



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

...

CRIMINAL WRIT PETITION NO. 621/2023

Kashif Khan Rauf Khan
Aged about 37 years, occu: Business
R/o Vitthal Mandir Ward
Near Mata Mandir, Warora
Dist. Chandrapur.

..PETITIONER

v e r s u s

- 1) State of Maharashtra
Through Sub-Divisional Police Officer
Tah. & Dist. Chandrapur.
- 2) The Divisional Commissioner
Nagpur Division, Nagpur.
- 3) Police Inspector
Police Station Warora
Tq.& Dist.Chandrpaur.
- 4) Sub-Divisional Magistrate,
Warora.

..RESPONDENTS

.....
Mr.S.V.Sirpurkar, Advocate for the petitioner
Mr.A.R.Chutke, APP for the Respondents
.....

CORAM: ANIL L. PANSARE, J.
DATE OF CLOSING: 12.09.2023
DATE OF PRONOUNCEMENT: 21.09.2023

JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally, with
the consent of the learned counsel for the respective parties.

2. The petitioner-externee has challenged the order dated 18.08.2023 passed by the respondent no.2-Divisional Commissioner, Nagpur in Appeal No.39/2023, as also the order dated 19.06.2023 passed by the respondent no.4-Sub-Divisional Magistrate, Warora, whereby the petitioner has been externed from Chandrapur District for a period of one year.

3. The petitioner has been externed in terms of Sections 56(a) and (b) of the Maharashtra Police Act, 1951 (in short 'M.P. Act'). Section 56 of the M.P. Act, 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 Chapters 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 to the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing 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 otherwise 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 area or areas specified (hereinafter referred to as "the specified area or areas") from which he was directed to remove himself).

(2) An officer directing any person under sub-section (1) to remove himself from any specific area or areas in the State may further direct such person that during the period the order made against him is in force, as and when he resides in any other areas in the State, he shall report his place of residence to the officer in-charge of the nearest police station once in every month, even if there be no change in his address. The said officer may also direct that, during the said period, as and when he goes away from the State, he shall, within ten days from the date of his departure from the State send a report in writing to the said officer, either by post or otherwise, of the date of his departure, and as and when he comes back to the State he shall, within ten days, from the date of his arrival in the State, report the date of his arrival to the officer in-charge of the police station nearest to the place where he may be staying."

4. As could be seen from Section 56(1)(a),(b), (bb) and (c) of the M.P. Act, there are various grounds for passing an order of externment. In the present case, the authorities have invoked grounds under clauses (a) and (b), which broadly relate to the dangerous movements or acts of a person and of his engagement in commission of an offence involving force or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, 1860. The prerequisite for invoking the ground under clause (b) is that the competent authority, who is empowered to pass an order of externment should satisfy itself that the witnesses are not willing to come forward to give evidence in public against such person because of his apprehension as regards the safety or property of a witness.

5. Mr S.V. Sirpurkar, the learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court, in the case of Deepak Dongre vs. The State of Maharashtra and others in Criminal Appeal No.139/2022 decided on 28.01.2022, wherein it is held that the recording of satisfaction by the competent authority as regards the witnesses are not willing to come forward to give the evidence against the externee, is *sine quo non* for passing a valid order of externment under clause(b). The Supreme Court held in para no.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 calculate 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 and XVII of the IPC. Offences under Chapter XII are relating to Coin & 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 to 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 quo non for passing a valid order of externment under clause (b)."

6. The learned counsel for the petitioner has invited my attention to the cases lodged against the petitioner which are taken aid of to show that the petitioner is engaged in criminal activities. The orders impugned will show that following cases have been relied upon by the authorities below :-

S.No.	Police Station.	Crime Nos.	Under Section	Result
1	Warora	186/2008	147,148,149,3 95,323, 120B, 294, 506,427, IPC and 135 of BP Act	Acquitted
2	Warora	802/2021	379, 34 IPC	sub-judice
3	Warora	803/2021	379, 34 IPC	sub-judice
4	Warora	804/2021	379,34 IPC	sub-judice
5	Warora	804/2021	379, 34 IPC	

7. Mr Sirpurkar, learned counsel for the petitioner submits that the petitioner has been acquitted in the first crime and, therefore, the competent authority ought not to have relied upon the said case. So far as the other cases are concerned, they all relate to the alleged theft of sand. His main grievance, however, is against the in-camera statements recorded by the police officials to label the petitioner as a dangerous person.

8. Their statements find place in the impugned order dated 19.06.2023 passed by the Respondent no.4-SDM, Warora. Both the witnesses have stated that the petitioner is a notorious person, involved in illegal activities, has encroached upon the road and built his office, has amassed ill-gotten gains by illegal means, the trucks belonging to him are driven rashly and negligently and if anyone questions the Driver he threatens them and lastly he is carrying out illegal mining of sand.

9. These two witnesses, according to the learned counsel for

the petitioner and rightly so, do not speak of engagement of the petitioner in the commission of a particular offence or of his engagement in the offence which were likely to be committed, as required under clause (b) of sub-section (1) of Section 56 of the M.P. Act. There are general, bald and vague allegations that the petitioner is engaged in illegal mining. However these witnesses do not speak of any offence that has been tabled in the order nor about a particular offence that was about to be committed.

10. That apart, neither the respondent no.4- SDM, Warora nor the respondent no.2-Divisional Commissioner Nagpur appears to have interacted with these two witnesses, whose statement has been recorded in-camera, to render a finding that the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property. The Hon'ble Supreme Court in the case of Deepak Dongre (supra) has held that recording of such subjective satisfaction by the competent authority is sine quo non for passing a valid order of externment, under clause (b).

11. Though the learned APP made an attempt to justify the orders, he could not convincingly point out that the authorities below have recorded their subjective satisfaction, on the basis of objective material, that the witnesses are not willing to come forward to give evidence against the petitioner.

12. That being so, the orders impugned are not sustainable in the eyes of law and, thus, are liable to be quashed and set aside. Hence

the order.

ORDER

(A) Criminal Writ Petition No.621/2023 is allowed.

(B) The orders dated 18.08.2023 passed by the Divisional Commissioner, Nagpur and dated 19.06.2023 passed by the Sub-Divisional Magistrate, Warora, both are quashed and set aside.

Rule made absolute in the aforesaid terms.

(ANIL L. PANSARE, J.)

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