

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6296 OF 2019

Raviraj Bhagirath Wagh ]  
Age : 32 years, Occ : Business ]  
R/at : House No.3477, Kajipura, ]  
Badrakali, Nashik ]..... Petitioner.

Versus

1] The Divisional Commissioner ]  
Nashik Division, Nashik ]  
] ]  
2] Deputy Commissioner of Police ]  
Zone – 1, Nashik City Nashik ]  
] ]  
3] The State of Maharashtra ]  
(Through the Public Prosecutor ]  
High Court, Appellate Side, ]  
Mumbai ]..... Respondents.

ALONG WITH  
CRIMINAL WRIT PETITION NO.6297 OF 2019

Pratik Suresh Kashid ]  
Age : 18 years, Occ : Service ]  
R/at : House No.3421, Kajipura, ]  
Badrakali, Nashik. ]..... Petitioner.

Versus

1] The Divisional Commissioner ]  
Nashik Division, Nashik ]  
] ]  
2] Deputy Commissioner of Police ]  
Zone – 1, Nashik City Nashik ]  
] ]  
3] The State of Maharashtra ]  
(Through the Public Prosecutor ]  
High Court, Appellate Side, ]  
Mumbai ]..... Respondents.

**Mr. Prashant D Patil for the Petitioners in both the Petitions.  
Mr. F R Shaikh, APP for the Respondent/State in both the Petitions.**

**CORAM : S. S. SHINDE,  
V. G. BISHT, JJ  
Reserved on : 11<sup>th</sup> March 2020  
Pronounced on : 18<sup>th</sup> March 2020**

**JUDGMENT :- (PER S S SHINDE, J)**

1 Rule in both the Petitions, with the consent of the learned counsel for the Petitioners and the learned Additional Public Prosecutor made returnable forthwith and heard.

2 The Petitioners by the above Writ Petitions challenge the orders dated 04/07/2019 passed by the Appellate Authority i.e. the Divisional Commissioner, Nashik Division, Nashik in the Appeals filed by the Petitioners under Section 60 of the Maharashtra Police Act (for short “the Police Act”) by which orders the externment orders passed by the Externment Authority i.e. the Deputy Commissioner of Police, Zone-1 Nashik City, Nashik came to be confirmed save and except to the extent mentioned in the operative part of the orders.

3 Both the Petitions involve identical facts and raise the same issues. We have heard both the petitions together and propose to dispose of by this common judgment.

4           It is the case of the Petitioners that on 02/05/2019 the Externing Authority i.e. Respondent No.2 herein issued show cause notice for externment of the Petitioners being member of alleged gang under Section 55 of the Police Act. Thereafter the Assistant Police Commissioner, Zone-2, Nashik conducted an inquiry. Respondent No.2, on the basis of said inquiry, on 15/06/2019 again issued another show cause notice calling upon the Petitioners and other persons to explain why they should not be externed for a period of two years from the area of Nashik District. Petitioners submitted their say on 26/06/2019. The Petitioner in Writ Petition No.6296 of 2019 pointed out that there are only two offences registered against the Petitioner and out of which one is of non-cognizable nature and he is falsely implicated in the said crime. So also Petitioner in Writ Petition No.6297 of 2019 pointed out that there are only one offence registered against him and he is falsely implicated in the said crime. It is also pointed out that whatever criminal cases are registered against the alleged gang members are more individualistic in nature than collective and do not show that these persons have got together and are indulging in criminal acts as a group. Therefore, by their reply the Petitioners questioned the issuance of the show cause notices.

5           The Externing Authority considered the material on record and the premises for proceeding against the Petitioners is that they constitute a gang

within the meaning of Section 55 of the Police Act. The Externing Authority has also referred to the in-camera statements of the witnesses. The Externing Authority was of the view that since there was no chance of the Petitioners reforming themselves, it was necessary to extern the Petitioners and, therefore passed the order dated 04/07/2019 externing the Petitioners and other members of alleged gang for a period of one year from the area of Nashik City and Nashik Gramin District.

6           Being aggrieved by the said order dated 04/07/2019 passed by the Externing Authority, the Petitioners preferred Appeals before the Appellate Authority i.e. the Divisional Commissioner under Section 60 of the Police Act. The Appellate Authority by the impugned order dated 14/11/2019, partly allowed the Appeals filed by the Petitioners thereby maintaining the externment of the Petitioners for a period of one year, however, the area prescribed by the Externing Authority in its order dated 04/07/2019 is restricted only to the jurisdiction of the Commissioner of Police. Hence these Petitions.

7           The learned counsel for the Petitioners submits that the Authorities have not applied their mind while considering the case of the Petitioners. It is submitted that there are only one or two offences registered against the Petitioners and they are falsely implicated in the said crimes. It is also

submitted that the cases registered against the alleged gang members are more individualistic in nature than collective and do not show that these persons have got together and are indulging in criminal acts as a group. He further submits that in respect of the alleged offences, both the Petitioners are released on bail and there is no breach of terms and conditions of the bail orders by the Petitioners. He also submits that the proceedings are initiated due to political influence against the Petitioners and the Petitioners are not involved in the said gang. It is stated that there is no material to show that the provisions of Section 55 of the Police Act can be invoked against the Petitioners. In support of his submissions, the learned counsel for the Petitioners relied upon the judgment of the Division Bench of this Court in the matter of Altaf Rajekhan Pathan and others v/s. Divisional Commission, Pune and others<sup>1</sup>. He lastly submits that by allowing these, the externment proceedings initiated against the Petitioners may be withdrawn.

8           On the other hand, the learned APP appearing for the Respondents/State supports the impugned orders. He submits that the Externment Authority as well as the Appellate Authority after considering the material on record especially the in-camera statements of the witnesses have come to a conclusion that the Petitioners are the members of the alleged gang. It is submitted that the offences registered against the Petitioners are under Indian Penal Code and therefore provisions of Section 55 of the Police Act can

---

<sup>1</sup> 2018(3) Bom.CR (Cri) 665.

be invoked against the Petitioners.

9           We have carefully perused the pleadings and the grounds taken in the Petitions, annexures thereto and the reasons recorded in the impugned orders by the Externing Authority as well as the Appellate Authority.

10          The issue whether the Petitioners can be said to constitute a gang within the meaning of Section 55 is required to be discussed on the touchstone of the provisions of Section 55 of the Police Act and whether the provisions of Section 55 can be invoked on the basis of the offences registered against the Petitioner. In the context of said issue, it would be necessary to refer to the said provision which for the sake of ready reference is reproduced herein under :-

**“55    *Dispersal of gangs and body of persons* ---.**

Whenever it shall appear in Greater Bombay and in 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 or 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 thereto] 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.”

So far as the judgment of the Division Bench of this Court relied upon by the learned counsel for the Petitioner in the case of Altaf Rajekhan Pathan (supra) is concerned, the facts of the said case and the facts of the present case are different. In the said case the offences were registered under the Gambling Act, however, in the present the offences registered against the present Petitioners are under Indian Penal Code. However, the Division Bench had an occasion to deal with the aforesaid issue in the said case. The Division Bench in paragraph 12 of the said judgment has observed that the aforesaid provision contemplates that the Commissioner in a commissionerate area and in a district the District Magistrate, the Sub Divisional Magistrate or the Superintendent empowered by the State Government to invoke the said provision if 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. In paragraph 14 it has been observed that from a plain reading of Section 55 of the Police Act it can be concluded that any “unlawful design” of a gang or body of persons would be covered by Section 55 of the Police Act.

11           Perusal of the impugned orders passed by the Externing Authority would show that the authority has referred two crimes registered against the Petitioner in Writ Petition No.6296 of 2019 being CR No.36 of 2019 for the offences punishable under Section 324, 504, 143 of IPC and CR No.1094 of 2018 for the offences punishable under Sections 323, 504 and 506 of IPC. So far as Petitioner in Writ Petition No.6297 of 2019 is concerned, the crime registered against him vide CR No.36 of 2019 is for the offences punishable under Section 324, 504, 143 of IPC. It is required to be noted that in the said CRs not only the present Petitioners are shown as accused but also other two/three persons are also shown as accused.

12           It needs to be noted that the externing authority has issued show cause notice dated 02/05/2019 against 6 members, out of which five members including the present Petitioners are shown as accused in CR No.36 of 2019 which has been registered at Badrakali Police. In so far as CR No.1094 of 2018 is concerned, the same has been registered against three persons and so far as CR No.676 of 2018 is concerned, the same has also been registered against three persons. It means the aforesaid crimes, referred by the externing authority in his order, have been committed by three or more persons and not by individual. The Externing Authority has also referred two in-camera statements of witnesses A and B who have named some of the members in their

statements and specifically stated that because of the terror created by the members they did not lodge any complaint in police station against them. As can be seen from the statements of witness A and B, five to seven persons are operating gang in Nashik City. It can be safely said that the offences registered against the Petitioners and other members are collective in nature.

Considering the aforesaid CRs in our view the said CRs have been registered against three to five members and not against individual person. Even in the in-camera statements the witnesses have stated about the threats given by 5 to 7 persons. Therefore, in the present case the basic requirement of there being a gang or body of persons is fulfilled. We are therefore not in agreement with the submission of the learned counsel for the Petitioner that criminal cases are registered against the alleged gang members are more individualistic in nature than collective and do not show that these persons have got together and are indulging in criminal acts as a group.

13           It is not necessary to state in the show-cause notice the details or the particulars of in-camera statements recorded by the external authority and only the general nature of material allegations is all that is necessary to be said in the show-cause notice.

14           Though it is the case of the Petitioners that they have been falsely implicated under political pressure and the offences are non-cognizable, the

Crime i.e. CR No.36/19 has been registered with Bhadrakali Police Station for the offences punishable under Sections 324,506 and 143 of the IPC, and except one member, all the five members including the Petitioners are involved in the said offences. One of the offence alleged against the Petitioners under Section 324 of the Indian penal Code is cognizable. The statements of witnesses A and B show that there is collective action on the part of the Petitioners and members. It appears from the in-camera statements that there was a collective participation by all the gang members in the unlawful activity. The cases have been registered against the gang leader and the gang members which are adverted to in the show cause notices

15           It appears from the aforesaid facts that the Petitioners including other persons are the members of the alleged gang. The Petitioners along with other gang members are engaged in illegal activities. The Externing Authority has properly considered the provisions of Section 55 of the Police Act. In our view, there is compliance of mandate of Section 55 of the Police Act and, therefore, the order of externment passed by the authorities does not require any interference.

16           While issuing the order of externment, the Externing Authority has also considered object and provisions of Section 55 of the Police Act. The Externing Authority after considering the material on record, the offences

registered against the Petitioners and the inquiry report submitted by Assistant Police Commissioner, Zone-II Nashik City, came to subjective satisfaction and accordingly passed the order of externment against the Petitioners on the ground that the said members are operating as a gang.

17           In the light of discussion made in foregoing paragraphs, we are of the considered view that the order of externment passed by Externing Authority and confirmed by Respondent No.1 – Appellate Authority is just, proper and well within law. We do not find any reason to interfere with the impugned order. The Writ Petitions are accordingly dismissed. Rule in both the Petitions is discharged.

[V. G. BISHT, J]

[S. S. SHINDE , J]

Laxmikant  
G.  
Chandan

Digitally signed  
by Laxmikant  
G. Chandan  
Date:  
2020.03.18  
14:49:00 +0530