

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 602 OF 2023

Jagdip Vasant Rao Dipke,
Age: 30 years, Occ: Agriculture,
R/o Village Dudhala,
Tq. Aundha (Nagnath),
Dist. Hingoli

...Petitioner

Versus

1. The State of Maharashtra
2. The Divisional Commissioner,
Aurangabad.
3. The Superintendent of Police,
Hingoli.
4. The Sub Divisional Magistrate,
Vasmat, Tq. Vasmant,
Dist. Hingoli.
5. The Police Inspector,
Aundha Nagnath Police Station,
Tq. Aundha, Dist. Hingoli

...Respondents

Mr. P. P. Giri, Advocate for Petitioner.
Mrs. G. L. Deshpande, APP for Respondents.

CORAM : R.M. JOSHI, J.

RESERVED ON : AUGUST 08, 2023
PRONOUNCED ON : AUGUST 29, 2023

JUDGMENT

1. Rule. Rule made returnable forthwith. With consent, heard finally.

2. This Petition takes exception to the order of externment dated 15.12.2022 passed by Sub-Divisional

Magistrate, Vasmat, Dist. Hingoli and judgment and order of dismissal of Appeal by Divisional Commissioner, Aurangabad in Appeal No. 2/2023 dated 28.03.2023.

3. The facts which led to the filing of the present Petition may be narrated in nutshell as under:

Petitioner is the resident of village Dudhala, Tq. Aundha Nagnath, Dist. Hingoli. He claims himself to be Marathwada Regional President of National Dalit Movement for Justice, a Social Organization and also claims to be social and RTI activist. The Superintendent of Police, Hingoli by letter dated 13.09.2021 forwarded a proposal to the Sub-Divisional Magistrate (for short '**SDM**'), Vasmat for externment of the Petitioner and pursuant to the said proposal, an inquiry officer was appointed and directed to submit report. He submitted a report and asked SDM to take action against the Petitioner under Section 56 of the Maharashtra Police Act, 1951 (for short '**the Act**'). The inquiry officer accepted the report of Police Inspector, Aundha Nagnath Police Station and submitted his preliminary inquiry report to SDM, Hingoli. It is

alleged in the said report that the Petitioner is habitual offender against whom number of offences relating to human body and property have been registered. It is also alleged that these offences include offences of outraging modesty of women, assembling mob for the purpose of rioting and encroaching upon properties of persons. It is alleged that in last five years there are in all 7 crimes registered against him. There is also claim in the said report that having regard to the terror created by the Petitioner, no one is willing to come forward to give complaint against him and therefore, externment of the Petitioner from District Hingoli is sought. For the purpose of seeking externment the following offences were sought to be relied upon.

Sr. No.	Crime No & Sections	Dates
1	P.S. Kalamnuri, Crime No. 176/18-u/s 447, 354, r/w 34 of I.P.C.	15/7/2018
2	p.s. Aundha Nagnath, Cr.No. 243/2019- U/s. 354, 354-A, 506 r/w 34 of I.P.C. & U/s 7, 8, 11, 12 of POCSO Act.	8/11/2019
3	P.S. Aundha Nagnath, Cr.No. 185/2020- U/s. 188 of I.P.C.	19/8/2020
4	P.S. Aundha Nagnath, Cr.No. 20/21 – U/s 143, 147, 324, 323,	22/1/2021

	148, 149, 504, 506 of I.P.C. & U/s 3(1)(r), 3(1)(s), 3(2)(5) of Atrocities Act.	
5	P.S. Aundha Nagnath, Cr.No. 188/21 U/s 307, 348, 324, 323, 147, 148 r/w Section 149 of I.P.C.	15/8/2021
6	P.S. Vasmat City, Cr. No. 169/22 U/s 294, 323, 504, 506 r/w 34 of I.P.C.	2/5/2022
7	P.S. Aundha Nagnath, Cr.No. 254/22 u/s 294, 504, 506 r/w 34 of I.P.C.	28/7/2022

4. On receipt of report, SDM issued notice to the Petitioner under Section 56(1)(a)(v) of the Act to show cause as to why he should not be externed for the period of two years from District Hingoli. Pursuant to the notice, Petitioner filed his say on 18.11.2022 denying the allegations made against him and explaining that the crimes registered against him are false and politically motivated. The SDM passed judgment and order dated 15.12.2022 accepting the report of the inquiry officer and externed the Petitioner from the limits of District Hingoli for the period of one year. Being aggrieved with the said order, Petitioner filed an appeal under Section 60 of the Act being Appeal No. 2/2023 before the Divisional Commissioner, Aurangabad. The said appeal was dismissed by the order dated

28.03.2023. Being aggrieved by these orders, present Petition is preferred on the ground nos. I to XXVI specifically set out in the Petition.

5. Learned Counsel for the Petitioner submitted that the impugned orders cannot sustain as there is no subjective satisfaction of SDM on objective material placed before it. It is submitted that out of the offences alleged against present Petitioner, the offences being Crime No. 176/2018 registered with Kalamnuri Police Station and Crime No. 243/2019 and 185/2020 registered with Aundha Nagnath Police Station are stale crimes and they being not live crimes have no nexus with impugned order of externment. It is submitted that in connection with Crime No. 243/2019 the Petitioner was enlarged on anticipatory bail and it is observed therein that *prima facie* no truth is found in the allegations made by the victim against Petitioner. As far as Crime No. 185/2020 is concerned, it is contended that the said offence was registered against him during period of Covid 19 pandemic under Section 188 of IPC, which is not bodily offence. He further submitted that the offence registered vide

Crime No. 20/2021 at Aundha Nagnath Police Station is politically motivated. According to him, since the Petitioner belongs to member of Scheduled Caste, these offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are not applicable. With regard to the offence being C.R. No. 188/2021 registered with Aundha Nagnath Police Station is concerned, it is submitted that the Petitioner is exonerated from the said crime. There are two other offences registered against him vide Crime No. 169/2022 is claimed to have been under investigation and it is contended that the said offence cannot be demonstrated for the purpose of passing externment order. As regard Crime No. 254/2022 registered with Aundha Nagnath Police Station, it is contended that since the Petitioner is involved in active politics he is been victimized by lodging false complaints. It is further contention of learned Counsel for the Petitioner that on the basis of material on record and without subjective satisfaction of the authority, the impugned order of externment came to be passed and hence, the same is not sustainable. In support of his submissions, he relied upon the following judgments of Bombay High

Court: Harikesh @ Guddu Madan Kjattilwar Vs. Deputy Police Commissioner and Others, Writ Petition No. 908/2022 decided on 24.01.2023, Ashish Samadha Makeswar Vs. State of Maharashtra and Others, Writ Petition No. 96 of 2023, decided on 13.03.2023, Paramjitsingh @ Jentil Sardar Vs. State of Maharashtra and Ors, Writ Petition No. 756/2022 decided on 01.03.2023.

6. He further argued that it is open for the police to take action against Petitioner under Section 151 of Code of Criminal Procedure and since in absence of any such action being taken against him, the order passed of externment cannot sustain and needs to be held as mala fide action. To support his submissions he relied upon observations of this Court in case of Shubham Vs. State of Maharashtra and Others, Writ Petition No. 515/2022 decided on 07.12.2022. It is further submitted that the order of externment, for the period of one year from the entire Hingoli District, is also not justified for want of reasons recorded therefor. According to him, the Petitioner is elected Sarpanch of village and due to the order of externment

he cannot attend the meeting of Panchayat Samiti and cannot perform his duties as elected representative of people.

7. Learned APP opposed the Petition with submission that the scope of judicial interference in the matters of administrative decision is extremely limited and such power may be exercised only in cases where there is manifest error in exercise of such powers or its exercise is done arbitrarily or in utter disregard of natural justice. To support her submissions, reliance is placed on the judgment of Hon'ble Apex Court in case of State of NCT of Delhi Vs. Sanjeev @ Bitto, 2005 DGLS (SC) 320. It is further submitted that apart from the fact that there were offences registered against the Petitioners involving bodily offences and property, even after issuance of notice against him complaint is registered. It is also submitted that even after passing of the order of externment one crime is registered against the Petitioner which indicates that the Petitioner is prone to commit similar nature of offences. It is submitted that the concerned authority had imposed reasonable

restrictions on the movement of the Petitioner by externing him for the period of one year from District Hingoli and that having regard to the nature of allegations against him, the said order does not deserve interference.

8. In order to appreciate the submissions in the context of factual matrix of the case, it would be relevant to take into consideration the scope of judicial interference in the matters of administrative decision such as in the case of externment of any individual in exercise of Section 56(1) of the Act. It would be relevant to take note of the observations made by the Hon'ble Apex Court in case of Deepak Laxman Dongre Vs. State of Maharashtra and Others, AIR 2022 SC 1241. The Hon'ble Apex Court in paragraph 4 of the said judgment has considered the fundamental right conferred on the citizen to move freely throughout the Country under clause (d) of Article 19(1) of the Constitution of India and observed that:

4. We have given careful consideration to the submissions. Under clause(d) of Article 19(1) of the Constitution of India, there is a fundamental right conferred on the citizens to move freely throughout the

territory of India. In view of clause (5) of Article 19, State is empowered to make a law enabling the imposition of reasonable restrictions on the exercise of the right conferred by clause (d). An order of externment passed under provisions of Section 56 of the 1951 Act imposes a restraint on the person against whom the order is made from entering a particular area. Thus, such orders infringe the fundamental right guaranteed under Article 19(1)(d). Hence, the restriction imposed by passing an order of externment must stand the test of reasonableness.

It is held in paragraph 6 as under:

6. As observed earlier, Section 56 makes serious inroads on the personal liberty of a citizen guaranteed under Article 19(1)(d) of the Constitution of India. In the case of Pandharinath Shridhar Rangnekar v. Dy. Commr. of Police, State of Maharashtra in paragraph 9, this Court has held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances. In the same decision, this Court held that care must be taken to ensure that the requirement of giving a hearing under Section 59 of the 1951 Act is strictly complied with. This Court also held that the requirements of Section 56 must be strictly complied with.

It is held in paragraph 7 as under:

7. There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of

externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause(b), there must be objective material on the basis of which the competent authority must record subjective satisfaction that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or offences punishable under Chapter XII, XVI or XVII of the IPC. Offences under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences under Chapter XVII are offences relating to the property. In a given case, even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that by itself is not sufficient to pass an order of

externment under clause (b) of sub-section (1) of Section 56. Moreover, when clause (b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b).

These observations of Hon'ble Apex Court clearly lay down the guidelines for testing an order of externment passed by the authority under Section 56 of the Act.

9. Reference needs to be made to the judgment cited supra in case of State of NCT Delhi (supra) wherein the Hon'ble Apex Court has dealt with the scope for judicial interference in the matters of administrative decisions. It would be relevant to refer observations of Hon'ble Apex Court in paragraph 15, which reads thus:

15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of

Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See *State of U.P. and Ors. v. Renusagar Power Co. and Ors.*, AIR (1988) SC 1737). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek

to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

By considering the law on the point it is observed in paragraph 17 that:

17. The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

It is further held that whether action falls within any of these categories has to be established. Mere assertion in that regard would not be sufficient. Finally, it is observed in paragraph 21 as under:

21. Therefore, to arrive at a decision on reasonableness the Court has to find out if the administrator has left out relevant

factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

Similar observations can be found in case of Deepak (supra) wherein the Hon'ble Apex Court in paragraph 10 of the judgment has observed that the Court cannot cause interfere in administrative order only because there is a possibility of another view being taken. In case of any other administrative order, the judicial review is permissible only on the grounds of mala fides, unreasonableness or arbitrariness.

10. The aforesaid law laid down by the Hon'ble Apex Court is sufficient guideline in order to decide the case in hand. Perusal of the facts of the present case indicates that there is no dispute about the competency of the SDM who has passed the order dated 15.12.2022 in exercise of powers under Section 56 of the Act whereby the Petitioner is externed from

District Hingoli. Further it is not the case of the Petitioner that he was not heard before passing of the said order and that there is noncompliance of the principles of natural justice. This Court has to consider as to whether the impugned order is tainted with mala fides, unreasonableness or arbitrariness if interference is to be caused therein. As held by the Hon'ble Apex Court that the Court will be slow in interference in the matters relating to administrative function unless the decision is tainted by illegality, irrationality or procedural impropriety. The Court also needs to consider that the action falls within any of these categories is established as mere assertion thereof would not be sufficient to cause such interference.

11. Perusal of the record indicates that there are as many as 7 offences registered against the present Petitioner at Police Station Kalamnuri and Aundha Nagnath. A proposal was forwarded by letter dated 13.09.2021 for externment of the Petitioner. Having regard to the said date of proposal, though offence Crime No. 176/2018 registered with Kalamnuri Police

Station may be considered as stale crime. But Crime Nos. 243/2019 and 185/2020 registered with Aundha Nagnath Police Station cannot be considered so. There are other crimes registered against him being Crime Nos. 20/2021, 188/2021 and 254/2022 registered with Aundha Nagnath Police station and Crime No. 169/2022 registered with Vasmant City Police Station. The Petitioner has been granted anticipatory bail in one of the offence, however, grant of anticipatory bail *per se* would not sufficient to show that the Petitioner is innocent. This observation would be inevitable in view of the various factors such as want of custodial interrogation etc would be essentially taken into account for grant of pre-arrest bail. Here in this case, all offences are not registered by particular individual against the Petitioner in order to call them as personal enmity but they are against different persons and also include offences against women. No doubt, in C.R. No. 188/2021 the Petitioner is exonerated, however, the registration and pendency of other crimes against him provides sufficient reason to conclude that Petitioner has been engaged in the commission of offences involving force

or violence or offences punishable under Chapter XII, XVI or XVII of IPC and when in his opinion witnesses are not willing to come forward to give evidence in public against him. Pertinently, not only when any person is engaged in but even when he is about to be engaged in offence, invocation of powers under Section 56 of the Act is permissible.

12. There is specific finding recorded by the SDM that the witnesses from the village did not appear the authority due to terror created by the Petitioner. The Petitioner on the other hand was unable to show that false cases are lodged against him by any particular person or offences are outcome of private dispute or he is tried to be falsely implicated in the crime on the basis of personal enmity with any individual. The offences registered against him indicate that some are committed against different persons. Merely because the Petitioner happened to be Sarpanch of village, it cannot be presumed that these offences are out of political rivalry. As held by the Hon'ble Apex Court in case of State of NCT Delhi (supra) that illegality, irrationality and procedural impropriety in the order,

on mere assertion and unless it is established before the Court, would not be sufficient ground to cause interference therein. In the instant case, having regard to the facts and circumstances of the case and record placed before this Court the Petitioner has failed to substantiate the same, this Court, therefore, does not find any irregularity, impropriety or mala fides on part of Authority in passing order in question. No manifest error has been committed in passing impugned order to annul the same.

13. With regard to the submissions of learned Counsel for the Petitioner that before taking action under Section 56(1)(a) or (b) of the Act the police ought to have been taken action against him under Section 151 of the Code of Criminal Procedure. In order to appreciate the said argument, it is relevant to take note of the said provision, which reads thus:

151. Arrest to prevent the commission of cognizable offences.

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty- four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

This provision indicates that power of arrest can be invoked where police officer has knowledge of a design to commit any cognizable offence. Meaning thereby, unless the commission of the cognizable offence has design and to avert such offence, arrest of person is permissible without order of Magistrate. The pre-condition for exercise of the said power is knowledge of police officer of a design to commit any cognizable offence. As against this, provision of Section 56 of the Act would apply on reasonable belief that a person is engaged or is about to be engaged in commission of offence. In the first case knowledge of police officer is essential, whereas in later, reasonable belief is sufficient. Needless to say that without knowledge and only on belief, coercive action of arrest can never be allowed to be taken by police officer. Thus, both provisions have application in entirety different spheres and situations. There would,

therefore, be no justification to say that police must take action against Petitioner under Section 151 of Cr.P.C and not to invoke provisions of Section 56 of the Act. Any such interpretation would lead to make the later provision otiose. Thus, it does not stand to any reason or justification that since the police has not taken any action under Section 151 of Cr.P.C, action under Section 56(1) of the Act would not be tenable.

14. However, as held by Hon'ble Apex Court order impugned must satisfy test of reasonableness. Perusal of the impugned order shows that SDM while externing the Petitioner from entire Hingoli District has recorded reason that there is fear amongst residence of village Dudhalal, Tq. Aundha Nagnath and that his terror is there in this village. This reasoning at the most indicates need of externment from particular taluka. For externment of the Petitioner from entire Hingoli district no reasons are recorded at all. Pertinently crimes which could be taken into consideration for justification of order are registered with Aundha Nagnath Police Station. The findings of the SDM further indicate that terror of the Petitioner is

amongst the residents of village Dudhala, Tq. Aundha Nagnath. There is no belief recorded on the basis of material on record that he is likely to commit offences in entire district and hence, he needs to be externed from entire Hingoli District.

15. As held by the Hon'ble Apex Court in case of Deepak (supra) the order in question is permissible to be interfered with on the ground of unreasonableness. Externment of the Petitioner from entire District of Hingoli is unreasonable and excessive. The Appellate Authority under Section 60 of the Act has failed to take said aspect into consideration. Hence, to that extend, the order impugned deserves interference.

16. Considering the fact that number of offences are registered against the Petitioner and he continued to involve himself in acts of commission of offences, the period of externment is not excessive or unreasonable. The claim of Petitioner for setting aside order of externment is entirety, hence, does not deserve acceptance. Merely because he is a Sarpanch of concerned village and that he needs to attend meeting of Grampanchayat cannot become ground for quashment of

impugned order. Sections 62 and 63 of the Act provides for the procedure for temporary entry in the prohibited area with order in writing or Authority. Thus, it is not the case that in no circumstances Petitioner would be unable to enter the area prohibited for his presence, in view of order of externment.

17. Hence, the Petition is partly allowed. The order of externment passed by SDM on 15.12.2022 is maintained to the extent of externing the Petitioner for one year from Taluka Aundha Nagnath.

18. Petition stands disposed of. Rule made absolute in above terms.

(R.M. JOSHI, J.)

Malani