

Digitally signed by
BHAGYAWANT
TATYARAO PUNDE
Date: 2021.08.18
17:53:52 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1566 OF 2021

Mr. Sunny Mansur Shaikh
Age 25 years, Occ: Worker,
Permanently R/at: Patilwada,
Sarafbazar, Nashik.
Presently residing at: Walunj Mahanagar,
Police Station Talukar Gangapur,
Dist. Aurangabad Opposite. M.I.D.C. road,
More Chowk.

...PETITIONER

Versus

1. The Divisional Commissioner/
Appellate Authority, Nashik Division,
Nashik.
2. The Dy. Commissioner of Police,
Zone-I, Nashik City, Nashik.
3. The State of Maharashtra

...RESPONDENTS

...
Mr. Prashant D. Patil for Petitioner.
Mr. J.P. Yagnik, APP for State.

...
CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.

RESERVED ON : 12th AUGUST, 2021.
PRONOUNCED ON: 18th AUGUST, 2021.

JUDGMENT [PER S.S. SHINDE, J.]:

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

2. This petition is filed with following substantive prayer:-

(a) This Hon'ble Court be pleased to quash and set aside the Order dated 01/02/2021 passed by Divisional Commissioner, Nashik Division, Nashik in Externment Appeal No. 91/2020 and Externment Order No. Circle/ Zone-1/ Externment / 56 / 5173/2020 dated 16/10/2020 passed by Dy. Commissioner of Police, Zone-1, Nashik City;

3. It is the case of the petitioner that on 6th July, 2020, the Assistant Police Commissioner, Nashik City issued notice under Section 56(1)(a)(b) of the Maharashtra Police Act for initiating the externment proceeding to extern the petitioner for 2 years from the revenue boundaries of Nashik district. On 10th July, 2020, the petitioner filed reply to the said notice. On 1st October, 2020, the Respondent No. 2 issued show cause notice to extern the petitioner for 2 years from the revenue boundaries of Nashik district. On 14th October, 2020, the Petitioner filed reply to the said show cause notice. Thereafter, On 16th October, 2020, Respondent No. 2 by order, externed the Petitioner under Section 56(1)(a)(b) of the Maharashtra Police Act for a period of two years from the revenue boundaries of Nashik district. In the month of October, 2020, the petitioner filed appeal before Respondent No. 1- The Divisional Commissioner, Nashik. On 1st February, 2021, the appellate authority dismissed the appeal filed by the petitioner. Hence, this

petition.

4. Learned counsel for the petitioner submits that after 18th May, 2019, not a single offence has been registered against the petitioner and the show cause notice was issued on 6th July, 2020 i.e. after lapse of more than one year, hence, there is no live link between the offences registered and the proceedings initiated for externment. At the relevant time, it is pointed out to the Respondent No. 1 that in respect of C.R. No. 52/2018 registered with the Gangarpur Police Station, the Criminal Case No. 707/2019 was registered and the trial of the same has been concluded on 15/10/2020 wherein the petitioner has been acquitted, however, the same has not been considered and in the judgment passed by the said authority it was shown that the said offence is still pending. This clearly shows the non application of mind on the part of respondent-authorities in passing the impugned orders. It is submitted that it was shown that the petitioner and his friends are threatening the public and there is no one coming forward to give complaint against them. However, neither the names of the friends of the petitioner were mentioned nor the action has been taken against them.

It is further submitted that in-camera statements of two witnesses are not reliable as general statements are made in the

said in-camera statements and no particulars of date and time of offence has been mentioned. Therefore, it is clear that the said statements are created by the respondent-authorities only with an intention to extern the petitioner. It is submitted that the alleged offences have been registered against the petitioner within the vicinity of Nashik city only, however, the respondents have externed the petitioner from the area of entire Nashik district for a period of two years which is unjust, unreasonable, excessive and harsh.

5. On the other hand, Mr. Yagnik, the learned APP appearing for Respondents relying upon the original record and the reasons assigned by the respondents in the impugned judgment submits that the petitioner has been rightly externed from the revenue boundaries of Nashik district. In-camera statements of two witnesses would unequivocally demonstrate that the alleged activities of the petitioner are causing danger to the public order. It is submitted that as many as five offences are mentioned in the impugned order and in addition to the said offences, the authorities have considered the statements of two witnesses recorded in-camera.

6. We have given careful consideration to the submissions of learned counsel for the petitioner and the learned APP appearing for respondents. With their able assistance, we have perused the pleadings and grounds in the petition, annexures thereto and the original record in relation to the externment proceedings submitted by the concerned authorities. Admittedly, the petitioner was acquitted by the order dated 15th October, 2020 passed by the Chief Judicial Magistrate in Regular Criminal Case No. 707/2019 arising out of C.R. No. 52/2018 registered with Sarkarwada Police Station. The order passed by the Deputy Commissioner of Police, Zone-I, Nashik City, was on 16th October, 2020 and the petitioner came to be acquitted from the aforesaid crime on 15th October, 2020. The petitioner incorporated specific ground in the appeal memo before the appellate authority i.e. Divisional Commissioner, Nashik. However, from the perusal of the order passed by both the respondent-authorities, it is clear that they have relied upon the said crime while passing the impugned orders. It shows non application of mind on the part of respondent-authorities.

7. We have carefully perused the statements of witness (A) and (B). So far as, witness (A) is concerned, he stated that he was cracking joke, at that time the petitioner went near him and asked

him that why the said witnesses have started laughing after seeing the petitioner. Witness (B) stated that his way was obstructed by keeping Activa motorcycle in horizontal direction and without any reason the petitioner abused the witness (B). The aforesaid version of two witnesses not even remotely indicate that the said alleged activities of the petitioner posed danger to the public order. The said statements of aforesaid witness were recorded in-camera on 10th June, 2020. However, the impugned order of externing the petitioner from the revenue boundaries of Nashik district has been passed on 16th October, 2020. There is no explanation offered by the respondent-authorities for delay in passing the impugned order from the date of recording statements of witnesses in-camera. From the perusal of the impugned orders, the authorities failed to demonstrate the live link between the offences registered against the petitioner and initiation of externment proceedings. The respondents have invoked Section 56(1)(a)(b) of the Maharashtra Police Act. One of the requirement of the said section is that the externing authority has to arrive at subjective satisfaction that the witnesses are unwilling to come forward in public to give evidence against the the petitioner by reason of apprehension to safety of their part, persona and property.

8. In the light of discussion in foregoing paragraphs, we are of the opinion that, because of externing the petitioner from revenue boundaries of Nashik district, by the impugned order, the fundamental right of the petitioner to reside at the place of his choice or move from one place to another has been curtailed and taken away for the period mentioned in the said order. Therefore, this is a fit case wherein interference under writ jurisdiction is warranted. Hence, we are of the considered view that the impugned order passed by the externing authority, thereby externing the petitioner from the revenue boundaries of Nashik district, cannot legally sustained and same deserves to be quashed and set aside. Hence, the following order.

ORDER

1. The writ petition is allowed.
2. The order dated 01/02/2021 passed Divisional Commissioner, Nashik, Division Nashik, in Externment Appeal No. 91/2020 and Externment Order No. Circle/Zone-1/Externment/56/5173/2020 dated 16/10/2020 passed by Deputy Commissioner of Police, Zone-I, Nashik City, are quashed and set aside.
3. Rule is made absolute to above extent.

4. The writ petition stands disposed of.
5. Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)