

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

941 CRIMINAL WRIT PETITION NO.1265 OF 2022

**SHAIKH JAFAR @ JAFAR BUILDER SHAIKH AKHATAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. C. C. Deshpande, Advocate h/f Mr. A. S. Tilve, Advocate for
the petitioner

Mrs. D. S. Jape, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 01st FEBRUARY, 2023

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1. Heard the respective counsels for the parties. The matter is taken up for final disposal by consent of the parties.

2. By this petition, the petitioner is challenging an action under Section 56(1)(a)(b) of the Maharashtra Police Act taken by the Deputy Commissioner of Police, Circle-2, Aurangabad and confirmed by the learned Divisional Commissioner, Aurangabad in a appeal. The action was taken pursuant to the notice dated 28-01-2022. The petitioner replied the said notice. However, after considering the notice and reply the learned Deputy Commissioner of Police recorded its satisfaction on the basis of material placed before him and passed an order externing the petitioner from Aurangabad city

and police commissioner area for a period of one year. Petitioner was directed not to enter the limits without written permission of the Deputy Commissioner of Police, Circle-2, Aurangabad or the State Government.

3. The petitioner challenged the order dated 16-05-2022 by filing an appeal before the Divisional Commissioner, Aurangabad. The Divisional Commissioner, Aurangabad by order dated 30-08-2022 was pleased to reject the appeal filed by the petitioner.

4. A proposal was made by the Jinsi Police Station. Pursuant to the said an Assistant Commissioner of Police issued a notice dated 06-01-2021 to the petitioner asking as to why no action be taken for externment. Said notice was replied by the petitioner. However, pursuant to the said no action was taken. Thereafter, again on receipt of proposal second notice came to be issued on 28-01-2022 wherein there are nine offences mentioned in the notice which reads as under:-

Sr. No.	P.S.	Cr.No.	Offences	Charge-sheet	Court cases No.	Status
1	Jinsi	50/18	324, 143, 147, 148, 149 IPC	106/18 29-08-18	RCC No. 1876/18	PENDING
2	Jinsi	401/19	143, IPC and 135 M. Police Act.	90/2020 13-07-20	SCC/5985/20	PENDING
3	Jinsi	411/20	354, 294, 34 IPC	08/2021 04-02-21	SCC/5527/18	PENDING
4	Jinsi	65/21	306, 498-A. 323IPC	48/2022 05-03-22	PENDING	PENDING
5	City Chowk	154/17	143, 147, 149, 435, 336, 427, 323, 504, 506 IPC & 135 of M. Police Act.	79/2019 17-06-19	RCC/531/21	PENDING

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6	City Chowk	369/17	353, 323, 504, 506, 35 IPC & 3 Property Damage Act.	133/2018 24-10-18	SCC/481/19	PENDING
7	M. Cidco	264/17	143 IPC 135 M. Police Act.	134/18 08-10-18	SCC/8740/18	PENDING
8	Jinsi	299/21	504, 506, 34 IPC	13-03-21	-	-
9	City Chowk	594/21	504, 506 IPC	12-10-20	-	-

5. In a reply to the notice the petitioner submitted that cases at Sr. No. 1 to 3 are filed by his political opponents and are in the nature of counter blast to the compliant lodged by the petitioner. So far as the offence at Sr. No. 4 is concerned he submits that it is only under Section 306 and 498-A whereby there is no threat to the society.

6. Learned Deputy Commissioner of Police after considering the reply and considering the record and the secret statements was satisfied that sufficient material is available to take action against the petitioner and passed the order dated 16-05-2022.

7. In appeal the learned Divisional Commissioner also considered all the material and came to a conclusion. He specifically observed that sufficient case is made out on the basis of material to take action against the petitioner and rejected the appeal.

8. The learned advocate for the petitioner vehemently submits that offence at Sr. Nos. 1 to 3 are lodged by the person

who lost election against him in the election to the post of Corporator. Offence at Sr. No. 3 is lodged by his wife and thus both the offences are clearly are only because of political enmity between the parties. So far as the offence at Sr. No. 6 and 7 he submits that there is acquittal in favour of the petitioner. As regards offence at Sr. No. 4 is the concerned he submits that it is not against the society. All the offences are of the year 2017, 2018 and 2019. As observed earlier he submits that no action is taken on the basis of NC. He submits that there is no proper reference given of the secret statements recorded by the police and therefore, there is procedural irregularities.

9. The learned advocate for the petitioner relied upon the judgment passed by this court in Criminal Writ Petition No. 878 of 2017 in the case of Pradip Ghuge Vs State and others to show that once the court comes to a conclusion that there are procedural irregularities this action needs to be quashed. He further submits that there is no proximate relation in the initiation of externment proceeding and same is lacking in this case. In the said judgment the court had observed that in the show cause notice there was no mentioned of the fact that no witness are examined to come forward to give public against the petitioner. In the another judgment in the criminal *writ petition No. 174/2017 in the case of Nitin Manohar Kakade Vs State of Maharashtra and others*. The Hon'ble Court was pleased to consider that order of externment was passed without

mentioning secret statements in the show cause notice. The said lapse as was held, resulted in vitiating the order of externment. There was no reference of recording of statements of witnesses in the show cause notice. The order was excessive and action was quashed and set aside.

10. Learned APP opposes the petition saying that the proper procedure is followed by the authorities. It is a question of subject to satisfaction of the authorities before passing the order. In this case there was reference to the statements in the notice dated 28-01-2022. He submits that the offence registered against the petitioner were of serious nature. When the matter was for consideration before the authorities there was quarrel only in one of the cases i.e. at Sr. No. 7. She relies upon the judgment reported in *2019 (2) Mh. L. J. 745 in the case of Sumit Ramkrishna Maraskolhe and others Vs Deputy Commissioner of Police and Another* wherein this court after considering both the cases relied upon by the advocate for the petitioner had come to a conclusion that it is not necessary to state in the show cause notice that details of in-camera recorded by the externment authority. A question was referred as to whether it is necessary to state and the matter was referred to the full bench. She submits that now larger bench has answered that it is not necessary for the externment authority to state the details of in-camera statement in the show cause notice.

11. Considering the above position and considering the material in this case it does appear that notice was properly served upon the petitioner. The petitioner also replied the said notice. It is only after reply to the notice the action was taken by the first authority. It is seen that even the Divisional Commissioner has considered all the aspects. There are cases pending against the petitioner. Out of the offences five offences still pending trial except Sr. 1 & 4 cases are against public tranquility and affecting the public peace. Thus, this court finds that there is no perversity or illegality committed by the learned Commissioner while deciding the appeal. Consequently, no case is made out to call for interference at the hands of this court. The petition, therefore, stands dismissed.

[KISHORE C. SANT, J.]

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