

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

CRIMINAL WRIT PETITION NO.631/2020

Mr. Aslam s/o Jamshed Khan,
aged about 32 years,
Occupation – Plumber,
R/o. Plot No. 131, Kale Lay out,
Om Nagar, Taluka and District- Nagpur. **PETITIONER**

// VERSUS //

1. State of Maharashtra,
Through its Secretary, Department
of Home, Mantralaya, Mumbai – 32.
2. Deputy Commissioner of Police,
Zone-V, Nagpur City, Nagpur.
3. Assistant Commissioner of Police,
Jaripatka Division, Nagpur City,
Nagpur. **RESPONDENTS**

Shri S. B. Tiwari, Advocate for petitioner
Mrs. H. Jaipurkar, APP for the respondents.

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

DATED : 15/01/2021

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

1] Heard. **Rule.** Rule made returnable forthwith.

2] Heard finally by consent of the learned counsel appearing for the parties.

3] The petitioner by the impugned order passed on 31.10.2020 by respondent no.2 has been externed for a period of one year from Nagpur city and also Nagpur district under Section 56(1)(a) and (b) of Maharashtra Police Act, 1951. Petitioner is aggrieved by this order and hence is before this Court. According to the learned counsel for the petitioner, the impugned order displays non application of mind on the part of respondent no.2 in as much as the offences which should not have been considered and the factors which were relevant and ought to have been considered have been ignored by the respondent no.2. In support, he has invited our attention to the offences listed at serial nos.6 to 11 in the show cause notice, all of which either relate to those proceedings which have been disposed of or in which the offences involved were beyond the scope of Section 56 of Maharashtra Police Act and some of the offences in which, the petitioner was acquitted were not considered appropriately by respondent no.2.

4] Learned counsel for the petitioner also submits that except for the repeated expressions regarding the statements of confidential witnesses, nothing more is mentioned in the

impugned order which shows that even the factor of opinion of confidential witnesses has not been appropriately considered by respondent no.2. In support, learned counsel relying upon the cases of *Abdul Wahab Vs. The Sub-Divisional Magistrate Malegaon and another*, reported in **1992 CRI. L. J. 326** and *Babulal s/o Pandharinath Mahajan Vs. State of Maharashtra through Principal Secretary, Home Ministry, Mumbai and others*, **Criminal Writ Petition No.741 of 2018** decided on 09/08/2018. Learned APP submits that the impugned order is rightly passed and there is no need to make any interference in the same.

5] We have carefully gone through the impugned order. We have also gone through the original record of the proceedings, produced before us for our perusal, which has now been returned after its examination by us. We do not think that any infirmity or error could be noticed in the impugned order.

6] There are criminal proceedings such as those which are mentioned at serial nos.6 to 11 in the show cause notice and also in the impugned order, which were disposed of or were the once in which offences involved did not attract the provisions of Section 56 of Maharashtra Police Act, 1951. But, majority of these offences related to an offence punishable under Section 142 of Maharashtra Police Act which is an offence relating to

breach of an externment order. These criminal proceedings involving Section 142 Maharashtra Police Act were lodged against the petitioner almost every year from 2015 to 2017. In the year 2015, there was one such offence pertaining to breach of externment order. In the year 2016 there were two such offences and in the year 2017 also there were two such offences. All though, except for the criminal proceeding bearing No.3021 of 2017, others have been disposed of under Section 258 of the Code of Criminal Procedure, it would not mean that these proceedings would have to be ignored for the reason that their disposal has taken place not on merits but for some other reasons which were not found to be conducive to keep it pending with these proceedings. All though, the exact reason for closure of the proceedings under Section 258 of the Code of Criminal Procedure has not been stated by the respondent, which appears to be a lapse on their part, it appears to us that they must have been closed on account of the period of externment having been over. In any case, the fact remains that consistently since the year 2015 till 2017, the petitioner even having been externed from a certain area, has defied all those externment orders and that is the reason why he involved himself consistently in these proceedings. They only indicate

the nature of the petitioner which appears to be quite disrespectful to law. Such petitioner, in our view, would not deserve any discretion of this Court to be exercised in his favour and on this count alone, we are inclined to dismiss this petition.

7] Even otherwise, we find from the impugned order that there is sufficient application of mind by the respondent no.2 to the material available on record. Our perusal of the original record of this case confirms this fact. There is available on records, material which has been considered by respondent no.2 and therefore, the subjective satisfaction which has been reached in the present case cannot be said to be one which has no connection whatsoever with the material available on record. Once this fact is ascertained, this Court would have no jurisdiction to further consider the question as to whether or not the subjective satisfaction has been rightly or wrongly exercised. Even the statements of confidential witnesses throw sufficient light upon the activities and nature of the petitioner and therefore, the conclusion drawn in that regard in the impugned order cannot be said to be not supported by any material on record. As such, we do not find that any assistance could be sought by the petitioner from the case laws cited before us. In the result, we find no merit in the petition. The Writ Petition

stands dismissed.

Rule is discharged.

JUDGE

JUDGE

Sarkate