

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL WRIT PETITION NO.1835 OF 2021

Shri Suyog Gajanan Aundhkar
aged about 30 years, Occ.:Agriculturist
r/at Kasegaon, Tal.:Walwa, District: Sangli

... Petitioner

Vs.

1) State of Maharashtra
through the Additional Chief Secretary
Home Department, Mantralaya, Mumbai

2) The Divisional Commissioner, Pune Region,
Pune.

3) Sub-Division Officer, Walwa, Islampur
Division.

... Respondents

4) Sub-Divisional Police Officer,
Islampur Division, Islampur, Sangli

5) Assistant Police Inspector
Kasegoan Police Station
Tal.Walwa, Dist. Sangli

Mr.Ujjwal Agandsurve ib Mr.A.S. Gaikwad for the Petitioner

Mr.K.V. Saste, APP, for Respondent – State

**JUDGMENT RESERVED ON: JULY 23, 2021
JUDGMENT PRONOUNCED ON: JULY 27, 2021**

JUDGMENT (PER S.S. SHINDE, J.):

1. Rule. Rule made returnable forthwith with the consent of the learned Counsel appearing for the parties and heard finally.

2. It is the case of the petitioner that on 15th March, 2019, the Sub-Inspector of Police, Islampur Police station, Islampur forwarded a proposal to the Police Inspector, Crime Branch, Sangli/ Special Executive Magistrate and requested to take action against the petitioner by invoking the provisions of section 110 of the Code of Criminal Procedure.

3. On 21st August, 2019, the proceedings under section 56(1) (a) of the Maharashtra Police Act, 1951 was initiated against the petitioner. Thereafter, the petitioner responded to the notice dated 2nd November, 2019 issued to him. Thereafter, on 25th December, 2020, the Sub-Divisional Magistrate, Walwa Region, Islampur passed the order and externed the petitioner from the Revenue boundaries of Satara, Solapur and Kolhapur districts. Being aggrieved by the said order, the present petitioner filed appeal before the Divisional Commissioner (Revenue), Pune Division, Pune. The said appeal was partly allowed thereby modifying the order passed by the Sub-Divisional Magistrate, Islampur, who externed the petitioner from Sangli district and not to enter in the Cities of Satara, Solapur and Kolhapur for one year.

4. Being aggrieved by both the aforesaid orders, this Writ Petition is filed.

5. Learned Counsel appearing for the petitioner submitted that the show-cause notice does not mention about the in-camera statements of witnesses recorded by the concerned authority. Though five offences are mentioned in the show-cause notice while passing the impugned orders, reliance is placed on six offences. The action initiated by the respondents is malafide and, therefore, the petition deserves to be allowed.

6. On the other hand, learned APP appearing for the Respondent – State and its officials relying upon the reasons recorded by both the authorities and also reply filed by the respondents before the said authorities submitted that the petition may be dismissed.

7. We have carefully perused the order passed by the Sub-Divisional Magistrate, Islampur. By the said order, the petitioner has been externed for 2 years from the revenue boundaries of Sangli district and from Satara, Solapur and Kolhapur cities. We have carefully perused the reasons assigned by the said authority

and we find that there are no cogent reasons assigned by the authority as to why the petitioner should not enter into Satara, Solapur and Kolhapur cities. No doubt, the authority by giving convincing and cogent reasons, can extern the proposed externee from the adjoining districts, however, in the facts of the present case, no cogent and convincing reasons are given as to why the petitioner should not be allowed to enter into Satara, Solapur and Kolhapur cities. The appellate authority has curtailed the period of externment from 2 years to one year, however, did not give cogent reasons except for mentioning that in view of the availability of transport facility, the petitioner may visit Satara, Solapur and Kolhapur cities and may indulge into the alleged illegal activities. In the show-cause notice issued to the petitioner, there is no mention about the recording of statements of witnesses in camera. It is true that it is not necessary to mention all details in the show-cause notice. However, a gist of the general allegations needs to be mentioned in the show-cause notice so as to enable the proposed externee to reply to the said notice.

8. On a careful perusal of the reasons assigned by the Sub-Divisional Magistrate, Islampur, it is stated that the witnesses are

not coming forward to depose against the petitioner due to fear to their person or property. There is no reference to the statement of any particular witness. Since the respondent authorities have invoked the provisions of section 56(1)(a) of the Maharashtra Police Act, it was necessary for them to record a satisfactory finding that the movements or acts of the petitioner were causing or calculated to cause alarm, danger or harm to the person or property by recording in camera statement of the witnesses. The mandate of the said provision is that while passing the externment order, the concerned authority has to arrive at a subjective satisfaction or opinion that 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. Neither the first authority nor the appellate authority has made an endeavour to give such finding. As already observed, there is no reference to the in-camera recording of the statements of "A" or "B" witnesses.

9. It appears that three offences are registered against the petitioner within two days.

10. Keeping in view the discussion in foregoing paragraphs, we are of the opinion that the respondents utterly failed to adhere to the mandate of section 56(1)(a) of the Maharashtra Police Act. As rightly submitted by the learned Counsel appearing for the petitioner that the show-cause notice mentions that five offences are registered against the petitioner, however, in the impugned order, there is a mention of six offences. Upon careful perusal of the reasons given by both the authorities, we do not find that the offences registered against the petitioner which are mentioned in the show-cause notice and the impugned order have a live link with the externment proceedings initiated against the petitioner. Therefore, we are of the opinion that the petition deserves to be allowed.

11. In that view of the matter, petition is allowed in terms of prayer clause (b) which reads as under:

“(b) This Hon'ble Court be pleased to issue writ of Certiorari and Writ in the nature of Certiorari and/or Writ in nature of Certiorari and thereby call the relevant record and the proceeding from the office of Respondent No.2 Commissioner Pune in the of Impugned Order dated 31/03/2021 passed in Appeal being No.E.A. 11 of 2021 arising out the Impugned order dated 24/12/2020 passed by Respondent No.3 and after going through its legality, validity and propriety quash and set aside the Impugned Order dated

31/03/2021 passed by the Respondent No.2 Commissioner, Pune.”

12. Rule made absolute to the above extent. Writ Petition stands disposed of.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)