable under Sections 143, 144, 148, 149, 324, 294, 506(b) of the Indian Penal Code are registered against the petitioner in 2018. Charge-sheet is filed in Crime No. 71/2018 and prosecution is pending. It cannot be said that the reference of the preventive action taken against the petitioner as per Section 110 of the Code of Criminal Procedure has made any difference in the adjudication by the respondent no. 2 – Deputy Commissioner of Police. Before this Court, the petitioner has not been able to point out that the non-disclosure of the preventive action taken

against the petitioner as per Section 110 of the Code of Criminal Procedure, in the show cause notice has adversely affected his right of defense.

6] We find that the order of externment passed by the respondent no. 2 – Deputy Commissioner of Police is based on proper appreciation of material on record and cannot be faulted with. The order passed by the learned Divisional Commissioner exercising appellate jurisdiction also cannot be faulted with. Hence, we see no reason to interfere with the impugned order.

Hence, the Criminal Writ Petition is **dismissed**. No Costs.

CRIMINAL APPLICATION (APPW) NO. 176/2019

In view of the disposal of the Criminal Writ Petition, this application praying for grant of time to file typed copy of faint pages and hand written pages does not survive. It is **disposed** accordingly.

JUDGE

JUDGE