

Ghuge

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

WRIT PETITION NO. 3967 OF 2022

Prathmesh alias Nanya Shirish Dhoke ... Petitioner

V/s.

Dy. Commissioner of Police and Ors ... Respondents

Mr. Adhik Kadam a/w Mr. Rahul S. Kadam for the petitioner.

Mr. A.R. Patil, APP for the State.

Mr. Nilesh Mokashi Faraskhana Police Station, Pune.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 16, 2022

P.C.:

1. Heard. **Rule.** Rule is made returnable forthwith by consent of the parties.
2. The petitioner is challenging order passed by the learned Divisional Commissioner, Pune dated 1st November, 2022 confirming Externment Order No.17 of 2022 dated 1st July, 2022 externing the petitioner for the period of six (6) months.
3. The petitioner was served with notice under Section 56(1) (b) alleging that the offence under chapter 12, 16 and 17 of the Indian Penal Code, 1860 are pending. The Externment Authority by order dated 1st July, 2022 has externed the petitioner from entire Pune District, Pune City Police Commissionerate and Pimpri Chinchwad Police Commissionerate for the period of Six (6) months. The appeal against the said order under Section 60 of

the Maharashtra Police Act,1951 has been allowed restricting the area to Pune City Police Commissionerate, Pimpri Chinchwad Police Commissionerate and Six (6) Talukas of Pune district. The order is the subject matter of present petition.

4. Learned advocate for the petitioner invited my attention to the orders passed by the authorities below contending that the authority has taken into consideration extraneous material in the form of offence mentioned in Serial No.1 of the chart reflected in the order dated 1st July, 2022. He submitted that the petitioner was already acquitted of the offence in relation to C.R No.230 of 2012. There is no discussion in the orders passed by the authorities below and the petitioner was externed in spite of acquittal of the petitioner in the offence stated at serial No.1. He further submitted that the show cause notice issued to the petitioner was under Section 56(1)(b). The language of show-cause notice was in relation to Section 56(1)(b) but while passing the order the externment authority has passed order considering Section 56(1)(a)(b). He, therefore, submitted that the subjective satisfaction recorded by the authorities below suffers from non-application of mind.

5. Learned APP supported the order stating that necessary ingredients of Section 56(1)(a)(b) are mentioned in the show cause notice and after giving due opportunity of hearing and after taking into consideration relevant material, the Externment Authority has passed the order and needs no interference.

6. Having considered the submissions made on both the sides,

in my opinion, the subjective satisfaction recorded by the authorities below is based on extraneous material in the form of non-consideration of acquittal of the petitioner in relation of offence at Serial No.1 bearing C.R. No.230 of 2012. On perusal of the order of the order of externment authority, it appears that the subjective satisfaction recorded by the Externment Authority is based on the facts stated in the notice that the offence bearing C.R. No.230 of 2012 was pending. The order does not disclose that the Externment Authority has applied his mind to the fact of acquittal of petitioner of the offence bearing C.R. No. 230 of 2012.

7. In so far as the passing of order, the ingredients of the show cause notice are in relation to 56(1)(b) but the subjective satisfaction recorded by the Externment Authority is in relation to 56(a)(b). It appears that the subjective satisfaction recorded by the Externment Authority has the cumulative effects of facts under Section 56 (1)(a)(b), therefore, it appears that the petitioner was not served with the show cause notice in relation to the ingredients of Section 56 (1)(a).

8. Learned advocate for the petitioner relied on the judgment of Division Bench of this Court in Writ Petition No.116 of 2015. The Division Bench of this Court while setting aside the externment observed that the petitioner wherein three case and the factor ought to have been taken into consideration by the Externment Authority. It is held that it was the duty of the Externment Authority to discuss the relevance of the remaining offences for which the petitioner was not acquitted. In the absence of such consideration, it is held that the subjective satisfaction is based on

extraneous material.

9. In that view of the matter, I am satisfied that the subjective satisfaction recorded by the Externing Authority in the facts of the case first from extraneous material and absence of notice under Section 56(1)(a) of the Maharashtra Police Act, 1951. Hence, following order.

10. Rule is made absolute in terms of prayer clause (a). No costs.

(AMIT BORKAR, J.)