

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

CRIMINAL WRIT PETITION NO. 1561 OF 2023

**SUHANA @ GUDDI SEEMA SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Ms. P. P. Shinde, Advocate h/f Mr. A. K. Bhosle, Advocate for the petitioner

Mr. S. P. Sonpawale, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 25th OCTOBER, 2023

P.C. :-

1. Petitioner is aggrieved by order of externment dated 6th September, 2023 directing her externment from Aurangabad city as well as district for the period of two years under Section 56 of Maharashtra Police Act and confirmation of the said order by the Appellate Authority.

2. It is the case of the petitioner that show cause notice came to be issued to the petitioner on 19th September, 2022 making allegations that there are four offences registered against her and a chapter proceeding under Section 107 of Cr.P.C. The said notice is served on 18th January, 2023. Thereafter the Deputy Commissioner, Aurangabad passed order 3rd July, 2023 stating that, there are statements of witnesses which indicate that, due to intimidation, threats, nuisance created by the petitioner they are not ready to come forward to lodged complaint against her. Having regard to these facts, impugned order came to be passed and the said

order is confirmed by the learned Divisional Commissioner under Section 60 of the Act by order dated 06th September, 2023.

3. Learned counsel for the petitioner submits that though it is sought to be shown that the petitioner is involved in four offences however the offence under crime No. 111 of 2022 is not the offence contemplated by Chapter XII, XVI or XVII of Indian Penal Code (for short 'IPC') and hence it cannot become a ground for externment. As far as the offence under CR No. 367 of 2020 registered Cantonment Police Station it is submitted that B summary is filed therein which indicates not involvement of the petitioner in the said crime. With regard to Crime No. 214 of 2023 registered with Pundlikenagar Police Station it is submitted that the said offence has been registered after issuance of notice and as such the same offence could not have been taken into consideration for the purpose of passing order. It is submitted that the only offence registered with Osmanpura Police Station being No. 210/2018 is stale crime and as such the order passed on the basis stale crime cannot sustain. Objection is also raised with regard to the alleged confidential statements contending that the said statements are vague as no particulars are given as to the occurrences of such incident claim therein. It is further submitted that for the purpose of maximum period of externment of two years reasons ought to have been assigned by the authority and in absence thereof such order is not sustainable. To support the said

submission she relied upon the judgment of Hon'ble Apex Court in case of ***Dipak s/o Laxman Dongre Vs. State of Maharashtra and Ors., 2022(2) MLJ (Cri) 155*** and ***Rahmat Khan @ Rammu Bismillah Vs. Deputy Commissioner of Police, 2021(3) PIJR 326.***

4. Learned APP opposed the said application by contending that apart from four offences registered against the petitioner one chapter proceeding was also initiated and after due consideration thereof order came to be passed on 7th July, 2022 against the petitioner. It is submitted that requisite process has been followed by giving opportunity to the petitioner to show cause and only after considering the material available on record including the the confidential statements the order in question came to be passed. It is submitted that in view of Section 58 of Maharashtra Police Act there is no bar for issuing direction under Section 56 of of Maharashtra Police Act not to enter any particular area for a period not exceeding two years. Thus, it is submitted that there is no impropriety in the order impugned and hence the petition deserves to be rejected.

5. Learned APP also states 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 his 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 two year and that having regard to the nature of allegations against him, the said order does not deserve interference.

6. 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.

7. 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 of 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.

8. 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.

9. Reverting back to facts of the case, practically except for one offence of year 2018, there was no record indicating involvement the present petitioner in any offence covered by Chapter XII, XVI or XVII of IPC. The offence registered with Begumpura Police Station being No. 111/2022 is not covered by the said chapters. Similarly, offence of year 2020 with Cantonment Police Station is not established against the petitioner as B summary came to be filed. The offence Crime No. 214 of 2023 with Pundliknagar Police Station is under investigation, which is alleged to have been committed after the issuance of show cause notice to the petitioner. Thus, at the time of issuance of show cause notice

except one stale crime of the year 2018 there was nothing before the concerned authority in order to invoke the provisions of Section 56 of the Act. A plain reading of this provision indicates that for the purpose of exercise of powers of externment the acts of the person to cause or calculated to cause harm to person or property or is engaged or about to engage in offence involving force or violence. Provision therefore more than sufficiently demonstrates that act in present time or about to be done are contemplated for taking into account for restricting the personal liberty of an individual. The stale crimes therefore cannot become a ground to curtail liberty of anyone. Considering, Article 21 of Constitution of India, no person shall be deprived of his liberty except according to the procedure prescribed by law. The facts of the case therefore are not sufficient to hold that the order of externment has been passed in accordance with the procedure of law as contemplated by Section 56 of Act.

10. Moreover, perusal of the impugned order also does not show that any reason being recorded for directing externment of the petitioner from City of Aurangabad as well as entire district of Aurangabad for the period of two years, no reason or justification is assigned there for. Hon'ble Apex Court in case of **Deepak Laxman Dongre** (supra) has held that such recording of such reason for imposing maximum period of

externment is mandatory. Even otherwise there could be no justification to extern the applicant from entire district when alleged offence is registered in the police station in city of Aurangabad. The order impugned therefore suffer from excessiveness.

11. The Appellate Court has mechanically confirmed the order without looking into the objections raised by the petitioner. Having regard to these facts and circumstances of the case it is a fit case for causing interference with the impugned order of externment. Accordingly, petition stands allowed. Impugned orders stand set aside.

(R. M. JOSHI, J.)

ssp