



Judgment

7-Cr.WP-324-2024

1

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

CRIMINAL WRIT PETITION NO. 324/2024

...

Mohammad Atique Mohammad Tamjeed Qureshi,
Aged 35 years, Occ. Business,
R/o. Gawalipura, Ratanganj, Amravati,
Tq. & District Amravati.

... **PETITIONER**

- - V E R S U S - -

1] Deputy Commissioner of Police,
Zone-1, Amravati,
Tq. & District Amravati.

2] The Divisional Commissioner,
Amravati Division, Amravati.

... **RESPONDENT**

Ms. Shreya Bhagat, Advocate for the Petitioner.

Mr. A.M. Joshi, A.P.P. for the Respondents/State.

CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 22, 2025.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsels for the parties.

2. The present petition is filed under Articles 226 and 227 of the Constitution of India, challenging the orders dated 18/07/2023 and 07/11/2023. The petitioner was externed by the Respondent No.1-Deputy Commissioner of Police, Amravati. The basis for passing the order is reflected from the order dated 18/07/2023 passed by Respondent No.1-Deputy Commissioner of Police, Amravati, which states that as many as 7 offences are registered against the petitioner either under the provisions of the Prevention of Cruelty to Animals Act, 1960, or the Maharashtra Animal Preservation Act, 1976.

3. The learned counsel for the petitioner submits that the offences registered against the petitioner cannot form the basis for externing the petitioner, as the offences are registered

3

either under the Prevention of Cruelty to Animals Act, 1960, or the Maharashtra Animal Preservation Act, 1976. The provisions of both these Acts do not fall under Section 56(1)(b) of the Maharashtra Police Act, 1951. Secondly, she submits that only on the basis of in-camera statements, the respondent No.2 could not have arrived at subjective satisfaction. Merely referring to the recording of two statements would not be sufficient, and that there should be proper application of mind to them. However, the order does not reflect that the concerned officer has duly applied his mind. Therefore, the act of the petitioner does not fall under Section 56(1)(a) & (b) of the Maharashtra Police Act, 1951.

4. On the other hand, the learned A.P.P. vehemently submits that the petitioner's activities are continuous. He is a habitual offender involved in animal slaughtering and is engaged in the business of buying and selling animals. He further submits that the two in-camera statements recorded by

4

the Police Inspector have been duly verified by the S.D.P.O., Zone-1, Amravati. The order passed by the Respondent No.1 is a reasoned order and considering the petitioner's activities, Respondent No.1 has rightly passed the externment order. The learned A.P.P. further submits that even in the appeal, the petitioner has failed, and by a detailed order, the Respondent No.2 has rejected the appeal filed by the present petitioner. Therefore, he prayed for rejection of the present petition.

5. I have considered the rival submissions and perused the papers on record. Having examined the original record, it appears from the order that total seven offences were registered between the year 2016 to 2023, which has been taken into consideration by the Respondent No.1. Admittedly, the offences are registered under the provisions of the Prevention of Cruelty to Animals Act, 1960, and the Maharashtra Animal Preservation Act, 1976.

5

6. It would be necessary to refer to Section 56 of the Maharashtra Police Act. Section 56 reads thus:-

“56. Removal of persons about to commit offence.

1] Whenever it shall appear in Brihan Mumbai and other areas for which a Commissioner has been appointed under Sec. 7 to the Commissioner and in other area or areas to which State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub. Divisional Magistrate specially 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 (XLV of 1860), 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”

6

7. Considering the requirements under Section 56(1) (a) and (b) of the Maharashtra Police Act, 1951, it is evident that the movements or acts of any person should cause or calculated to cause alarm, danger or harm to person or property. It is further required that offences to be taken into consideration should fall under Chapters XII, XVI, or XVII of the Indian Penal Code, 1860. Further requirement is that, witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part, as regards safety of their person or property.

8. Considering the purport of Section 56, it is abundantly clear that, the activities attributed to the petitioner do not fall under Section 56 of the Maharashtra Police Act. The offences registered against the petitioner under the Prevention of Cruelty to Animals Act, 1960, or the Maharashtra Animal Preservation Act, 1976, cannot form the basis to extern the petitioner. It is further pertinent to note that, stale offences

have been taken into consideration. Additionally, some offences are still shown to be under investigation, despite having been registered in 2021 and 2022.

9. It would be useful to refer to the Judgment delivered in *Imtiyaz Hussain Sayyad VS The State of Maharashtra & Ors., 2024 ALL MR(Cri) 1675*, wherein it has been held that offences which are still under investigation cannot be considered for the purpose of externment. Secondly, it would be necessary that the stale offences which are registered long back and admittedly has lost the live link or snapped live link cannot be said to be sufficient to extern the petitioner. Paragraph No.19 of *Imtiyaz Hussain Sayyad (supra)*, reads thus:-

“19. The situation which thus obtains is that the externing authority had noted pendency of two cases which did not satisfy the requirement of class of cases stipulated by clause (b) and also considered the crimes which were under investigation and chargesheet had not been filed. It is trite, the crimes which are still under

*investigation cannot be taken into consideration as depending upon the outcome of the investigation, the investigating agency may or may not send the accused for trial. It is true, in one of the crimes, subsequently chargesheet came to be filed. However, a submission could be advanced that the chargesheet was filed with a view to justify and support the order of externment. Reliance placed by Mr. Gupta on the judgment of the learned Single Judge of this Court in the case of **Ganesh Laxman Dhabale V/s. State of Maharashtra and Ors. AIR Online 2023 Bom 231** appears to be well founded.”*

10. Insofar as the in-camera statements are concerned, merely referring that the two in-camera statements have been recorded and the respondent No. 1 have perused the same is in itself not sufficient. It is necessary that the order reflects how the statements are sufficient to justify the externment of the petitioner. Therefore, in my considered opinion, there is no indication of subjective satisfaction arrived at by the Respondent No. 1.

11. As was submitted by the learned counsel for the petitioner, although an enquiry under Section 59 of the Maharashtra Police Act was conducted by the S.D.P.O., wherein, the petitioner had filed a reply stating that the proceedings against him has been stopped under Section 258 of the Code of Criminal Procedure, still both the Authorities have taken this offence into consideration. This fact, in itself, demonstrates the lack of proper application of mind by the authorities.

12. Insofar as the Appeal is concerned, the Appellate Authority, as discussed hereinabove, has also failed to consider this aspect. Therefore, both the Authorities have erred in not properly examining the applicability of Section 56(1)(a) and (b) of the Maharashtra Police Act, 1951, particularly in view of the fact that the offences are registered under the Prevention of Cruelty to Animals Act, 1960, and the Maharashtra Animal Preservation Act, 1976.

10

13. In this view of the matter, the order dated 18/07/2023 passed by the Deputy Commissioner of Police, Amravati, and the order dated 07/11/2023 passed by the Divisional Commissioner, Amravati, are hereby quashed and set aside. Rule is made absolute in above terms.

[**M. M. NERLIKAR, J**]