



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2805 OF 2023**

Imtiyaz Hussain Sayyad ... Petitioner
versus
The State of Maharashtra and Ors. ... Respondents

Mr. Ganesh Gupta, for Applicant
Mrs. Geeta P. Mulekar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 19 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.
3. The Petitioner who has been externed by invoking the provisions contained in Section 56(1) of the Maharashtra Police Act, 1951 has assailed the legality and validity of the externment order dated 24 January 2023 passed by the Deputy Commissioner of Police Zone XII, Mumbai (Respondent No.2) and the order dated 10 July 2023 passed by the Divisional Commissioner, Konkan Division (Respondent No.3) partly allowing the appeal to the extent of reducing the period of externment from two years to 18 months.
4. Few crimes have been registered against the Petitioner at Samta Nagar Police Station, Mumbai. On 9 July 2022, a notice to show cause as to why the

Petitioner should not be extened, came to be issued to the Petitioner under Section 59 of the Act. The pendency of the crimes registered against the Petitioner and confidential in-camera statements of the witnesses were adverted to in the said notice to allege that the movements and acts of the Petitioner are causing or calculated to cause alarm, danger or harm to person or property and the Petitioner has been engaged in the commission of offences involving force or violence or offences punishable under Chapter XVI and XVII of the Indian Penal Code, and the witnesses were not coming forward to give evidence in public against the Petitioner fearing safety of their person or property.

5. The Petitioner, it seems, did participate in the proceedings before the Respondent No.2. However, the Petitioner had neither submitted any material nor examined any witness in the rebuttal. Evidently, by an order dated 24 January 2023, the Respondent No.2 directed the Petitioner to remove himself from the Districts of Mumbai City, Mumbai Suburban, Thane, Vasai, Palghar and Dahanu Taluka of Palghar District and Panvel, Karjat Taluka of Raigad District within a period of two days of the service of the said order, for a period of two years.

6. Being aggrieved, the Petitioner preferred an appeal, being Appeal No.32 of 2023, before the Respondent No.3 under Section 60 of the Act, 1951. After appraisal of the material and the submissions on behalf of the parties, by the impugned order dated 10 July 2023, the Respondent No.3 found no reason to interfere with the

order of externment as the satisfaction arrived at by the Respondent No.2 to extern the Petitioner was based on objective material. However, the appellate authority was of the view that the externing authority had not ascribed reasons for externing the Petitioner for the maximum period of two years and, therefore, the order of externment was modified by reducing the period of externment to 18 months from two years. Thus, the appeal came to be partly allowed to the extent of duration of the externment only.

7. Being further aggrieved, the Petitioner has invoked the writ jurisdiction.

8. I have heard Mr. Ganesh Gupta, learned Counsel for the Petitioner, and Mrs. Geeta P. Mulekar, learned APP for State, at some length. With the assistance of the learned Counsel for the parties, I have also perused the orders impugned in the Petition and the material placed on record.

9. Mr. Gupta, learned Counsel for the Petitioner, took a slew of exceptions to the order of externment. First, the order of externment deserves to be quashed and set aside on the sole ground that the externing authority had externed the Petitioner for the maximum period of two years without recording any subjective satisfaction and reasons for the same. Such a course, according to Mr. Gupta, has been frowned upon by the Supreme Court as being wholly arbitrary and unsustainable in the case of **Deepak Laxman Dongre V/s. The State of Maharashtra and Ors.**¹ Second, the

1 AIR 2022 SC 1241

impugned order suffers from the vice of the non-application of mind as the externing authority had taken into account the crimes registered against the Petitioner which did not fall within the ambit of clause (b) of sub-Section (1) of Section 56 of the Act, and also the crimes which were under investigation. Third, in respect of those crimes which could have been lawfully taken into account, the aspect of non-existence of a live link between the acts attributed to the Petitioner in those crimes and the measure of externment was lost sight of.

10. Learned APP supported the impugned order. It was urged that the cumulative effect of the conduct of the externee over a period of time on the residents of the area where the Petitioner had created a reign of terror is required to be taken into account. The consistent course of violence resorted to by the Petitioner could not have been arrested but by externing him. Since the appellate authority has reduced the period of externment, the Petitioner cannot now urge that the externment order is vitiated on account of externment for the maximum period. It was further submitted that when the externment order was passed in one of the two crimes then under investigation, chargesheet had been lodged.

11. Learned APP refuted the submission on behalf of the Petitioner that there was no live link between the crimes registered against the Petitioner and the externment order.

12. In the notice issued to the Petitioner under Section 59 of the Act,

reference was made to the following crimes registered against the Petitioner :

Sr.Nos.	Police Station	C.R.No. And Sections	Status
1	Samata Nagar Police Station	C.R.No.246 of 2018 under Sections 37(1) (a), 135 of Maharashtra Police Act	Subjudice
2	Samata Nagar Police Station	C.R.No.568 of 2019 under Section 401 of IPC read with Section 122(e) of Maharashtra Police Act.	subjudice
3	Samata Nagar Police Station	C.R.No.103 of 2019 under Sections 160 IPC with Sections 4, 25 of the Arms Act, and Sections 36(1)(a) and 135 of the Maharashtra Police Act.	Subjudice
4	Samata Nagar Police Station	C.R.No.2 of 2020 under Section 354, 326, 324, 509, 506(2) read with Section 34 of IPC and Section 8 and 12 of POCSO Act.	Subjudice
5	Samata Nagar Police Station	C.R.No.187 of 2020 under Sections 399, 402, IPC and 37(1), 135 of Maharashtra Police Act.	Subjudice
6	Samata Nagar Police Station	C.R.No.284 of 2020 under Sections 354, 354B, 354BD, 509, 323, 504 of IPC	Under investigation

7	Samata Nagar Police Station	C.R.No.154 of 2022 under Sections 307, 324, 323, 504, 506 read with 34 of IPC.	Under investigation
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13. A reference was also made to two confidential in-camera statements of the witnesses, who allegedly stated about the acts of violence and robbery allegedly committed by the Petitioner. On the date of the passing of the externment order by the Respondent No.2, C.R.No.284 of 2020 for the offence punishable under Sections 354, 354BD, 509, 323, 504 of IPC, was still under investigation.

14. The Petitioner was ordered to be externed by invoking the provisions contained in Section 56(1)(a) and (b) of the Act, 1951. The measure of externment by its very nature is extra-ordinary. It has the effect of forced displacement from the home and surroundings. Often it affects the livelihood of the person ordered to be externed. Thus, there must exist justifiable ground to sustain an order of externment. The order of externment, therefore, must be strictly within the bounds of the statutory provisions. Under clause (a) of sub-Section (1) of Section 56, the externing authority must be satisfied on the basis of the objective material that the movements or acts of the person to be externed are causing or calculated to cause alarm, danger or harm to person or property. Under clause (b), there must be an objective material on the strength of which the externing authority must record subjective satisfaction that there are reasonable grounds for believing that the externee is engaged or about to be

engaged in the commission of offences involving force or violence.

15. Mere registration of a number of offences by itself does not sustain an externment under Section 56(1)(b) of the Act. The offences must either involve elements of force or violence or fall under Chapters XII, XVI and XVII of the Indian Penal Code. In addition, the externing authority must record satisfaction that the witnesses are not willing to come forward to give evidence in public against the externee by reason of apprehension on their part as regards the safety of their person or property.

16. In effect, to sustain an action of externment under sub-clause (b), the offences the externee has engaged in must be under one of the Chapters enumerated therein and that the acts or conduct of the externee is such that the witnesses are terrified and dissuaded from giving evidence against the externee in public fearing safety of their person or property.

17. In the light of the aforesaid conspectus of the requirements of Section 56(1)(a) and (b), the aforementioned challenges deserve to be appreciated. First, the consideration of the offences which do not fall within the ambit of clause (b) of sub-Section (1). Perusal of the chart (extracted above) indicates that the crime at Sr. No.1 i.e. C.R.No.246 of 2018 for the offences punishable under Sections 37(1) read with Section 135 of the Maharashtra Police Act, 1951 and at Sr. No.3 i.e. C.R.No.103 of 2019 for the offences punishable under Section 160 of the IPC and Section 4 read with

Section 25 of the Arms Act and Sections 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951, do not fall within the ambit of clause (b).

18. Likewise, when the notice was issued on 9 July 2022, two of the crimes i.e. Sr. Nos.6 and 7 were under investigation and the chargesheet had not been lodged. On the date of the externment order also, the crime at Sr. No.6 i.e. C.R.No.284 of 2020 for the offences punishable under Sections 354, 354BD, 509, 323, 504 of IPC was under investigation.

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.**² appears to be well founded.

20. Secondly, the objection based on the absence of live link between the

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cases filed against the Petitioner and the externment order also carries some substance. The cases at Sr. Nos.2 i.e. C.R.No.568 of 2019, at Sr. No.4 i.e. C.R.No.2 of 2020, at Sr. No.5 i.e. C.R.No.187 of 2020 were registered in the years 2019 and 2020. Action for externment was initiated in the month of July 2022 and the order of externment came to be passed on 24 January 2023. Considerable period elapsed from the registration of the aforesaid crimes till the initiation of the action for externment. The purpose of externment is not punitive. Externment is with a view to disable a person by moving him away from surroundings which prove favourable for the commission of the offences and thereby disarm his influence in the said area. Thus, there ought to be a live link between the acts of the externee and the action of externment. Stale cases cannot be used to support the externment order. This also bears upon the subjective satisfaction arrived at by the externing authority.

21. Lastly, the duration of the order of externment. Section 58 of the Act, provides that the term of order made under Sections 55, 56, 57 or 57A shall in no case exceed the period of two years from the date on which the person removes himself or is removed from the specified area. The legislature has enacted maximum period for which the externment order could be passed. The externing authority is, however, required to apply its mind, based on the objective material, as to the period for which the person should be externed so as to disable and disarm him. It must record reasons from which the justifiability of the externment for the full term of two years can be

discerned. In the case of Deepak Laxman Dongre (supra), the Supreme Court, inter alia, observed as under :

“58..... On a plain reading of Section 58, it is apparent that while passing an order under Section 56, the competent authority must mention the area or District or Districts in respect of which the order has been made. Moreover, the competent authority is required to specify the period for which the restriction will remain in force. The maximum period provided for is of two years. Therefore, an application of mind on the part of the competent authority is required for deciding the duration of the restraint order under Section 56. On the basis of objective assessment of the material on record, the authority has to record its subjective satisfaction that the restriction should be imposed for a specific period. When the competent authority passes an order for the maximum permissible period of two years, the order of externment must disclose an application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing an order of externment for the maximum period of two years which is based on material on record. Careful perusal of the impugned order of externment dated 15 December 2020 shows that it does not disclose any application of mind on this aspect. It does not record the subjective satisfaction of the respondent No.2 on the basis of material on record that the order of externment should be for the maximum period of two years. If the order of externment for the maximum permissible period of two years is passed without recording subjective satisfaction regarding the necessity of extending the order of externment to the maximum permissible period, it will amount to imposing unreasonable restrictions on the fundamental right guaranteed under clause (d) of Article 19(1) of the Constitution of India.”

22. In the case at hand, the externing authority had not recorded any reasons

as to why the Petitioner was externed for a full period of two years. Nor any consideration was bestowed on the duration of the externment order.

23. It is true the appellate authority interfered with the externment order on the said count and reduced the period of externment to 18 months. Had that been the only ground of challenge, the Court would have appreciated the effect of modification of the duration of the externment order in a different perspective. However, in the case at hand, apart from the absence of reasons to justify the externment for the period of two years, the order passed by the Respondent No.2 suffers from the vice of non-application of mind on account of consideration of cases, which ought not to have been taken into account, and absence of live link between the cases, which could have been legitimately taken into account, and the externment order.

24. Resultantly, the impugned order deserves to be quashed and set aside.

25. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed in terms of prayer clause (i).
- (ii) Rule made absolute to the aforesaid extent.

(N.J.JAMADAR, J.)