

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

CRIMINAL WRIT PETITION NO.612/2020

1. Mohan S/o Damodar Raut,
aged about 28 Yrs., Occ. Agriculturist.

2. Dhiraj S/o Damodar Raut,
aged about 25 Yrs., Occ. Agriculturist.

Both R/o Pitambarvadi, Patur,
Tal. Patur, Dist. Akola.

..Petitioners.

..Vs..

1. The Superintendent of Police,
Akola, Dist. Akola.

2. Sub Divisional Police Officer,
Akot, Dist. Akola.

3. State of Maharashtra,
through its Police Station Officer,
Police Station Patur, Dist. Akola.

4. The Divisional Commissioner,
Amravati, Dist. Amravati.

..Respondents.

AND CRIMINAL WRIT PETITION NO.627/2020

1. Damodar S/o Kisan Raut,
aged about 62 Yrs., Occ. Agriculturist,
R/o Pitambarwadi, Patur,
Tah. Patur, Dist. Akola.

..Petitioner.

..Vs..

1. State of Maharashtra,
through the Secretary, Ministry of Home
Affairs, Mantralaya, Mumbai – 32.

2. Divisional Commissioner, Amravati
Division, Amravati.

3. Superintendent of Police, Akola,
Tq. and Dist. Akola.
4. Sub-Divisional Police Officer, Akot,
Tq. Akot, Dist. Akola.
5. Police Station Officer, P.S. Patur,
Tq. Patur, Dist. Akola.

..Respondents.

Shri N.T. Gwalwansh, Advocate h/f Shri S.N. Nandeshwar, Advocate for the petitioners.
Ms H.N. Jaipurkar, A.P.P for the respondents.(W.P No.612/2020)

Shri D.S. Patil, Advocate for the petitioner.
Ms H.N. Jaipurkar, A.P.P for the respondents.(W.P No.627/2020)

CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE , JJ.
DATED :- 4.2.2021

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

1. Both these petitions are being heard together and being disposed of together as the challenge made in each of these petitions is common which is the one against the order of externment passed against all these petitioners by respondent - Superintendent of Police, Akola on 12.9.2020 and the order dated 22.10.2020 of the Divisional Commissioner, Amravati Division, Amravati thereby confirming the externment of these petitioners in appeal for a period of two years from the districts of Akola, Amravati, Washim and Yavatmal.

2. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

3. Petitioners Mohan Damodar Raut and Dhiraj Damodar Raut in Criminal Writ Petition No.612/2020 are the sons of Damodar Kisan Raut, who is a petitioner in Criminal Writ Petition No.627/2020. The father and his two sons have been externed from 4 districts for a period of two years by the impugned orders.

4. It is the contention of respective learned counsel for these petitioners that the impugned orders are arbitrary and excessive. According to them, there was no material available on record which would satisfy the essential requirements of Section 55 of the Maharashtra Police Act and that the material necessary for passing a larger externment order was also absent. They submit that these petitioners never formed any gang or any body of persons engaged in criminal activities, rather these petitioners were members of one and the same family who had at the time of passing of the impugned orders and still have a civil dispute with the family of the complainant in all the crimes registered against these petitioners. They further submit that these material facts though stated in their reply were not considered in any manner by the respondents.

5. Learned A.P.P. for the State, defending the impugned orders submits that these petitioners though belong to the same family, have

together engaged themselves in continuous criminal activity and, therefore, it could be said that all of them constituted a group of criminals sufficient to attract the provisions of Section 55 of the Maharashtra Police Act. She submits that if one goes through the criminal history of the petitioners and the manner in which those crimes were committed by the petitioners, one would be convinced that the activities of the petitioners are dangerous and likely to cause alarm to the members of public.

6. Upon consideration of the material available on record, especially the show cause notice, the facts stated in the impugned orders, reply of the respondents and the documents annexed to the reply, we find that this is a case wherein no material whatsoever existed which could be said to be sufficient for answering the criteria of Section 55 of the Maharashtra Police Act.

7. If any preventive action in the nature of externment of a criminal is to be taken by invoking Section 55 of the Maharashtra Police Act, the following conditions must be satisfied:-

(i) There must be a satisfaction regarding existence of a gang or body of persons in the subject area, which is engaged in continuous criminal activity,

(ii) There must be noticed either movement or

encampment of such gang or body of criminals in a manner as would cause or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such a gang or body of persons or members of such body.

8. Now, if we go through the impugned orders, we would find that there is no finding recorded therein that these petitioners had formed a gang or group of persons or body of persons engaged in continuous criminal activity so as to cause alarm or danger to the members of public. It is further seen that no material whatsoever has been referred in this regard while passing the impugned orders. It must be noted here that no subjective satisfaction regarding existence of any gang or group of criminals can be recorded unless, there is some material available on record and which when considered, would show that such persons are engaged in continuous criminal activity by performing it in an organized manner or in partnership with each other or by forming a group together so as to cause danger or alarm to the members of public. However, there is no such material whatsoever which appears to be considered while passing the impugned orders. What has been considered by the respondents before passing the impugned orders was only the material in the nature of registration of 17 crimes against these petitioners. But, admittedly, all these crimes were registered against them on the basis of complaints made by a

member of the same family of Ramdas Kisan Raut, the younger brother of the petitioner in Criminal Writ Petition No.627/2020. When so many crimes are registered at the behest of one and the same family, it cannot be said that the alleged criminal activity of the accused persons is targeted towards society in general and, therefore, it would cause or is calculated to cause danger or alarm or reasonable suspicion that some unlawful designs are entertained by such group of persons *qua* the society or members of public in general.

9. It is true that in Section 55 of the Maharashtra Police Act the words like “causing of danger” or “alarm” or “reasonable suspicion that some unlawful designs are entertained” have not been used in the context of or *vis-a-vis* society in general. But, such contextual reference is discernible upon reading this provision as a whole and when it is done, it becomes clear that the danger or alarm which is likely to be caused by the gang of criminals or the unlawful designs entertained by the gang of criminals can only be towards the larger society and none of these could be only in respect of one or two persons or a family of persons. There is one more reason for reaching such a conclusion. It is that this Section 55 has been inserted in Chapter 5 which prescribes special measures for maintenance of public order and safety of State. So, the intention of the legislature is indicated by such special positioning of Section 55 in Chapter 5. The

intention of the legislature is to provide for maintenance of public order and safety of State and to prescribe measures which are necessary for ensuring the public peace and order. Therefore, the words alarm or danger or unlawful designs whenever construed would only mean something as would have consequences on the general state of public peace and order.

10. Then, there is material available on record which shows that these two families, the family of the petitioners and the family of younger brother of petitioner Damodar, namely, Ramdas Kisan Raut, are at war in a series of civil litigations. The reply filed by these petitioners in externment proceedings shows that at least two civil suits bearing Regular Civil Suit No.23/2000 and Regular Civil Suit No.163/2018 are pending between these two families and that there is one Revenue Application No.467/2019 and one Revenue Appeal No.43/Patur/15-16, all of which are still pending adjudication. All these facts were already stated in the reply filed by the petitioners before respondent - Sub-Divisional Officer, Akot on 31.8.2020. But, it appears that the respondents refused to consider this reply because it was filed after a delay of just one day. We are of the view that even though the reply was filed with some delay, delay was not so big as to warrant its ignorance by the respondents. After all, facts having material impact on the conclusions to be made in this matter were to

be found in this reply and, therefore, such reply ought not to have been ignored by the respondents. If these facts have been really considered by the respondents before passing impugned orders, we are sure, the result of the whole proceedings would have been different. Be that as it may. The fact remains that there is civil dispute between these two families and it appears to us that this civil dispute lies at the base of registration of so many crimes against these petitioners. Learned counsel for the petitioners pointed out that even the petitioners have filed counter complaints against the members of family of Ramdas Kisan Raut, which facts have not appeared on record. But, if this contention is true, it would fortify our inference that starting point of the whole enquiry under Section 55 was this family dispute. Thus, we find that the impugned orders do not satisfy the essential requirements of law and, therefore, they deserve to be quashed and set aside. With such basic flaw in the impugned orders, in our opinion, there would be no need to consider the argument relating to excessive nature of impugned orders.

11. The writ petitions, are therefore, allowed. The impugned orders are hereby quashed and set aside. Rule is made absolute in these terms.

JUDGE

JUDGE