



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.23953 OF 2023

Eshtiyaq Ahmed Mushtaq Ahmed Qureshi ... Petitioner
versus
The State of Maharashtra and Anr. ... Respondents

Mr. Arif Siddiqui a/w. Mr. Farheen Shaikh, Mr. Yasin Nabi, Mr. Siraj Ansari, Mr. N. Khan, for the Petitioner.
Mr. Tanveer Khan, APP for Respondent No. 1-State.
Mr. Kishor Zoting, API, Chunabhatti Police Station, Mumbai, present.

CORAM: N.J.JAMADAR, J.
RESERVED ON: MARCH 21, 2024
PRONOUNCED ON : MAY 10, 2024

JUDGMENT :

1. This Petition under Article 226 of the Constitution of India assails the legality, propriety and correctness of the order dated 22nd November, 2023 passed by the Divisional Commissioner, Konkan Division in Appeal No. 137 of 2023, whereby the appellate authority dismissed the appeal preferred by the petitioner under section 60 of the Maharashtra Police Act, 1951 (Police Act, 1951) against the externment order dated 26th August, 2023 passed by the Competent Authority thereby externing the petitioner from Mumbai City, Mumbai Suburban and Thane District for a period of 18 months, under section 57(1)(a)(i) of the Police Act, 1951.

2. Shorn of superfluities, the background facts leading to this petition can be stated as under:-

On 5th August, 2023 the Dy. Police Commissioner, Zone-6, Chembur, Mumbai addressed a notice to the petitioner calling upon him show cause as to why the petitioner should not be externed from Mumbai City, Mumbai Suburban and Thane District for a term of two years, for having been convicted in an offence punishable under Chapter XVI of the Penal Code, 1860 and on account of the acts and conduct of the petitioner and that there was an apprehension that the petitioner was likely to again engage in the commission of the similar offence for which he had been convicted. In the said show cause notice, reference was made to the following cases filed against the petitioner.

Sr.	Police Station	C.R.No. And Sections	Admitted	Court Case Number	Status
1	Nehru Nagar	C.R.No. 209/2010 U/s.363, 326 of IPC	07/08/10	891/PW/10 Dt.12/09/2010	On 29/01/2016 Court No.38 acquitted the applicant Pending
2	Chunabhatti	C.R.No.144/2016 U/s. 120-B, 324, 326 of IPC	06/06/16	2061/PW/16 Dt.27/10/2016	
3	Chunabhatti	C.R.No.40/2018 U/s. 324, 326 r/w. 34 of IPC	11/03/18	1718/PW/2018 Dt.17/09/2018	On 03/05/2019 Court No.60 acquitted the applicant
4	Chunabhatti	C.R. No.374/2020 U/s.326, 504, 506 of IPC	16/10/20	1151/PW/2021 Dt.10/05/2020	On 10/05/2023 convicted the applicant to suffer 6 months SI with fine of Rs. 10,000/-

3. A reference was also made to the fact that prohibitory action was initiated against the petitioner in the year 2010, 2017 and 2018. The petitioner participated in the proceeding. After appraisal of the material on record, the competent authority, recorded a finding that the petitioner had been indulging in offences within the limits to Chunabhatti and adjoining police stations. The acts and movements of the petitioner were likely to cause alarm and danger to the persons residing in the said locality and they feared for the safety of their person and property. Thus, to arrest the criminal activities of the petitioner and prevent the breach of law and order and tranquility, it was necessary to extern the petitioner from Mumbai City, Mumbai Suburban and Thane District for a period of 18 months.

4. Being aggrieved, the petitioner preferred an appeal before the Divisional Commissioner under section 60 of the Police Act, 1951. The Appellate Authority found no reason to interfere with the externment order and affirmed the same by the impugned order. Being further aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

5. I have heard Mr. Arif Siddiqui, the learned counsel for the petitioner and Mr. Tanveer Khan, learned APP for the respondent No. 1-State at

some length.

6. The learned counsel for the petitioner submitted that the externment order purportedly passed under section 57(1)(a)(i) is laconic and based on a single conviction, that too for an offence punishable under section 324 of the Penal Code. In rest of the two cases, the petitioner had already been acquitted. There was no live link between the incident which resulted in registration of C.R.No. 374 of 2020, in which the petitioner came to be convicted, and the externment order. On the basis of stale cases and without there being any material to show that the petitioner was likely again to engage himself in the commission of offences of a similar nature, the competent authority passed the externment order trampling upon the fundamental rights of the petitioner. At any rate, the order of externment is wholly disproportionate to the conviction of the petitioner for an offence punishable under section 324 of the Penal Code.

7. In opposition to this, Mr. Khan, learned APP submitted that the competent authority was justified in passing the order of externment as the accused was convicted for the offences punishable under Chapter XVI of the Penal Code. It was urged that in the totality of the

circumstances, including the other crimes registered against the petitioner and the prohibitory action taken in the past, the subjective satisfaction arrived at by the competent authority cannot be faulted at. It was urged that in any event, the adequacy and sufficiency of the material to arrive at such subjective satisfaction cannot be examined in exercise of writ jurisdiction. Therefore, the petition be dismissed.

8. Relevant part of Section 57 of the Maharashtra Police Act, 1951 reads as under :

“57. Removal of persons convicted of certain offences :

(1) If a person has been convicted -

(a) (i) of an offence under Chapters XII, XVI or XVII of the Indian Penal Code; or

.....

(c) thrice or more of an offence under Section 122 of 124 of this Act, the Commissioner, the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in this behalf if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person 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 so specified (hereinafter referred to as “the specified area or areas”) from which he was directed to remove himself.”

9. From a plain reading of the text of Section 57 of the Act, 1951, it becomes abundantly clear that the externing authority must record a finding that the Petitioner had been convicted of any of the offences enumerated in clauses (a) to (c) of sub-Section (1) and further satisfaction that it had reason to believe that the proposed externee was likely to again engage himself in the commission of an offence similar to that for which he was convicted. The previous conviction for any of the offences enumerated in various clauses of sub-section (1) of Section 57 is a condition precedent. That constitutes an objective fact. In addition to such objective fact, the externment authority must record a subjective satisfaction that the proposed externee is likely to again engage himself in the commission of similar offences. Such subjective satisfaction, however, must be based on objective material. It cannot be a mere *ipse dixit* of the externing authority that, in its opinion, the proposed externee is likely to again commit similar offences. The legislature has designedly used the term “reason to believe” which implies that there ought to be material on the basis of which a person can justifiably draw an inference that the proposed externee has shown such tendency as to again indulge in identical offences.

10. A useful reference in this context can be made to a decision of the

Division Bench of this Court in the case of Rameshchandra V/s. The State¹ wherein the Division Bench had enunciated as under :

“4.....The idea underlying the provisions contained in Section 57 obviously is to protect the locality or area concerned from the probable commission of the offence by the externee. In that sense, the order is more preventive in intention and action than punitive. If that be the real object of the order, it would, I think be reasonable to hold that the order authorized to be passed under S.57 is the result of the present tendency of the externee far more than of his past convictions.

The past history of the externee is no doubt relevant, and indeed is made a condition precedent by S.57, for the passing of an order of externment. But, even so, the order of externment is not a penalty imposed for the said history. The scheme of the section clearly indicates that the order of externment was passed against the appellant, not because he was convicted on eight previous occasions or because the offence for which he was convicted fell under Chap XVII, IPC., but because the Commissioner had reason to believe that he was likely again to engage himself in the commission of similar offences.

The direct and immediate cause for the externment of the appellant is the tendency on the part of the appellant, of which the Commissioner was satisfied, to commit offences similar to those of which he had been convicted in the past. It is not as if every person who has committed offences mentioned in S.57, cl. (a), (b) or (c) is liable to be externed.

Previous convictions of the type and of the categories mentioned in the first part of S.57 are, no doubt, a condition precedent. But it would be unreasonable to hold that the order of externment is the necessary result of the said convictions alone. The order of externment is more directly and more immediately the result of the tendencies which are noticed in the person concerned and as to which the Commissioner had satisfactory evidence in his possession to justify his conclusion that the person concerned is likely again to engage himself in the commission of similar offences.”

(emphasis supplied)

1 AIR 1955 Bombay 346

11. The aforesaid being the object of provisions contained in Section 57 of the Act, 1951, it deserves to be appraised, whether the externing authority had posed unto himself the correct question and passed the externment order after recording the requisite subjective satisfaction ?

12. As noted above, the externing authority took into account four cases filed against the petitioner (chart extracted above). Out of those four cases, the petitioner was acquitted in two cases (first and third). Case No. 2061/PW/16, arising out of C.R. No. 144 of 2016 registered with Chunabhatti police station, was subjudice. In 1151/PW/21 arising out of C.R. No. 374 of 2020 (Sr.No.4), the petitioner came to be convicted for an offence punishable under section 324 of IPC and was sentenced to suffer simple imprisonment for six months and pay fine of Rs. 10,000/-.

13. The situation which, thus, emerges is that out of four cases filed against the petitioner, the latter was convicted in only one case. It implies that the conviction in C.R. No. 374 of 2020, for an offence under section 324 constitutes the sole thread to which the fate of the externment order hangs in the balance.

14. Technically, it could be urged that the condition precedent for

invoking the provisions contained in section 57(1)(a)(i) of the Police Act, 1951 has been fulfilled. However, the legal position is well nigh settled that it is not a mere conviction in a case but the propensity of the proposed externee to commit similar offences that furnishes foundation for an action under section 57(1)(a)(i) of the Police Act, 1951. It is the satisfaction as to the second condition, of the likelihood of the proposed externee in indulging in similar offence that furnishes a justification for the externment order.

15. A useful reference in this context can be made to a Division Bench judgment of this Court in the case of Vishwanath Kashinath Tribhuvan V/s. K.P.Raghuvanshi and Anr.², wherein it was enunciated that it is obvious that it is not the mere conviction, but a further satisfaction of the competent authority that the person concerned is likely to engage himself in the commission of identical offences that furnishes a justification for an order under Section 57 of the Police Act, 1951.

16. In the case of Karan Ramesh Ghuge V/s. Dy. Commissioner of Police and Ors.³ another Division Bench of this Court observed, inter alia, as under :

2 1988 SCC Online Bom 411

3 2013 SCC Online Bom 747

“9.....It must be noted here that the impugned order has been passed under Section 57(1)(a)(i) of the Bombay Police Act. In order to exercise jurisdiction under this Section, there are two necessary prerequisites, one, the person must be convicted for an offence under any of the Chapters XII, XVI or XVII of the Indian Penal Code and second, the empowered officer must have reason to believe that such person is likely again to engage himself in the commission of a similar offence. The second condition wp1305-13J can be said to be fulfilled only when there is some additional material apart from prior conviction in a similar offence, on the basis of which a subjective satisfaction can be reached that the person has a tendency or criminality in mind or over-powering urge to indulge in a similar offence. No doubt, the satisfaction of an empowered officer is subjective, but it has to be necessarily based upon some empirical material from which any prudent man can draw similar inference. In the instant case, there is no such additional material present on record and, therefore, the impugned order is vitiated also on this ground.”

17. In the light of the aforesaid position in law, the pivotal question that wrenches to the fore is, was there objective material to record the subjective satisfaction envisaged by section 57 of the Police Act, 1951 ? First and foremost, it is imperative to note that the externment order, though purportedly passed under section 57(1)(a)(i) of the Act, does not seem to have been premised on the conviction in 1151/PW/2021 of the petitioner for the offence punishable under section 324 of the Penal Code. On the contrary, one gets impression that the competent authority considered the overall conduct of the petitioner, on the basis of crimes registered and prohibitory action taken against the petitioner,

and recorded a satisfaction that the applicant has created a reign of terror and that the petitioner was habitually indulging in identical offences.

18. The competent authority has not, however, recorded a satisfaction that there was an imminent possibility that the petitioner might again engage himself in the commission of the offence similar to that for which he was convicted. The consideration, seems to be completely misdirected.

19. Secondly, the competent authority lost sight of the fact that in two of the cases, the petitioner has been acquitted. Thus, it was not open to draw any inference on the basis of those two cases in which the petitioner had already been acquitted.

20. Thirdly, the first case was of the year 2010. The third case was of 2018. In this backdrop, the element of continuity and repetition was clearly absent. Moreover, it does not appear that the competent authority considered the material in proximity to the conviction of the petitioner which justifies an inference that the petitioner might again indulge in identical offences. Therefore, it cannot be said that there was

objective material on the basis of which the competent authority could record its subjective satisfaction as envisaged by section 57(1)(a)(i) of the Police Act, 1951.

21. The externment order, thus suffers from the vice of arbitrary exercise of the power sans credible material which would justify an action under section 57(1)(a)(i) of the Police Act, 1951. The externment order, therefore, cannot be sustained. The appellate authority also failed in not correcting the mistake which the externment authority had committed. Both the orders, thus, deserve to be quashed and set aside.

Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The externment order dated 26th August, 2023 passed by the Competent Authority and the impugned order dated 22nd November, 2023 passed by the Divisional Commissioner, Konkan Division stand quashed and set aside.
- (iii) Rule made absolute in the aforesaid terms.

(N.J.JAMADAR, J.)