

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

CRIMINAL WRIT PETITION (WP) NO. 347/2020

1. Dinesh @ Tukaram son of Shamraoji Ghodmare,
Aged about 47 years,
Occupation – Journalist and Agriculturist,
resident of Ward No. 16,
Near Sant Kabir Temple,
Kandli Main Road,
Sindhi Railway,
Taluq Selu, District Wardha. PETITIONER

// VERSUS //

1. The Superintendent of Police,
Wardha, District Wardha.
2. Sub Divisional Magistrate,
Wardha, District Wardha.
3. Sub Divisional Police Officer,
Wardha, District Wardha.
4. Police Station Officer,
Police Station Sindhi Railway,
Taluq Selu, District Wardha. RESPONDENT(S)

Shri Anil Mardikar, Senior Advocate a/w. Shri Shri S. G. Joshi, Advocate
for the petitioner

Shri S.P. Deshpande, APP for respondent nos. 1 to 4/State

Shri Mahesh Rai, Advocate for intervener/applicant in Criminal
Application No.(APPW) No. 90/2020

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 23/11/2020

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

- 1] Heard. **Rule.** Rule made returnable forthwith.
- 2] Heard finally by consent.
- 3] Heard learned Senior Counsel Shri Anil Mardikar for the petitioner. He has assailed the impugned order dated 17.08.2020 on the ground that it does not, in any manner, fulfill the requirements of Section 57 of the Maharashtra Police Act, 1951 (for short the “Act of 1951”) and that it is also the result of absolute non-application of mind on the part of respondent no. 2. He submits that there must be some material available on record on the basis of which subjective satisfaction of the empowered officer required under Section 57 of the Act of 1951 is recorded and that in the present case, there is absolutely no material available on record or at least the presence of such material on record is not reflected anywhere in the impugned order. He placed his reliance upon the view taken by this Court in the case of **Karan Ramesh Ghuge Vs. Dy. Commissioner of Police and Ors.** reported in **2013 ALL MR (Cri) 3491.**
- 4] Shri Deshpande, learned APP for respondent nos. 1 to 4 supports the impugned order contending that application of mind is indeed seen on overall consideration of the impugned order and that there is sufficient material available on record to conclude that if no action of externment under Section 57 of the Act of 1951 is taken

against the petitioner, the petitioner may or would engage in commission of similar offence for which he has been convicted earlier.

5] Shri Rai, learned Counsel for intervener - applicant adopts the argument of learned APP and thus he also supports the impugned order.

6] On going through the impugned order, we do not find that there is anything in the impugned order which would justify externment of the petitioner under Section 57 of the Act of 1951.

7] Firstly, Section 57 of the Act of 1951 requires that there must be conviction of the externee for offences elaborately mentioned in Section 57 of the Act of 1951 and secondly, there must be subjective satisfaction reached by the empowered officer making him believe that if not externed, the externee may again engage himself in the commission of an offence “similar to that for which he was convicted”. Then, in order to arrive at such subjective satisfaction, it is necessary that there is available some material on record, which would show that apprehension was as reached by the empowered officer is not fanciful and has some reliable foundation to it. This is the view taken by this Court in the case of **Karan Ramesh Ghuge** (cited supra).

8] In the present case, there are three offences on which reliance has been placed by the respondents and the intervener -

applicant. First offence registered as Crime No. 3033/2015 related to two felonies punishable under Sections 294 and 506 of the Indian Penal Code, 1860 (for short the "I.P.C."). Section 294 of the I.P.C. is an offence relating to 'obscene acts and songs' and whereas Section 506 is an offence which relates to 'criminal intimidation'. Both these offences are categorized in Chapter XIV and Chapter XXII respectively of the I.P.C.. Offences included in Chapter XIV and Chapter XXII are not the ones which are contemplated under Section 57 of the Act of 1951. So, offence as registered vide Crime No. 3033/2015 against the petitioner is wholly irrelevant in the present case. Second crime registered vide Crime No. 3/2016 is for offences punishable under Sections 341, 294 and 506 of the I.P.C. Section 341 defines "Wrongful Confinement" and it is seen from the chart given in the impugned order that for this offence, alongwith other offences, the petitioner has been convicted by the Criminal Court of competent jurisdiction on 10.12.2019. As stated earlier, the conviction for such offences as are punishable under Sections 294, 506 of the I.P.C. would not be relevant, but conviction of the petitioner for an offence under Sections 341 read with Section 342 would be for the reason that the offence of wrongful confinement falls under Chapter XVI, which has been specifically contemplated under Section 57 of the Act of 1951. The third crime on which reliance has been placed is Crime No. 78/2017 registered for offences punishable under Sections 341, 294 and 506 of the I.P.C.. But, in this Crime,

criminal proceedings are still pending and no conviction has been recorded and, therefore, again we would say this crime would not be relevant for the purposes of Section 57 of the Act of 1951 as what is required is the conviction and not mere registration of any offence or pendency of any criminal proceeding.

9] So, facts of the case indicate that the only offence for which the petitioner has been convicted and which is relevant for the purposes of Section 57 of the Act of 1951 is of Section 342 read with Section 341 of the I.P.C. Now, the next requirement would be, about which we have already mentioned earlier, of the apprehension nurtured by the empowered officer regarding possibility of the person committing the same offence for which he has been convicted earlier. For this purpose, presence of some material would be necessary so that one can say that such an apprehension is not without any reasonable foundation. On going through the impugned order, we find that there is not even a whisper made by respondent no. 2 regarding presence of such material. In fact, the impugned order nowhere makes any reference about the satisfaction and the belief of the empowered officer i.e. respondent no. 2 that if no action of externment under Section 57 of the Act of 1951 is taken against the petitioner, the petitioner may again repeat the same offence for which he has been convicted earlier. The reasons stated in the impugned order refer to some different fears not within the scope

and purview of Section 57 of the Act of 1951. These apprehensions are about the possibility of the petitioner misusing the freedom of expression by getting published false news, the petitioner creating atmosphere of fear and terror, the petitioner giving false information to the Police Officers and instigating them to conduct unjustified raids under Maharashtra Prevention of Gambling Act, 1887 and so on and so forth. These reasons nowhere refer to the possibility of the petitioner committing similar offence for which he was convicted earlier. Then, there is also no material present on record that illegal activity of the petitioner can possibly extend to adjoining districts. It is obvious that the impugned order suffers from non-application of mind and also vice of consideration of wholly irrelevant material and, therefore, such order cannot be sustained in the eye of law.

10] The petition is, therefore, **allowed**. The impugned order is hereby quashed and set aside.

11] Rule is made absolute accordingly.

12] In view of the disposal of the Writ Petition, Criminal Application (APPW) No. 90/2020 is disposed of accordingly.

JUDGE

JUDGE