



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

CRIMINAL WRIT PETITION NO. 1112 OF 2024

Sunil Baliram Rathod

.. Petitioner

Versus

The Divisional Commissioner And Another

.. Respondents

Mr. Ramrao G. Nirmal, Advocate for the Petitioner.
Smt. C. C. Kutti, APP for Respondent Nos. 1 and 2.

CORAM : KISHORE C. SANT, J.

DATE : 31st JULY, 2025.

PER COURT :-

. Heard learned advocate for the petitioner and learned A.P.P. for respondents for final disposal at the stage of admission.

2. The petitioner has challenged an order dated 28.05.2024 passed by the learned Divisional Commissioner, Chhatrapati Sambhajinagar thereby partly allowing the appeal of the petitioner. The learned Divisional Commissioner by way of impugned order modified the order passed by the learned Sub Divisional Magistrate (S.D.M.), Kinvat dated 23.02.2024. The respondent No. 2/learned S.D.M. has passed an order externing

the petitioner from two districts i.e. Nanded and Yavatmal under Sections 56 (1)(a) and 56(1)(b) of the Maharashtra Police Act. The learned S.D.M. has extenuated the petitioner for a period of one year. The learned Divisional Commissioner though confirmed the order, modified the period from one year to six months. Though now the period is over, the petitioner has approached the Court to remove the stigma.

3. The learned advocate for the petitioner vehemently argued that, while passing an order the learned S.D.M. considered total six cases as below :

Sr. No.	Crime No.	Sections
1.	96/2018	Sections 498, 323, 504, 34 of the I.P.C.
2.	118/2018	Sections 354-A, 452, 143, 147, 323, 337 of the I.P.C.
3.	73/2021	Sections 353, 379, 34 of the I.P.C.
4.	142/2021	Sections 294, 506, 34 of the I.P.C.
5.	168/2022	Sections 504, 506, 507 of the I.P.C.
6.	01/2022	Section 151 of Cr.P.C.

4. Out of the said offences, the appellant has acquitted from Offences Nos. 96/2018 and 142/2021. The offence Nos.

168/2022 and 01/2022 are non cognizable offences. The offence Nos. 118/2018 and 73/2021 are only cases which are pending prosecution. No conviction is recorded in any of these cases. The learned advocate further submits that, though all the offences are registered with Police Station Sindkhed, still the action is taken externing him from two districts which is excessive order. He submits that, there is no sufficient material on record to take such action. Two of the offences are of 2018, two offences are of 2021 and N.C. cases are of 2022. He thus prays for allowing the writ petition by quashing and setting aside the impugned order.

5. The learned A.P.P. vehemently opposes the petition. The State has filed affidavit in reply. The learned A.P.P. submits that, the activities of the petitioner are not restricted only to one Police Station, though the offences registered only in one Police Station. Looking to the nature of the offences which are pending would show that he is involved in antisocial activities. In one of the offence he is being tried for the offences punishable under Sections 354-A, 452, 143, 147, 323 & 337 of the I.P.C. In another offence he is being tried for the offences punishable under Sections 353, 379 & 34 of the I.P.C. She submits that, both

authorities have applied their mind. They have also discussed the material on the basis of which they arrived at the satisfaction that the action is required to be taken. There are statements recorded of the witnesses which show that, because of conduct of the appellant the people in society are not coming forward to give statement against him. Though notices were issued to him, he did not appear before the authority. It is only after four plus notices were issued and served upon him, he appeared for the first time before the authority. This itself shows that the petitioner is not law abiding person. She thus prays for rejection of the petition.

6. The action is taken on the basis of six cases as already discussed. In two cases he is acquitted. Two cases are non cognizable cases. Though two cases are still pending, those are pending since 2018 & 2021 and till now no conviction is recorded. It is seen in the order that, the authorities have only apprehension of law and order situation at the hands of the petitioner. The offence No. 73/2021 shows that the petitioner was found involved in the offence of extracting mines and minerals i.e. sand. When he was apprehended, he even obstructed the work of the public servant. In the offence No. 118/2018, the allegation is under

Section 354-A of the I.P.C. The offences cannot be said to be such serious offences where action is required to be taken. There is no sufficient discussion about the secret statements. Though the learned A.P.P. has pointed out general diary details No. 32 dated 30.09.2020, it is seen that there is only an apprehension expressed against the petitioner of creating law and order situation. There is nothing to show that, in fact, he has created such situation.

7. Considering all above, this Court finds that, the action taken by the authorities is without sufficient material. The action was initiated because of the apprehension of law and order situation in view of declaration of Zilla Parishad and Panchayat Samiti election. This Court does not find any sufficient material to take action. The action, therefore, deserves to be quashed and set aside.

8. The impugned judgment and order is quashed and set aside. Criminal writ petition stands allowed in terms of prayer clause (C).

9. With this, criminal writ petition stands disposed of.

(KISHORE C. SANT, J.)

P.S.B.