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HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 315 of 2021

Reserved on : 12.08.2021

Delivered on : 25.10.2021

Bhupendra Kishore Vaishnav, S/o D.D. Vaishnav, Aged About 42 Years,
R/o Near Kali Mandir, Kharsia, Tehsil - Kharsia, District – Raigarh
(C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary Home, Department of Home Affairs, Raipur (C.G.)
2. Additional Chief Secretary, Department of Home (C.G.)
3. District Magistrate, Raigarh, District- Raigarh (C.G.)
4. Superintendent of Police, Raigarh, District- Raigarh (C.G.)

---- Respondents

For Petitioner : Mr. Awadh Tripathi, Advocate.

For State/ respondents : Mr. Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioner has filed writ petition under Article 226 of the Constitution of India challenging the order dated 24.03.2021 (Annexure P/1) passed by Additional Chief Secretary, Department of Home/respondent No. 2 by which appeal filed by the petitioner under Section 9 (1) of the Chhattisgarh Rajya Suraksha Adhiniyam, 1990 (for short "the Adhiniyam, 1990") has been dismissed, affirming the order dated 07.12.2020 (Annexure P/2) passed by District Magistrate, Raigarh/ respondent No. 3 whereby externment of the petitioner for one year from Raigarh District has been ordered.
2. The brief facts, as projected by the petitioner, are that the petitioner is an Advocate and also works as a reporter. He has

reported against malifide of coal mafia, gambling mafia, land mafia and also made some report against Ex-Minister and his brother. He has also made protest against present MLA in the year 2014. This act of the petitioner has annoyed the local administration, therefore, Superintendent of Police, Raigarh has sent a report on 29.12.2014 to District Magistrate, Raigarh for externment of the petitioner from Raigarh District alleging that the petitioner always remains in company of unsocial element and involved himself in the act of rioting assaulting, criminal intimidation, political and communal activities, which disturb peace and tranquility of the area. Such activities of the petitioner have become danger for maintenance of public order and on account of these activities the civilians are scared of the petitioner and fear to make report, which amounting to endanger to the law and order of the State, therefore, he may be externment from Raigarh.

3. Learned counsel for the petitioner would submit that in the complaint, list of five cases which were registered against the petitioner are as under:-

S.N.	Crime No.	Offence U/s	Status
1	14/2011	294, 506, 323, 34 IPC & (3)(1)(x) of SC/ST Act	Decided by JMFC
2	171/2011	420, 34 of IPC & 3 & 4 Negotiable Instruments Act	Pending before trial Court
3	594/2013	452, 294, 506, 186, 34 IPC	Pending at P.S.
4	06/2014	452, 147, 294, 506, 323, 395, 354 IPC & (3)(1)(x) of SC/ST Act	Pending at P.S.
5	88/2014	294, 506, 34 IPC	Pending at P.S.

4. On the basis of report submitted by Superintendent of Police, Raigarh, District Magistrate, Raigarh conducted preliminary enquiry and after satisfying himself with the contents of the report submitted by the Superintendent of Police, issued show cause notice to the petitioner on 31.12.2014. The petitioner filed reply to the show cause notice on 22.01.2015 stating that the

petitioner belongs to poor family and he has been acquitted from four criminal cases out of total five criminal cases and one criminal case is pending and since long he is not involved in any other criminal cases. It is further contended that the petitioner is having family members and living peacefully with his family. The petitioner is a sole bread earning member of his family, therefore, he is required to take care of his family members, as such, he may not be externed. It has been further contended that the alleged cases registered against the petitioner are not in grievous in nature and baseless, therefore, the complaint filed by the Superintendent of Police, Raigarh is vague and he prayed for dropping of the proceeding.

5. Learned counsel for the petitioner would further submit that the proceedings were initiated on 31.12.2014 and thereafter, it was kept pending upto 29.10.2020. On 29.10.2020 another Ishtgasha was served to the petitioner as additional report of Superintendent of Police, Raigarh. The petitioner has filed reply to the said Ishtagasha on 09.11.2020 (Annexure P/4) mainly contending that in the present Ishtagasha, Superintendent of Police, Raigarh has taken into consideration nine cases, which have been decided by learned Judicial Magistrate First Class/ Sub Divisional Magistrate, but the Superintendent of Police, Raigarh has deliberately recorded its finding in pending cases with intention to destroy his reputation, which amounts to contempt of Court. The petitioner has submitted applications to various higher authorities including His Excellency the Governor and Hon'ble the Chief Minister of Chhattisgarh State. The Hon'ble Chief Minister enquired into the complaint, but no enquiry has been conducted. It is further submitted that four various cases have been registered against the petitioner, out of three cases, the petitioner has been released on regular bail in one case and in two cases he has been released on anticipatory bail and only one matter is still pending for investigation, therefore, he may not be treated as criminal.
6. The District Magistrate, Raipug without examining the witnesses

fixed the case for final argument and on 23.11.2020 the petitioner has also submitted written argument. Vide order dated 07.12.2020, District Magistrate, Raigarh has passed the impugned order directing externment of the petitioner from Raigarh District for one year as per Section 5 (b) of the Adhiniyam, 1990. Being aggrieved by this order, the petitioner preferred an appeal under Section 9 (1) of the Adhiniyam, 1990, contending that the evidence of the petitioner has not been recorded and without any material on record, learned District Magistrate, Raigarh has passed the order without giving opportunity of hearing to the petitioner and without examining any of the prosecution witnesses. It has been further contended that findings have been wrongly recorded that general public are not ready and willing to record their evidence and due to continuous criminal activity of the petitioner, law and order has been disturbed and also adversely affected the public administration, which is perverse, therefore, the order of externment dated 07.12.2020 is liable to be quashed by the appellate authority.

7. The appellate authority vide its order dated 24.03.2021 has dismissed the appeal. The petitioner has filed Writ Petition (Crl.) assailing both the orders. This Court vide order dated 18.06.2021 directed learned State counsel to produce record related to the Appeal No. F-4-03/Grih-C 2021 as well as record from District Magistrate, Raigarh in Criminal Case No. 04/2015 and in pursuance of this Court's order, State counsel has produced the records for perusal of this Court.
8. I have heard learned counsel for the parties and perused the records appended thereto with utmost satisfaction.
9. The records of the proceedings initiated by the District Magistrate, Raigarh would reflect that the prosecution has examined witnesses namely Rajesh Sahis on 03.05.2017, Dhansai Yadav on 20.12.2017, Manendra Nayak on 07.02.2018 & Smt. Krishna Khatik on 20.09.2018. The petitioner appeared before District Magistrate on 28.03.2016 & 26.04.2016 and

thereafter he remained absent on 24.05.2016, 21.06.2016, 25.07.2016, 30.08.2016, 30.12.2016, 31.01.2017, 29.03.2017, 18.07.2017, 16.08.2017, 13.09.2019, 25.10.2017, 22.11.2017, 20.12.2017, 17.01.2018, 07.12.2018, 14.03.2018, 23.05.2018, 11.07.2018, 01.08.2018, 05.09.2018, 12.09.2018. The prosecution has examined the witness Rajesh Sahis in presence of the petitioner, but he has not cross-examined him. When other witnesses were examined, the petitioner was remained absent. The petitioner appeared before District Magistrate on 10.10.2018, but he has not made any prayer for any opportunity to cross-examination of the witnesses, who have already been examined. The petitioner recorded his statement on 10.10.2018 and closed his right to lead further evidence to substantiate his defence. On 15.10.2018, the petitioner appeared and sought time to submit written arguments, therefore, the case was adjourned to 16.10.2018 and on 16.10.2018 he has submitted the written arguments.

10. On 22.09.2020, Superintendent of Police, Raigarh has again submitted additional report wherein, Criminal Case No. 220/2020 has been registered against the petitioner at Police Station- Kharsia, District- Raigarh for committing offence punishable under Sections 451, 384, 387, 506-B, 120-B & 34 of I.P.C. On 04.05.2020 another Crime No. 229/2020 has been registered against the petitioner at Police Station- Kharsia, District- Raigarh for committing offence punishable under Sections 188, 269, 270 of I.P.C. thereafter, District Magistrate has issued notice to the petitioner directing him to file reply. In response, petitioner filed reply and submitted written argument also, thereafter, the impugned order has been passed. District Magistrate while directing externment of the petitioner for one year has recorded its finding, which reads as under:-

“14- छ०ग० राज्य सुरक्षा अधिनियम 1990 की धारा 5(ख) के अनुसार “यह विश्वास करने के लिए युक्तियुक्त कारण है कि ऐसा व्यक्ति किसी ऐसे अपराध के, जिसमें बल या हिंसा अंतर्वलित है, या भारतीय

दण्ड संहिता 1860 के अध्याय 12, 16 या 17 या उसकी धारा 506 या 509 के अधीन दण्डनीय किसी अपराध के करने में या ऐसे किसी अपराध के दुष्प्रेरण में संलग्न है या संलग्न होने को आमादा है और जब जिला मजिस्ट्रेट की राय में, ऐसे व्यक्ति के विरुद्ध साक्षीगण अपने शरीर या संपत्ति की सुरक्षा के बारे में उसकी ओर से आशंका होने के कारण, खुलेआम साक्ष्य देने हेतु आगे आने के लिए रजामंद नहीं है।” अनावेदक के कृत्य से यह विश्वास हो गया है कि साक्षीगण अपने शरीर या संपत्ति की सुरक्षा के बारे में उसकी ओर से आशंका होने के कारण खुलेआम साक्ष्य देने हेतु आगे आने के लिए रजामंद नहीं है। यही कारण है कि फरियादीगण न्यायालय में अनावेदक के भय से उससे राजीनामा कर रहे हैं। अनावेदक आपराधिक प्रवृत्ति का व्यक्ति है साथ ही महिलाओं के प्रति भी उसकी भावना ठीक नहीं है। अतः राज्य सुरक्षा अधिनियम के उक्त प्रावधान के तहत उसे जिले से निष्कासित किये जाने का पर्याप्त कारण है।”

11. Thereafter, the petitioner preferred an appeal before the appellate authority i.e. Additional Chief Secretary under Section 5(b) of the Adhiniyam, 1990. The learned appellate authority while dismissing the appeal has recorded finding that nine cases have been registered against the petitioner from 2010 and on eight occasions proceeding for prohibition was done. There is no improvement in conduct of the petitioner. Learned appellate authority has recorded finding that the petitioner is an advocate and journalist, therefore, he has responsibility and involvement of the petitioner in criminal activities clearly establishes that the security, peace and tranquility of the area will be jeopardized, therefore, externment of the petitioner as ordered by the District Magistrate for one year on 07.12.2020 is legal, justified and not liable to be interfered with by the appellate authority and accordingly, the appeal is liable to be dismissed.
12. The petitioner in support of his submission has also filed written synopsis reiterating the stand taken by him in the appeal and relied upon the judgment passed by Hon'ble the Supreme Court in **Gulab Mahato @ Santosh Mahato Vs. State of Chhattisgarh & others**¹.

¹ (2017) 3 CGLJ 280

13. Before advertizing to the facts of the case, it is expedient to examine the relevant provisions of the Adhiniyam.
14. Section 5 of the Adhiniyam, 1990 deals with removal of persons about to commit offence, Section 6 deals with removal of persons convicted of certain offences, Section 7 deals with period of operation of orders under Section 4, 5 or 6 & Section 8 deals with hearing to be given before order under Section 3, 4, 5 or 6 is passed.
15. The relevant provisions of Sections 5 to 10 of the Adhiniyam 1990 are extracted below:-

5. Removal of persons about to commit offence.

- Whenever it appears to the District Magistrate-

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abatement of any such offence, and when in the opinion of the District Magistrate witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property; or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant;

the District Magistrate may, by an order in writing duly served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant-

(a) so as to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease; or

(b) to remove himself outside the district or any part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route within such time as the District Magistrate may specify and not to enter or return to the said district or part thereof or such area and such contiguous districts, or part thereof, as the case may be, from which he was directed to remove himself.

6. Removal of persons convicted of certain offences. - If a person has been convicted-

(a) of an offence,-

(i) under Chapter XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860); or

(ii) under the Protection of Civil Rights Act, 1955 (22 of 1955); or

(b) twice, of an offence under Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956); or

(c) thrice, of an offence within a period of three years under [Section 3 or 4 or 4-A] of the Public Gambling Act, 1867 (3 of 1967), in its application to the State of Madhya Pradesh;

the District Magistrate may, if he has reason to believe that such person is likely against to engage himself in the commission of an offence similar to that for which he was convicted direct such person by an order to remove himself outside the district or part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route and within such time as the District Magistrate may order and not to enter or return to the District or part thereof or such area and such contiguous district or part thereof, as the case may be, from which he was directed to remove himself.

Explanation :- For the purpose of this Section, the expression, "an offence similar to that for which he was convicted" means :-

(i) in the case of a person convicted of an offence mentioned in clause (a), an offence falling under any of the Chapters or Sections of the Indian Penal Code, 1860 (45 of 1860), mentioned in that clause or an offence falling under the provisions of the Act mentioned in sub-clause (ii) of that clause; and

(ii) in the case of a person convicted of an offence mentioned in clauses (b) and (c), an offence falling under the provisions of the Acts mentioned respectively in the said clauses.

7. Period of operation of orders under Section 4, 5 or 6. - A direction made under Section 4, 5 or 6 not to enter any district or part thereof or such area and any district or districts or any part thereof, contiguous thereto, as the case may be, shall be for such period as may be specified therein and shall in no case exceed a period of one year from the date of which it was made.

8. Hearing to be given before order under

Section 3, 4, 5 or 6 is passed. - (1) Before an order under Section 3, 4, 5 or 6 is passed against any person, the District Magistrate shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them.

(2) If such person makes an application for the examination of any witness produced by him, the District Magistrate shall grant such application and examine such witnesses unless for reason to be recorded in writing, the District Magistrate is of opinion that such application is made for the purpose of vexation or delay.

(3) Any written statement put in by such person shall be filed with the record of the case and such person shall be entitled to appear before the District Magistrate by any legal practitioner for the purpose of tendering his explanation and examining the witnesses produced by him.

(4) The District Magistrate proceeding under subsection (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under Section 3, 4, 5 or 6 require such person to appear before him and to execute a security bond with or without sureties for such attendance during the inquiry.

(5) If the person fails to execute the security bond as required or fails to appear before the District Magistrate during the inquiry, it shall be lawful for the District Magistrate to proceed with the enquiry *ex parte* and thereupon such order, as was proposed to be passed against him, may be passed.

9. Appeal. - (1) Any person aggrieved by an order under Section 3, 4, 5 or 6 made by the District Magistrate or any other officer specially empowered under Section 13 may appeal to the State Government within thirty days from the date of such order. Such appeal shall be decided as far as possible within a period of four months of the date of filing of the appeal.

(2) An appeal under this section shall be preferred in the form of a memorandum setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by a certified copy thereof.

(3) On receipt of such appeal, the State Government may after giving a reasonable opportunity to the appellant to be heard either

personally or by a legal practitioner and after such further inquiry, if any, as it may deem necessary confirm, vary or rescind the order appealed against :

Provided that the order appealed against shall remain in operation pending the disposal of the appeal, unless the State Government otherwise directs.

(4) In calculating the period of thirty days provided for an appeal under this Section, the time taken for granting a certified copy of the order appealed against shall be excluded.

10. Finality of orders passed for in certain cases. - Any order passed under Section 3, 4, 5 or 6 shall not be called in question in any Court except on the grounds-

(i) that the District Magistrate had not followed the procedure laid down in sub-section (1) of Section 8; or

(ii) that there was no material before the District Magistrate upon which he could have based his order; or

(iii) that the District Magistrate was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person in respect of whom an order was made under Section 5.

16. From bare perusal of the relevant provisions of the Adhiniyam, 1990, the proceedings under the Adhiniyam, 1990 are preventive in nature and the order of externment cannot be construed to be an order imposing punishment. The said Adhiniyam, 1990 as is clear, has been enacted to provide for security of the State, maintenance of public order and certain other matters connected therewith. The provisions are intended for taking preventive actions to counteract activities of anti-social elements and the Adhiniyam confers on the Government with power to take appropriate action so that peace and tranquility is not disturbed and one manner of maintaining peace and tranquility is by removal of anti-social elements and restriction of their activities. The Adhiniyam arms the Government with power to make a restriction order and appropriate orders dealing with dispersal of anti-social elements and previous convicts and removal of

persons about to commit offences as also removal of persons convicted of certain offences for which appropriate actions may be initiated. The action under this provision is not to punish, but to prevent certain actions which may be prejudicial to the peace and tranquility in the community. Though, it is no doubt true that to some extent the order of externment affects the right to movement of a person (within a certain area) against whom an order is passed but then this is preventive and not punitive. Indeed, a citizen has a right to move about freely throughout the territory of India, but this right is not wholly absolute and the State has the power to impose reasonable restrictions on such movement either in the interest of the general public or for the protection of interest of any Scheduled Tribe. In the case at hand, the restriction in so far as it prohibits the petitioner's entry in certain specified districts may be complete, but it cannot be said that the order amounts to a total prohibition of the fundamental right of the petitioner guaranteed under Article 19(1)(d) of the Constitution of India. The action of restriction is with the object of maintaining peace and tranquility and the action is taken against the person only after giving him a due opportunity of hearing.

17. The records of the proceedings would clearly establish that opportunity of hearing has been granted to the petitioner as first witness was examined by the prosecution on 03.05.2017 in presence of the petitioner, but he has not cross-examined and when prosecution examined other witness on 20.12.2017 & 07.02.2018, he has not cross-examined the witnesses. As such, there is compliance of the procedure as provided in Section 8 of the Adhiniyam, 1990. It is pertinent to mention here that even new Ishtagasha was submitted by the Superintendent of Police, the District Magistrate has provided copy to the petitioner and the petitioner has submitted his reply and documents.
18. Witness namely- Manendra Nayak has deposed as under:-

"मैं, अनावेदक भूपेन्द्र वैष्णव को जानता हूँ वह "स्वे" कान्सेप्ट मार्केटिंग इंडिया प्रा.लि. का वर्ष 2010-2011 में एजेंट था तथा उसके द्वारा कम्पनी के नाम से मेरे एवं अन्य लोगों से पैसे दुगना कर दूंगा करके पैसे लेने का कार्य करता था । घटना वर्ष 2010 के मार्च महिने अनावेदक के द्वारा मुझसे 2000 रु. जमा करोगे तो उसका एक वर्ष में 26100 रु. हो जायेगा कहकर बोलने लगा तब मैं उसके बहकावे में आकर उसके एकाउन्ट नंबर 31018073934 में 1,16,000 रु. जमा कर दिया तथ मैंने उक्त रकम के अलावा बीच-बीच में 4000 रु., 8000 रु., 12000 रु., 80000 रु., 90000 रु., 44000 रु., 52000 रु., इस तरह कुल करीब 298000 रु. तथा पूर्व में दिया गया 116000 रु कुल मिलाकर 4,00,000 रु. दिया किन्तु अनावेदक ने उक्त पैसे को निर्धारित अवधि में नहीं दिया जिसके कारण मुझे ठगा महसूस होने पर अ.वि.अ. (पुलिस) खरसिया में रिपोर्ट दर्ज कराया था ।

अनावेदक मुझे तथा आस-पास के लोगों को छलपूर्वक पैसे प्राप्त करता था तथा उसके डर से आस-पास के लोग उसके विरुद्ध गवाही देने से कतराते हैं । अनावेदक बदमाश एवं धोखेदार प्रवृत्ति का आदमी है ।"

19. Witness namely Dhansai Yadav deposed as under:-

"मैं अनावेदक भूपेन्द्र किशोर को जानता हूँ वह खरसिया का निवासी है । मैं रायगढ़ से प्रकाशित जन्मकर्म का पत्रकार वर्ष 2014 में था । घटना 08 मार्च रात्रि करीब 11 बजे की है घटना दिनांक को आरती वैष्णव का मुख्य नगर पालिक अधिकारी श्रीमती कृष्णा खटिक के पति से कुछ विवाद था जिसकी पत्रकार की हैसियत से जानकारी प्राप्त करने हेतु मैं तथा राजेश शर्मा पुलिस चौकी खरसिया गये हुये था तभी पुलिस चौकी खरसिया के सामने पहुंचने पर अनावेदक एवं उनके साथी हम लोगों को देखकर भड़क गये तथा मां बहन की गंदी गंदी गाली गलौच देने लगे तथा उन लोगों के द्वारा मुझे गैंगस्टर को बुलाकर टुकटे कर जान से मारने की धमकी देने लगे जिसके कारण मैं तथा राजेश शर्मा भयभीत हो गये तथा डर के कारण मैंने चौकी खरसिया में अनावेदक एवं उनके विरुद्ध लिखित में शिकायत दर्ज कराया तथा उक्त प्रकरण न्यायालय में विचाराधीन है ।

अनावेदक खरसिया के स्थायी निवासी है तथा उसके विरुद्ध थाना में कई मामले दर्ज है एवं वह आराधिक प्रवृत्ति का आदमी है तथा अनावेदक से आम जन हमेशा भयभीत रहते हैं ।"

20. Witness namely Smt. Krishna Khatik deposed as under:-

"शपथपूर्वक कथन करती हूँ कि मैं अगस्त 2012 से 13.08.2015 तक मुख्य नगर पालिका अधिकारी, नगर पालिका परिषद खरसिया के पद पर पदस्थ थी। दिनांक 03.12.2013 को दिन के 01:30 बजे अनावेदक भूपेन्द्र किशोर वैष्णव अपने साथियों के साथ नगर पालिक परिषद के ऑफिस में घुसकर मेरे साथ गाली-गलौच किया गया तथा ऑफिस में तोड़ फोड़ किया गया। इस घटना की रिपोर्ट मैंने चौकी खरसिया में दर्ज कराई थी। जिस पर अप.क्र. 594/13 धारा 452, 294, 506, 186, 34 भादवि दर्ज की गई थी।

दिनांक 08.03.2014 की शाम 07:00 बजे अनावेदक भूपेन्द्र किशोर वैष्णव अपने अन्य साथियों के साथ एक राय होकर मेरे नगर पालिका खरसिया स्थित मकान घर के अन्दर प्रवेश करके जातीगत गाली गलौच व जान से मारने की धमकी देकर मारपीट, छेड़छाड़ व डकैती का अपराध कारित किया। उक्त घटना की रिपोर्ट मेरे द्वारा चौकी खरसिया में की गई जिस पर अप.क्र. 06/14 धारा 452, 147, 294, 506, 323, 395, 354 ता. हि. 3(1-10) एस.सी/एस.टी. एक्ट पंजीबद्ध किया गया।

दिनांक 03.12.2013 की रिपोर्ट के संबंध में पुलिस द्वारा न्यायालय में चालान पेश किया गया था। न्यायालय खरसिया में अनावेदक से मेरा राजीनामा हो गया था। जिसके आधार पर प्रकरण समाप्त किया गया।

दिनांक 08.03.2014 की रिपोर्ट के आधार पर पुलिस द्वारा विशेष न्यायालय (एट्रोसिटीज) जिला रायगढ़ में चालान पेश किया गया था। विशेष न्यायालय (एट्रोसिटीज) रायगढ़ में अनावेदक से मेरा राजीनामा हो गया था। जिसके आधार पर प्रकरण समाप्त किया गया।"

21. Witness namely Rajesh Sahish deposed as under:-

"मैं अनावेदक भूपेन्द्र किशोर वैष्णव को जानता हूँ। घटना वर्ष जून 2011 की रात्रि 9.00 बजे की है। घटना दिनांक को आरोपी ने खरसिया स्थित अम्बेडकर चौक के पास रास्ता रोककर मुझे हाथ मुक्का से मारपीट कर गाली गलौच किया था जिसकी मैंने चौकी खरसिया में लिखित शिकायत दर्ज कराया था। लिखित शिकायत प्रदर्श-पी-1 के अ से अ भाग पर मेरे हस्ताक्षर हैं। उक्त प्रकरण में मेरा अनावेदक से राजीनामा हो गया है।

अनावेदक भूपेन्द्र किशोर वैष्णव किस प्रवृत्ति का आदमी है मुझे जानकारी नहीं है।"

22. There is sufficient material for the District Magistrate to record a finding that peace and tranquility of the area is adversely

affected because of the presence of the petitioner. This is the subjective satisfaction of the authority which should be based upon some material, which is available in this case, therefore, it cannot be said that in the case on hand, the restriction imposed upon the petitioner is arbitrary or of an excessive nature beyond what was required in the interest of the public as it deprives the petitioner from his fundamental right of movement throughout the territory of India.

23. The contention that the order not being a well reasoned order stands vitiated, cannot also be accepted. As has been observed above, the order of externment is not an order imposing punishment and in such cases it cannot be said that the facts on which the action is based should make out a case beyond all reasonable doubts as is required to be made out before holding a person guilty of an offence. Obviously, such orders of externment of individuals like preventive detention are largely precautionary and to some extent can be said to be based on suspicion which should arise from the material placed on record. An order of externment cannot be passed on the ipse dixit of an Authority, but founded on material on record and which is sufficient for arriving at a belief that a person is engaged or about to be engaged in the commission of offence. Thus, a satisfaction or a belief has to be arrived at by the Authority before it takes any action and this satisfaction or belief is to be based on material placed before him. In the case at hand, it cannot be said that the Authority-respondent No. 3 herein, has arrived at a particular conclusion without there being any material on record or in a routine or a mechanical manner. The record indicates that a report giving details was received from the Superintendent of Police. On receiving the report, the concerned Authority examined the matter, initiated an enquiry in which statements of some witnesses were examined, who were not cross-examined by the petitioner for the reason best known to him. From perusal of the said order, it is clear that the Authority arrived at that conclusion after appraisal of the facts on

record. In other words, his satisfaction has been recorded indeed, neither it is necessary nor does the statute require recording of reasons to make out a case beyond reasonable doubt like in a criminal trial before passing an order of externment.

24. It is, not doubt, true and as pointed out by the learned counsel that in many of the cases, the Court acquitted the petitioner. But from the orders impugned, it is apparent that in most of these cases the witnesses had feigned ignorance of the incident and they have resiled from their statement made during the investigation and in one case even the complainant had resiled from their earlier stand. In other words, the complainant also did not support the prosecution but surprisingly, as is clear from the order of the authority, many of these persons have deposed before the Authority pointing out threats against them by the petitioner and his conduct by which the community is disturbed.
25. From bare perusal of the order passed by the appellate authority, it is quite clear that the appellate authority after considering the entire material and evidence on record, has recorded the finding, which is as under:-

“14. अपीलार्थी के विरुद्ध वर्ष 2001 में एक प्रकरण दर्ज हुआ है। इसके पश्चात वर्ष 2010 से उसकी अपराधिक गतिविधियों के कारण उसके विरुद्ध 09 अपराधिक प्रकरण दर्ज हुए हैं। 08 अवसरों पर उसके विरुद्ध अपराध से विरत रहने के उद्देश्य से प्रतिबंधात्मक कार्यवाहियाँ भी की गईं किंतु सुधार का अवसर दिये जाने पर भी उसके आचरण में सुधार नहीं होने के तथ्य एवं साक्ष्य उपलब्ध हैं। अपीलार्थी ने स्वयं को अधिवक्ता बतलाते हुए पत्रकार भी होना बतलाया है। इन कारणों से समाज के प्रति उसका उत्तरदायित्व और अधिक महत्वपूर्ण हो जाता है, किंतु अपीलार्थी का लगातार अपराधिक गतिविधियों में लिप्त रहना उस पर अधिरोपित महत्वपूर्ण दायित्व के निर्वहन में असफलता को स्थापित करता है। इन्हीं आधारों पर अपीलार्थी के अपराध करने के लिए अमादा रहने की गतिविधियों की स्पष्ट एवं प्रमाणित साक्ष्य के आधार पर आम जन की सुरक्षा एवं क्षेत्र में शांति व्यवस्था बनाए रखने के लिए जिला रायगढ़ एवं सीमावर्ती जिलों से बाहर रहने का निषेधात्मक आदेश पारित किया गया है। इन परिस्थितियों में अपीलार्थी के विरुद्ध

आदेश दिनांक 07.12.2020 को अपील द्वारा दी गई चुनौती आधारहीन स्थापित होती है।

15. जिला दण्डाधिकारी रायगढ़ द्वारा अपीलार्थी के विरुद्ध अधिनियम की धारा 5(ख) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए पारित किए गए निषेधात्मक आदेश दिनांक 07.12.2020 में कोई तथ्यात्मक अथवा विधिक त्रुटि नहीं है। आदेश दिनांक 07.12.2020 में हस्तक्षेप करने का कोई आधार नहीं है।

अपीलार्थी द्वारा प्रस्तुत अपील दिनांक 06.01.2021 अस्वीकार की जाती है।"

26. This finding is purely appreciation of facts, evidence already brought on record and as per Section 10 of the Adhinyam, 1990. As the order passed under Section 3, 4, 5 & 6 can be called in question in any Court except on the grounds that the District Magistrate had not followed the procedure, there was no material before him upon which he could have based his order or the District Magistrate was not of the opinion that witnesses were unwilling to come forward to give their evidence in public against the petitioner in respect of whom, an order was made under Section 5 of the Adhinyam, 1990. From the order passed by District Magistrate, it is crystal clear that there is no such ingredients on which, the appellate authority can interfere in the order, therefore, the appellate authority has rightly rejected the appeal filed by the petitioner.
27. Hon'ble the Supreme Court in case of **Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, the State of Maharashtra²**, has examined the scope and ambit of Sections 56 to 59 of the Maharashtra Police Act, 1954 with regard to law relates to externment order, which are extracted below:-

"8. Section 56 of the Act provides, to the extent material, that whenever it shall appear in Greater Bombay to the Commissioner: (a) that the movements of acts of any person are causing or are calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence

2 (1973) 1 SCC 372

punishable under Chapter XII, XVI or XVII of the Penal Code, 1860, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, the said officer may by order in writing direct such person 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 the said officer may prescribe and not to enter or return to the said area from which he was directed to remove himself. Under Section 58, an order of externment passed under Section 56 can in no case exceed a period of two years from the date on which it was made. The relevant part of Section 59(1) provides that before an order under Section 56 is passed against any person, the officer shall inform that person in writing "of the general nature of the material allegations against him" and give him a reasonable opportunity of tendering an explanation regarding those allegations. The proposed externnee is entitled to lead evidence unless the authority takes the view that the application for examination of witnesses is made for the purpose of vexation or delay. Section 59 also confers on the person concerned a right to file a written statement and to appear through an advocate or attorney.

9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under clause (a) or (b) of Section 56, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externnee by reason of apprehension on their part as regards the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed externnee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which is impossible to bring to book by established methods of judicial trial because in such trials there can be no

conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee "of the general nature of the material allegations against him". That obligation fixes the limits of the co-relative right of the proposed externee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.

10. It is true that the provisions of Section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in Gurbachan Singh v. State of Bombay[1952 SCR 737 : AIR 1952 SC 221 : 1952 SCJ 279] had upheld the validity of Section 27(1) of the City of Bombay Police Act, 1902, which corresponds to Section 56 of the Act. Following that decision, the challenge to the constitutionality of Section 56 was repelled in Bhagubhai v. Duldbhabhai Bhandari v. District Magistrate, Thana. We will only add that care must be taken to ensure that the terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee.

15. As regards the last point, it is primarily for the externing authority to decide how best the externment order can be made effective, so as to subserve its real purpose. How long, within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 56 it should extend, are matters which must depend for their decision on the nature of the data which the authority is able to collect in the externment proceedings. There are cases and cases and therefore no general formulation can be made that the order of externment must always be restricted to the area to which the illegal activities of the externee extend. A larger area may conceivably have to be comprised within the externment order so as to isolate the externee from his moorings.

16. An excessive order can undoubtedly be struck down because no greater restraint on

personal liberty can be permitted than is reasonable in the circumstances of the case. The decision of the Bombay High Court in **Balu Shivling Dombé v. Divisional Magistrate, Pandharpur**, is an instance in point where an externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case. The activities of the externee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as districts of Sholapur, Satara and Poona. These areas are far widely removed from the locality in which the externee had committed but two supposedly illegal acts. The exercise of the power was therefore arbitrary and excessive, the order having been passed without reference to the purpose of the externment.”

28. Hon’ble the Supreme Court in **Gazi Saduddin v. State of Maharashtra & another**³, has held that in passing an order of externment, the authority passing the order must be satisfied of the expediency of passing the order. If the satisfaction recorded by the authority is objective and is based on material on record then the Court would not interfere with the order passed by the authority, only because another view can possibly be taken. However, the satisfaction of the authority can be interfered with if the satisfaction recorded is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of the materials on record, been satisfied of the expediency/necessity of passing an order of externment.
29. Hon’ble the Supreme Court in **Gazi Saduddin (Supra)** held as under:-

“13. It has not been pointed out that there was any lapse in following the procedure laid down under the Act and the Rules in passing the order of externment. Procedure laid down under the Act culminating in passing of the order of externment was duly followed. Primarily the satisfaction has to be of the authority passing the order. If the satisfaction recorded by the authority is objective and is based on material on record then the courts would not interfere with the order passed by the authority only because another view possibly can be taken. Such satisfaction of the authority can be

3 (2003) 7 SCC 330

interfered with only if the satisfaction recorded is either demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person could not form or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act.

30. The judgment cited by learned counsel for the petitioner in **Gulab Mahato (Supra)** is not applicable to the facts and circumstances of the present case as in **Gulab Mahato (Supra)** evidence was examined in absence of the petitioner whereas statement of the petitioner was to be recorded, but despite knowledge of date of the hearing, the petitioner deliberately had not appeared before the District Magistrate for cross-examination of the witnesses, therefore, facts of that case are distinguishable from the facts and circumstances of the present case, therefore, the judgment cited by the petitioner is not applicable in the present facts of the case.
31. Thus, from the above, stated legal provisions and the laid down by Hon'ble the Supreme Court, it is clear that the authority while passing the order must be satisfied of the expediency of passing the order. If the satisfaction recorded by the authority is objective and is based on material on record then the Court would not interfere with the order passed by the authority, only because another view can possibly be taken. Therefore, the order passed by the District Magistrate does not suffer from perversity as there is sufficient material to record a finding that witnesses are compelled to settle their dispute with the petitioner on the ground of safety and security of the property. The appellate authority has also given a brief reason for dismissing the appeal which is legal, justified and not liable to be interfered by this Court.
32. Thus, from the above stated discussion as well as the law laid down by Hon'ble the Supreme Court, this Court is of the view that the District Magistrate, Raigarh has not committed any error in passing order dated 07.12.2020 (Annexure P/2) and the appellate authority has also rightly rejected the appeal filed by the petitioner vide order dated 24.03.2021 (Annexure P/1). The

impugned orders do not suffer from any illegality or irregularity warranting interference by this Court.

33. In view of the above, the instant petition is liable to be and is hereby dismissed. No order as to cost.

**Sd-
(Narendra Kumar Vyas)
Judge**

Arun