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65criwp709.24

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

65 CRIMINAL WRIT PETITION NO. 709 OF 2024

DATTA MALLIKARJUN MOHALKAR

....Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondent

Mr. T. M. Venjane, Advocate for the petitioner

Mr. R. B. Dhaware, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 16th JUNE, 2025

P. C.

1. Heard the learned advocate for the parties.
2. The matter is taken up for final disposal at the stage of admission with the consent of the parties.
3. A challenge in this petition is to an order dated 27-03-2024 passed by the learned Divisional Commissioner in Appeal under Section 60 of the Maharashtra Police Act, thereby modifying the order dated 12-06-2023 passed by the learned

Special Divisional Magistrate, Nilanga. The learned SDM had passed an externment order. When he passed an order dated 12-06-2023 directing the petitioner be externed for a period of one year from two districts i.e. Latur and Osmanabad. By way of impugned order the learned Divisional Commissioner restricted the order dated 12-06-2023 only to the extent of Latur District.

4. The learned advocate for the petitioner submits that first proposal was issued on 25-12-2020 by the Police Inspector. On the basis of same, proposal for externment was sent by SDPO on 28-10-2021 to the SDM, Nilanga. A notice came to be issued on 23-11-2021 wherein nine offences were reported. This petitioner filed reply on 21-01-2022. On 11-02-2022 the learned SDM, Nilanga closed the matter for orders. The order came to be passed on 12-06-2023. The appeal filed thereafter came to be partly allowed. The petitioner is, therefore, before this court.

5. The learned advocate for the petitioner mainly relied on two grounds that order passed is excessive and is passed after

much delay. To press points of delay in passing the order, he relies on the following judgments

- a] Kishore Rambhauji Narad Vs the State of Maharashtra and another¹
- b] Sudhakar Mahadeorao Khelkar Vs the State of Maharashtra and others²
- c] Prashant Shashikatn Mandal Vs the State of Maharashtra and another³
- d] Dilip Laxman Kokare Vs S. M. Ambedkar and others⁴

6. He further submits that there is no subjective satisfaction of the authority appearing in the impugned order to take such action. For that purpose he relies upon the judgment in the case of Sudhir Raviraj Chaudhary Vs The State of Maharashtra⁵. He further submits that there is no discussion as to why the persons are not ready to depose against the present petitioner. In support of his submission, he relies upon the judgment in the case of Anna Bhimrao Dhavale Vs The State of Maharashtra and others⁶.

7. The learned APP submits that the order was passed

1 2017 ALL MR (Cri) 4898

2 2014 A:: MR (Cri) 1706

3 2013 ALL MR (Cri) 4357

4 1991 (1) Mh. L. J. 833

5 2013 ALL MR (Cri) 175

6 2017 ALL MR (Cri) 2099

on 12-06-2023 for one year. Said period is now over and petition has become infructuous. He supports the reasoning given by the SDPO and the learned Divisional Commissioner. He prays for dismissal of the petition.

8. Though the learned APP submits that period is over, this court finds submission of the learned advocate for the petitioner is proper that though the period is expired, this order casts a stigma on him and for this, it is necessary to decide the petition on merits.

9. After hearing the parties for long, this court has gone through the orders. It does appear that there is no dispute about the dates of issuance of notices, reserving the matter for orders and the date of actual judgment. It is seen that though in some of the cases which were considered there was acquittal, but still same was not properly brought to the notice of the authorities. Some of the offences were of political in nature. In some of the offences the petitioner is acquitted. It is observed in the order

that the action of externment needs to be taken as urgent action. It is still seen that the matter was closed for more than 16 months and only thereafter, the order was passed. There is no discussion about the secrete statements. This court finds that subject to satisfaction is also not recorded.

10. The learned Divisional Commissioner also failed to appreciate all these aspect. The order is only modified by rectifying it to one district instead of setting aside entire order.

11. It does not appear that the authorities have considered all these aspects properly. There is no dispute about the proposition submitted by the learned advocate for the petitioner on the basis of reported judgments. This court, therefore, finds that case is made out to allow the petition. Therefore, the criminal writ petition is allowed in terms of prayer clauses-B and C and disposed off.

[KISHORE C. SANT, J.]