

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

CRIMINAL WRIT PETITION NO.623 OF 2021

Ganesh s/o Rajendra Varma,
Aged 31years, Occu. Govt. Contractor,
Biyani Nagar, Old Bus Stand,
Malegaon, Tah. Malegaon,
District Washim

.....PETITIONER

...V E R S U S...

1. The Divisional Commissioner,
Amravati Division, Amravati.
2. Sub Divisional Magistrate,
Washim, District Washim.
3. The State of Maharashtra
Through Police Inspector,
Police Station, Malegaon,
Dist. Washim.

...RESPONDENTS

Shri S.D. Chande, Advocate for petitioner.
Shri S.S. Doifode, A.P.P for respondents.

CORAM:- M.S. SONAK AND PUSHPA V. GANEDIWALA, JJ.
DATE :- 18^h NOVEMBER, 2021

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Rule. Rule is made returnable forthwith. Heard finally
with consent of learned counsel for both the parties.

2. By way of this petition, the petitioner has challenged
the order of externment dated 13.01.2021 and the appellate order

dated 07.05.2021 confirming the order of externment passed by respondent no.1.

3. It is stated that the petitioner is a Government contractor and takes contracts for Municipal Council, Malegaon. It is further stated that the respondent no.3 had sent an externment Proposal No.906/2020 dated 12.06.2020 under Section 56(1) (a) of Maharashtra Police Act (for short “the Act”) for the externment of petitioner for two years from the jurisdiction of Washim district. The show-cause notice came to be issued to the petitioner under Section 59 of the Act. In the said notice, it is stated that there are 17 cases registered against the petitioner and the petitioner is having terror in the vicinity of Malegaon town and he would extend threats to the Government employees and to create hurdle in the Government work by gathering illegal persons due to which no person coming forward to lodge complaint against the petitioner and his act of terror is increasing day-by-day.

4. It is the grievance of the petitioner that without considering his reply to the show-cause notice, the impugned order came to be passed and appeal against said order came to be dismissed.

5. Learned counsel appearing on behalf of the petitioner based his arguments mainly on the ground that even though alleged offence came to be registered at Malegaon Police Station, the petitioner came to be externed from the entire Washim district. The next submission made by the learned counsel is that out of all 17 offences as listed in the impugned order, 7 cases are shown to be pending and therefore it cannot be believed that due to terror or fear the witnesses do not come forward to depose which is the main ingredient of Section 56. The learned counsel lastly submitted that without recording subjective satisfaction, the respondents on the basis of extraneous material, passed the impugned orders which suffer from infirmity and are liable to be quashed and set aside.

6. Learned Additional Public Prosecutor appearing on behalf of respondents/State filed affidavit on behalf of respondent no.2 in support of the impugned order. Learned Additional Public Prosecutor states that there are serious offences registered against the petitioner. The petitioner is in habit of committing crime continuously. There is no reformation in the behavior of the petitioner and the petitioner has no regard for any laws. The respondent has recorded in-camera statements of the witnesses, wherein it is found that due to fear of the petitioner no witnesses are coming forward to give statement against him. The said

witnesses, have given their confidential statements on assurance that their identity will be concealed. The learned Additional Public Prosecutor urged the dismissal of the petition.

7. We have considered the rival submissions. At the outset the impugned order dated 07.05.2021 indicates the following 17 crimes registered against the petitioner:

Sr. No.	Police Station	Crime No.	Sections	Status
1	Malegaon	151/2008	324, 504, 506 of IPC	Acquitted
2	Malegaon	3004/2008	153B, 568 of IPC	Acquitted
3	Malegaon	99/2013	143, 147, 148, 149, 324, 504, 506 of IPC	Acquitted
4	Malegaon	3058/2014	4, 5 of Maharashtra Prevention of Gambling Act	Acquitted
5	Malegaon	3069/2016	294, 323, 506, 427 of IPC	Acquitted
6	Malegaon	86/2016	143, 147, 148, 149, 324, 504, 506 of IPC	Pending
7	Malegaon	105/2016	188 of IPC	Pending
8	Malegaon	354/2016	324, 323, 294, 504, 506 of IPC	Acquitted
9	Malegaon	95/2017	404, 506 of IPC	Pending
10	Malegaon	132/2017	341, 294, 323, 506 of IPC	Acquitted

Sr. No.	Police Station	Crime No.	Sections	Status
11	Malegaon	161/2017	143, 143, 148, 149, 323, 324, 325, 506 of IPC with 25 Amrs Act	FIR quashed by Hon'ble Court
12	Malegaon	120/2019	353, 332, 352, 186, 506 of IPC 7 Criminal Law Amend.Law	Pending
13	Malegaon	122/2019	188 of IPC	Pending
14	Malegaon	50/2019	323, 504, 506, 34 of IPC	Pending
15	Malegaon	292/2019	323, 504, 506 of IPC	Pending
16	Malegaon	09/2020	294, 506 of IPC with 3(1) (r) of SC ST (Prevention of Atrocities) Act	Under Police investigation
17	Malegaon	303/2020	307, 294, 295, 506, 341, 143, 145, 147, 148, 149 of IPC with 3(2)(VA), 3(1) (r)(s), 3(2) (5) of SC ST (Prevention of Atrocities) Act	Under Police investigation

8. We have perused both the orders minutely. It is recorded that the petitioner is in the habit of involving himself in one or another offence continuously. He has not corrected his behavior. The statements of confidential witnesses reflect the about criminal attitude of the petitioner and the authorities have recorded satisfaction that due to the continuous criminal activities

of the petitioner there is an apprehension for breach of public order and therefore he was externed for a period of one year from Washim district. The Appellate Authority in its order dated 07.05.2021 considered all the relevant facts and has satisfied itself that reasonable opportunity of hearing was offered to the petitioner and due procedure of law was followed in passing the impugned order.

9. The perusal of the chart of the aforesaid offences would indicate that from 2008 till 2020 i.e. during the span of 12 years, the petitioner has involved himself in offences against human body and properties under Sections 307, 323, 324, 353, 506 and the offences under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which are serious in nature. Of late, in the year 2020, a crime for the offence of attempt to murder was registered against the petitioner. The Sub-Divisional Police Officer on inquiry submitted his report stating therein that even after preventive proceedings were initiated against the petitioner, the petitioner did not bother to amend his behavior.

10. With regard to the submission of the learned counsel that the petitioner has been externed from the entire district of

Washim, while the alleged activities of the petitioner are shown within the limit of Malegaon town, the learned APP has rightly pointed out that the geographical limit of Washim district is very small and perhaps, it is the smallest district in the State of Maharashtra and therefore we do not find any arbitrariness or unreasonableness in the impugned orders.

11. In the considered view of this Court, the aforesaid are the reasonable grounds for believing the authorities that the petitioner has engaged himself in the commission of offences involving fears or violence or the offences punishable under the provisions of the Indian Penal Code. There is ample material on record to back the satisfaction recorded by the external authority, that the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regard safety of their person or property. Therefore, we do not find any infirmity in the impugned orders. The petition is devoid of any merit and hence stands dismissed. There shall be no order as to costs.

Rule is discharged.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)

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