

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 678 OF 2022

PETITIONER : Nilesh S/o. Purushottam Bhende,
Aged about 30 years, Occupation:
Social Work, R/o. Amar Colony,
Dastur Nagar, Amravati, Distt.
Amravati.

//VERSUS//

RESPONDENTS : 1. The Divisional Commissioner,
Amravati Division, Amravati.

2. The Deputy Police Commissioner,
Amravati Division No.2, District
Amravati.

3. Police Station Officer, Police Station
Rajapeth, Amravati.

Mr. T.U. Tathod, Advocate for the Petitioner.

Mr. S.A. Ashirgade, APP for the Respondents/State.

CORAM : G. A. SANAP, J.

DATED : 9th FEBRUARY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties.

02] In this criminal writ petition, filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 13th July, 2022 passed by the respondent No.1- Divisional Commissioner, Amravati confirming the order of externment passed by the respondent No.2 and also the order dated 9th May, 2022 passed by the respondent No.2-Deputy Commissioner of Police, Division-2, Amravati, whereby the petitioner is directed to remove himself outside the limits of Amravati District for a period of two years.

03] The facts leading to the filing of the petition can be summarized as follows:

The respondent No.2 by invoking the provisions of Section 56 sub-section (1), clauses (a) and (b) of the Maharashtra Police Act, 1951 (hereinafter referred to as “**the Act of 1951**” for short), ordered externment of the petitioner and directed him to remove himself outside the limits of Amravati District for a period of two years. The respondent No.2 to arrive at subjective satisfaction before passing the order, placed reliance on 19 crimes registered against the petitioner and others at various police stations within the limit of the Amravati City. The details of those crimes are as under:

Sr. No.	Police Station	Crime No.	Section	Case status
1.	Rajapeth	621/2019	341, 188 of IPC	Pending in court
2.	Rajapeth	55/2022	188, 268, 269, 341 of IPC r/w 51(b) of Disaster Management Act, 2005 and 2, 3, 4 of Epidemic Diseases Act, 1897.	Pending in court
3.	Rajapeth	57/2022	188, 268, 269, 341 of IPC r/w 51(b) of Disaster Management Act, 2005 and 2, 3, 4 of Epidemic Diseases Act, 1897.	Pending in court
4.	Rajapeth	69/2022	188, 268, 269, 341 of IPC r/w 51(b) of Disaster Management Act, 2005 and 2, 3, 4 of Epidemic Diseases Act, 1897.	Pending in court
5.	Rajapeth	75/2022	188, 268, 269, 341 of IPC r/w 51(b) of Disaster Management Act, 2005 and 2, 3, 4 of Epidemic Diseases Act, 1897.	Under police investigation
6.	Frezarpura	1049/2018	143, 147, 323, 504, 506(B) of IPC	Pending in court
7.	Gadge Nagar	347/2017	143, 149, 353 of IPC r/w 3 of Mah. Prevention of Defacement of Property Act, 1995, 135 of Mah. Police Act.	Acquitted
8.	Gadge Nagar	30/2018	143, 452, 323, 427 of IPC	Pending in court
9.	Gadge Nagar	785/2018	309 of IPC	Pending in court
10.	Kotwali	153/2019	147, 148, 452, 427, 504, 506 of IPC	Pending in court
11.	Kotwali	1008/2021	143, 186, 188, 323, 353, 448 of IPC r/w 135, 112, 117 of Mah. Police Act.	Pending in court
12	Rajapeth	370/2020	188, 269 of IPC	Pending in court

13.	Kotwali	351/2017	135 of Mah. Police Act	Pending in court
14.	Kotwali	250/2019	135 of Mah. Police Act	Pending in court
15.	Gadge Nagar	107/2017	135 of Mah. Police Act	Pending in court
16.	Gadge Nagar	267/2018	135 of Mah. Police Act	Pending in court
17.	Gadge Nagar	779/2018	500, 501 of IPC r/w 67 of Information Technology Act, 200 and 3(1)(r) of Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989	Pending in court
18.	Gadge Nagar	955/2018	135 of Mah. Police Act	Pending in court
19.	Frezarpura	491/2021	188 of IPC r/w 51(b) of Disaster Management Act and 3, 4 of Epidemic Diseases Act and 135, 33 of Mah. Police Act.	Pending in court

04] The respondent No.2 apart from the above crimes, relied upon the confidential in-camera statements of the two witnesses. The above crimes and the confidential in-camera statements of the two witnesses were found sufficient by the respondent No.2 to record his satisfaction that the activities of the petitioner are fully covered under the provisions of Section 56(1) clauses (a) and (b) of the Act of 1951. The petitioner availed the remedy of appeal before the respondent No.1 and challenged the said order. The respondent No.1 after granting an opportunity of hearing found that subjective satisfaction for the externment of the

petitioner was arrived at on the basis of the objective material placed on record. The respondent No.1, therefore, rejected the appeal. The petitioner has, therefore, come before this Court by filing this writ petition.

05] I have heard Mr. T.U. Tathod, learned advocate for the petitioner and Mr. S.A. Ashirgade, learned APP for the respondent Nos.1 to 3. With their able assistance, I have gone through the record and proceedings.

06] Perusal of the petition would show that the petitioner has pleaded multiple grounds of challenge to the impugned orders. Mr. Tathod, learned advocate appearing for the petitioner submitted that there is no concrete material on record to record the satisfaction that the witnesses are not coming forward to depose against the petitioner. The learned advocate submitted that the crimes relied upon to record the subjective satisfaction by the respondent No.2 are stale crimes. It is submitted that on the basis of those crimes, a live link has not been established to warrant the order of externment against the petitioner. The learned advocate further submitted that in the notice issued by the respondent No.2, 3 crimes in which the petitioner was acquitted were taken into

consideration. The learned advocate pointed out that in reply to the show cause notice, this fact was specifically stated by the petitioner. The learned advocate submitted that despite having knowledge of this fact from the reply, these 3 crimes have been made basis to record the subjective satisfaction.

07] The learned advocate further submitted that the impugned orders suffers from the virus of excessiveness. It is pointed out that all the offences, relied upon, were registered at different police stations in the City of Amravati. The petitioner has been externed from the entire Amravati District and that too for a period of two years. It is submitted that no reasons have been recorded to warrant his externment from the entire Amravati District for a period of two years and, as such, the orders suffer from virus of excessiveness.

08] The learned advocate for the petitioner has placed on record a Government Resolution dated 20th September, 2022, whereby the Government of Maharashtra has decided to withdraw the offences registered against the accused persons during covid-19 pandemic period under Sections 188, 269, 270 and 271 of the Indian Penal Code, 1860 (for short "IPC") and Sections 2, 3 and 4

of the Epidemic Diseases Act, 1897 and Section 51(b) of the Disaster Management Act, 2005. The learned advocate pointed out that out of 19 crimes, seven crimes were registered under the above provisions. It is submitted that in view of this Government Resolution, those crimes have, therefore, become meaningless and cannot be made the basis of externment. The learned advocate pointed out that the crimes at Serial Nos.6 to 9 are relating to the human body. The crimes at Serial Nos.13 to 16, 18 and 19 are under the Maharashtra Police Act, 1951. The learned advocate submitted that the crimes at Serial Nos.8, 10 and 11 were relating to defiance of the administrative directions, issued by the Competent Authority. The learned advocate submitted that the petitioner is supporter of one political group which, at the relevant time, was not in power and, therefore, to take revenge, this action was initiated. The learned advocate submitted that if the activities or indulgence in the activities were so serious as sought to be made out, then the easiest possible remedy to curb the menace of the petitioner to the society and public peace and tranquility, the police could have taken recourse to the remedy provided under Section 151 of the Cr.PC. It is pointed out that relying upon the necessary materials, the police could have obtained the order of detention of the petitioner in the Court of Judicial Magistrate First Class. The

learned advocate, therefore, submitted that the subjective satisfaction sought to be asserted, was not arrived at on the basis of the objective material and, therefore, both the impugned orders are required to be quashed and set aside.

09] Mr. Ashirgade, learned Additional Public Prosecutor for the respondent Nos.1 to 3 submitted that considering the 19 crimes listed in the chart, the subjective satisfaction recorded by the respondent No.2 and approved by the respondent No.1 cannot be questioned at all. The learned APP submitted that even if it is assumed that three crimes in which petitioner was acquitted were considered, the same would not be the ground to grant benefit to him inasmuch as in the remaining crimes, he has been facing the prosecution. The learned APP submitted that the acts and the offences committed by the petitioner were squarely covered by the provisions of Section 56(1) clauses (a) and (b) of the Act of 1951. The learned APP submitted that the last crime committed was in the year 2021 and, therefore, there was a live link between the earlier crimes as well as in the order of externment, passed by the respondent No.2. The learned APP submitted that the continuity of the commission of crimes by the petitioner proves beyond doubt that his movements and acts are likely to cause calculated danger

and harm to the person or property. The learned APP submitted that the confidential in-camera statements of the two witnesses clearly substantiate the subjective satisfaction recorded by the respondent No.2. The learned APP further submitted that the statement of the confidential witnesses cannot be questioned and doubted inasmuch as the same were duly verified by the respondent No.2. It is submitted that, therefore, the apprehension of manipulation of those statements sought to be placed on record, is baseless. The learned APP further submitted that the elaborate discussion on the bail orders granted in all the crimes in favour of the petitioner was not necessary, considering the nature of the proceeding initiated against him. The learned APP, in short, supported the impugned orders.

10] In order to appreciate and deal with the rival submissions, I have gone through the record and proceedings. In this case, relying upon the provisions of Section 56 of the Act of 1951, the externment order is passed. Section 56 reads thus:

“56. Removal of persons about to commit offence:-

(1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Section 7 to the Commissioner and in other area or areas to which the State Government

may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf -

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or

(b) 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 an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or,

(bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980, or (2) in any manner prejudicial to the maintenance of supplies of commodities essential of the community as defined in the Explanation to sub-section (1) of Sec. 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or other wise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm [or such prejudicial act] or the outbreak or spread of such disease or [notwithstanding

anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the Officer or not and whether contiguous or not), by such route, and within such time as the officer may specify and not to enter or return to the said area or areas specified (hereinafter referred to as “the specified area or areas”) from which he was directed to remove himself].”

11] In this case, the provisions of Section 56(1), clauses (a) and (b) of the Act of 1951 have been invoked. The ground under clause (a) indicates that movements or acts of any person must be causing or calculated to cause alarm, danger or harm to person or property. The ground under clause (b) indicates that to invoke the same, there must be reasonable ground for believing that the person sought to be externed is engaged or about to engage in the commission of an offence involving force or violence or offence punishable under Chapters XII, XVI, XVII of the Indian Penal Code or abetment of any such offence. The second part of clause (b), which has to be read with the first part, clearly stipulates that the Competent Authority empowered to pass an order should form an opinion that the witnesses are not willing to come forward to give evidence in public against such person only because of an apprehension on their part as regards safety of their person or property. The conjoint reading of clauses (a) and (b) would indicate

that in arriving at a subjective satisfaction as to the grounds, there must be objective material on record before the authority.

12] At this stage, useful reference can be made to the decision in the case of *Deepak S/o Laxman Dongre Vs. State of Maharashtra and Others* [2022 ALL MR (Cri.) 761 SC. In this case, the Hon'ble Supreme Court has considered the decision in the case of *Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police, State of Maharashtra* [(1973) 1 SCC 372]. On consideration of this decision, it is held that the reasons which necessitate or justify passing of an extraordinary order of externment arise out of extraordinary circumstances. It is held that, therefore, the strict compliance of Section 59 of the Act of 1951 is required to be made. It is further held that the order of externment deprives the citizen of his fundamental right of free movement throughout the territory of India. The order of externment in fact prevents the person even from staying in his own house along with his family members during subsistence of the externment order. It is, therefore, held that the subjective satisfaction must be arrived at on the basis of the objective material.

13] In order to consider the applicability of the proposition to the facts of the case on hand, it would be necessary to go

through the show cause notice, the reply to the show cause notice given by the petitioner, the other materials relied upon in the show cause notice and the orders passed by the respondent Nos.2 and 3 to come to a conclusion whether the externment of the petitioner outside the limits of the Amravati District was based on the subjective satisfaction.

14] The show cause notice was issued by the respondent No.2 on 19th April, 2022. The last crime registered at Frezpara Police Station bearing No.491/2021 for the offences under Section 188 of the IPC read with Section 51(b) of the Disaster Management Act and Sections 3 & 4 of the Epidemic Diseases Act, and Sections 135 & 33 of the Maharashtra Police Act was on 11th November, 2021. The last crime registered for commission of the offences under the IPC was on 17th August, 2021 at Kotwali Police Station bearing Crime No.1008/2021. The notice issued is dated 19th April, 2022. The order of externment is dated 9th May, 2022. Perusal of the crimes registered against the petitioner would show that in three crimes, he was already acquitted before issuance of notice. It is undisputed that in the crimes at Serial Nos.12 to 17, the petitioner has been acquitted. It is pertinent to note that out of 19 crimes, 7 crimes are under Section 188 of the IPC, Section 51(b) of

the Disaster Management Act and Sections 2, 3 and 4 of the Epidemic Diseases Act. All these crimes, which cannot be strictly covered under the provisions of Section 56(1) clauses (a) and (b) of the Act of 1951, have been taken into consideration. It is to be noted, at this stage, that the Government of Maharashtra *vide* Government Resolution dated 20th September, 2022 has decided to withdraw the crimes committed in contravention of the prohibitory order during Covid-19 pandemic and particularly the crimes registered for the offences under Sections 188, 269, 270 and 271 of the IPC and Sections 2, 3 & 4 of the Epidemic Diseases Act and Section 51(b) of the Disaster Management Act. It is, therefore, seen that 7 crimes could not have been taken into consideration against the petitioner in this proceeding. These 7 crimes had no propensity to affect the public peace or tranquility. The spirit of issuance of the prohibitory order by the Competent Authority during Covid-19 pandemic, ought to have been considered in proper perspective by the respondent No.2 in the externment proceeding and by the respondent No.1 in the appeal. Therefore, in my view, 7 offences would not have been considered to record the subjective satisfaction.

15] It is further seen that 6 crimes, out of 19 crimes relied upon to arrive at a subjective satisfaction, were registered under Section 135 of the Act of 1951. In majority of these crimes, the petitioner has been acquitted. On going through the externment order as well as the order passed by the Appellate Authority, I am unable to understand the rationale in placing the reliance on these crimes, to justify and sustain the order of externment. It is to be noted that the crimes, committed in the years 2017, 2018 and 2019, have been relied upon to record subjective satisfaction for passing the externment order. In some of the crimes, the petitioner was already acquitted. The notice was issued on 19th April, 2022. I fail to understand the rationale behind the reliance on the stale crimes registered upto the year 2019, to record the subjective satisfaction. It is further pertinent to note that on the basis of the crimes registered from 2017 to 2019, a live link has not been established. Similarly, the live link between those crimes and the proceeding initiated pursuant to the notice dated 19th April, 2022 was completely snapped. In the reply to the notice issued by the respondent No.2, the petitioner categorically stated that he was acquitted in three crimes. On receipt of this reply, the respondent No.2 was required to make an inquiry about this fact. The respondent No.2 despite having gained the knowledge of the

acquittal of the petitioner in three crimes, relied upon these crimes to record his satisfaction. This fact is sufficient to conclude that the subjective satisfaction was recorded without applying the mind. These crimes could not have been taken into consideration. There was no rationale for relying upon the stale crimes as well as the crimes in which the petitioner was acquitted, to pass the externment order. Therefore, in my view, on this ground, a dent has been caused to the subjective satisfaction asserted for passing the order of externment by the respondent No.2.

16] The learned APP made the original file available for perusal of this Court. The sealed envelopes containing the statements of the confidential witnesses were opened in the Court. It was the grievance of the learned advocate for the petitioner that in the notice, there was no reference to the verification of those statements by the Senior Officer as well as the name and designation of the Officer, who had recorded those statements. The learned APP, before the confidential statements were opened and perused by this Court, submitted that the statements were duly verified by the Superior Officer i.e. respondent No.2. It is seen on perusal of the statements that the same were recorded on 5th February, 2022. Those statements were recorded by Police Sub-

Inspector, Police Station, Rajapeth, Amravati City. The respondent No.2, before recording his satisfaction with regard to the credibility and the correctness of the statements, was supposed to verify the statements. Perusal of the statements would show that, at bottom, there is endorsement 'verified' with the stamp of the designation of the respondent No.2 with his signature. There is no date below this stamp and signature. It, therefore, cannot be said that the statements were verified before issuance of notice by the respondent No.2. Verification of statements of the confidential witnesses cannot be a mechanical exercise. The statements of the confidential witnesses, if properly recorded and verified, can be the best material to sustain the order of externment. This endorsement of verification indicates that the witnesses were not personally called by the respondent No.2 when the statements were verified. It is to be noted that the preliminary inquiry was handed over to Assistant Commissioner of Police Mr. Bharat Gaikwad. On the backside of the statement, there is endorsement by Mr. Bharat Gaikwad that he had verified the statements. I fail to understand as to why Mr. Bharat Gaikwad personally did not record the statements of those witnesses. In my view, therefore, the statements, which were not properly verified by the respondent No.2, cannot be made the basis of externment order. It is further

pertinent to note that in the notice issued by the respondent No.2 as well as the order of externment, there is no mention that the respondent No.2 had personally called the witnesses for the purpose of verification of the statements and actually verified the same. In my view, this is one more circumstance, which causes a dent to the subjective satisfaction sought to be asserted.

17] This would take me to another important aspect with regard to the failure to initiate an action under Section 151 of the Cr.PC in the teeth of the serious apprehension of breach of peace and public tranquility at the behest of the petitioner. It is to be noted that considering the serious apprehension placed on record on the basis of the material, one can say that the acts of the petitioner were alleged to be of the nature and kind stipulated under Section 56(1) clauses (a) and (b) of the Act of 1951. In my view, in this backdrop, respondent nos.2 and 3 would have invoked the provisions of Section 151 of the Code of Criminal Procedure in its application to the State of Maharashtra. Section 151 of the Cr.PC provides that the arrest of a person can be made to prevent a person from committing cognizable offence. If a police officer apprehends a design of a person to commit any cognizable offence, can arrest him without order from the Magistrate. If it appears to

such officer that the commission of the offence cannot be otherwise prevented, he can be detained in custody for a total period of thirty days from the date of arrest of such a person as per the order of the JMFC. In this case, considering the apprehension sought to be placed on record and invocation of Section 56(1) Clauses (a) and (b) of the Act of 1951, the respondent No.2 ought to have taken recourse to this remedy. If he had taken recourse to this remedy, then he would have been justified in passing the order on the basis of the said material. It is to be noted that the remedy provided under Section 151 of the Cr.PC is a speedy remedy. The police officer to invoke Section 151 of the Cr.P.C., is required to form an opinion that the person is likely to commit a cognizable offence and that said person cannot be prevented from committing the said offence unless and until he is arrested and detained as provided under Section 151 of the Cr.PC. The Judicial Magistrate, who is an independent authority, would definitely make objective analysis of the material on record before granting the prayer for detention of the concerned person. It is to be noted that after taking recourse to the remedy provided under Section 151 of the Cr.PC and after completion of the detention period, if the said person comes out and commits an offence then, in my view, it would be a strong circumstance justifying externment.

18] As per the provisions of Section 56 of the Act of 1951, the maximum period of externment is two years. In this case, the respondent No.2 has ordered externment of the petitioner from the entire Amravati District for a period of two years. It is to be noted that the externment order apart from making inroads on the fundamental right of the movement makes the said person live separate from his family members. Similarly, the said order can deprive the said person of his livelihood. In order to justify the externment for maximum period of two years, the authority is required to consider the objective material to record the subjective satisfaction on this point. The order passed by the respondent No.2 is silent on this point. No reasons have been recorded by the respondent No.2 to warrant externment of the petitioner for a period of two years from entire Amravati District. In view of this fact, the respondent No.2 was expected to record the reasons to warrant externment of the petitioner outside Amravati District. The order passed by the respondent No.2 and confirmed by the respondent No.1, therefore, suffers from virus of excessiveness. The laid down on the point in the cases of *Shaikh Mukhtyar S/o Mustafa Shaikh Vs. State of Maharashtra and Others* [2017 ALL.M.R. (Cri.) 268 and *Bhagwat Dadasaheb Landge and Another Vs. State of Maharashtra and Others* [2020(5) Mh.L.J.

(*Cri.*) 546], would, therefore, equally apply in this case. In my view, this would be one of the factors, which would weigh in favour of the petitioner. This would also reflect upon non-application of mind to the material on record to arrive at subjective satisfaction. In my view, therefore, the externment order passed by the respondent No.2 and the order passed by the Appellate Authority confirming the externment order, cannot be sustained. The orders deserve to be set aside.

19] Accordingly, the writ petition is **allowed**.

The order dated 9th May, 2022 passed by the respondent No.2 externing the petitioner from Amravati District for a period of two years and the order dated 13th July, 2022 passed by the respondent No.1 confirming the said order of externment, are quashed and set side.

Rule is made absolute. The petition stands disposed of.

(G. A. SANAP, J.)