

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

CRIMINAL WRIT PETITION NO. 627 OF 2022

Danish Shadab Shakeel Ahmed,
Aged about 21 years, Occupation :Labour,
R/o. Shaniwar Wada, Anjangaon (Surji),
Tah. Anjangaon (Surji), District :
Amravati – 444 705.

.... **PETITIONER.**

// **VERSUS** //

1. State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. Sub-Divisional Magistrate,
Daryapur, Distt. Amravati.
3. Sub-Divisional Police Officer,
Sub-Division, Anjangaon (Surji),
Tah. Anjangaon (Surji), District :
Amravati.
4. Police Station Officer,
Police Station, Anjangaon (Surji),
Tah. Anjangaon (Surji), District:
Amravati.

.... **RESPONDENTS.**

Shri Anup S. Dhore, Advocate for Petitioner.
Shri A.M.Kadukar, A.P.P. for the respondent Nos. 1 to 4.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 20, 2022.

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith.
3. Heard finally by consent of the parties.
4. By this writ petition under Articles 226 and 227 of the Constitution of India challenge is raised to the order dated 01/09/2022 passed by respondent No.2-Sub-Divisional Magistrate, Daryapur, District : Amravati in Proceeding No.08/Anjangaon (Surji)/2022-23, whereby the petitioner has been externed from Amravati district for a period of six months.
5. The learned counsel for the petitioner submits that initially a show cause notice for externment dated 10/08/2022 was issued to the applicant, wherein a chart was given in relation to the

offences shown to have committed by the applicant, which in fact were not related with the petitioner and accordingly the reply was filed. Thereupon, the said error was rectified and another show cause notice dated 23/08/2022 was issued, wherein two offences were shown against the petitioner, out of which, in one the charge-sheet is filed and in another investigation is going on. It is submitted that both the offences alleged to have committed within the jurisdiction of Police Station, Ajnangaon(Surji). He submits that despite the said fact, the externment order is passed for Amravati district and not restricted to Police Station, Anjangaon(Surji). It is further submitted that though in the impugned order there is a mention about calling of report on enquiry, however, it was never supplied to the petitioner and without giving an opportunity to submit his say on the same, the impugned order came to be passed. He, therefore, submits that the impugned order is not sustainable in the eyes of law.

6. On the other hand, the learned A.P.P. is not disputing the said fact that the material on which the Sub-Divisional Magistrate

has relied upon while passing the impugned order, was not supplied to the petitioner. However, he submits that he supports the impugned order.

7. In the backdrop of the above referred submissions made by both the parties, I have perused the impugned order and other documents filed along with the petition. It is pertinent to note here that in the initial show cause notice, dated 10/08/2022, four offences were shown to have been registered against the petitioner and on submission of reply by the petitioner that, those offences were not related with the petitioner, the second show cause notice dated 23/08/2022 was issued correcting the error.

8. The above referred fact speaks for itself that initiation of action of externment was itself based on error and misconception.

9. Furthermore, it can be seen from second show cause notice that there is only one offence in which the charge-sheet has been filed and in another matter the investigation is going on.

Moreover, both the offences alleged to have committed within the jurisdiction of Police Station, Anjangaon (Surji). Thus, there is no material on record to show that the petitioner has committed offences at different places in Amravati district. This is relevant, as it is evident from the impugned order that the petitioner has been externed not only from Anjangaon (Surji) but from entire Amravati district for six months. Thus, the order is excessive in nature.

10. Moreover, while passing the impugned order though the Sub-Divisional Magistrate has relied upon the report of the Enquiry Officer, it was never supplied to the petitioner.

11. A coordinate Bench of this Court in the case of *Ajit Champatrao Bhapkar Vs. State of Maharashtra*, reported in **2007 ALL MR (Cri) 2736** has observed thus:

“5. The learned counsel for the petitioner submitted that the notice with regard to allegations of giving threats to the person purchasing paper and plastic, was served. The notice shows that same incident is quoted twice and taken into account while passing order. It is not made clear even in the affidavit of State as to whether any in camera statements of the witnesses were recorded giving details as to when

such incident had taken place and why that person could not come forward to lodge the report and what was the nature of the dispute. Since it appears that no such statements are recorded confidentially, it is difficult to accept the contention of the detaining authority that the people do not come forward to give report or make statement. Obviously, the material on which such allegations that witnesses or persons do not come forward is not supported by any evidence nor the copies of such statements if at all recorded were supplied to the present petitioner so that he could afford explanation in that regard. Obviously no proper opportunity was given to the petitioner.

6. Further it was contended that the order is vitiated because of the fact that the petitioner is unnecessarily externed from Nagpur Rural area. He submitted that the alleged activities of the petitioner are confined to Rana Pratapnagar police station area falling in Urban Nagpur. My attention was drawn to externment order, it makes reference to some areas falling in Ranapratap Nagar police station and areas adjoining to that area. It does not make reference to any areas in Nagpur Rural. Even the Crime Chart given in the show cause notice shows that not a single offence in Nagpur Rural area is registered against the present petitioner. Obviously, therefore, his activities are confined to Ranapratap Nagar police station area. It is held by this Court in Ganpat @ Ganesh Tanaji Katare Vs. Assistant Commissioner of Police and Others 2006(1) Maharashtra Law Journal 510, that mere geographical proximity is no ground to extend the order of externment to another district or part. It was contended on behalf of the respondent-State that Nagpur Rural area is adjoining to Ranapratap

Nagar police station area. That may be so adjoining but no offence is said to be committed in the Rural area and the order of operation of the present petitioner cannot be said to extend beyond Nagpur City police in any case. In view of this it can be said that the order suffers from vice of being excessive. It is established law that order cannot be set aside in part, as a result the order of externment will have to be set aside. Petition is allowed. The order of externment is set aside.”

12. Thus, in the teeth of the above referred observations and the law in this regard, I am of the opinion that the impugned order vitiates and it needs to be quashed and set aside. Accordingly, I pass the following order:

- i) The Criminal Writ Petition is **allowed**.
- ii) The order dated 01/09/2022, passed by Sub-Divisional Magistrate, Daryapur in Proceedings No.08/Anjangaon Surji/2022-23, is hereby quashed and set aside.

The Criminal Writ Petition is **disposed of** accordingly.

(ANIL S. KILOR, J)