

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2603 OF 2021

Shri Arshad Sahil Khan
Age 37 years, Occu- Business,
R/at Ovegav, Tal- Panvel,
District- Raigad.

...PETITIONER

Versus

1. Deputy Commissioner of Police
Mr. Ashok Dudhe
Pronunciation-2, At Panvel
District Raigad.
2. State of Maharashtra

...RESPONDENTS

Ms. Tanu Bhatia for Petitioner.
Mr. J.P. Yagnik, APP for State.

...

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

**RESERVED ON : 13th SEPTEMBER, 2021.
PRONOUNCED ON: 17th SEPTEMBER, 2021.**

JUDGMENT: {PER S.S. SHINDE, J.}

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel for the petitioner and learned APP for State.
2. On 17th June, 2019 a show cause notice was issued by the Respondent No. 1 to the petitioner. On 30th September, 2019 the

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petitioner filed reply to the said show cause notice. Respondent No. 1 extened the petitioner by an order dated 6th January, 2021.. Thereafter, the petitioner filed an appeal before Commissioner Konkan Division under Section 60 of Maharashtra Police Act for quashing the order of Respondent No. 1. On 23.03.2021, the said appeal was rejected by the Divisional Commissioner, Konkan Division thereby confirming the order passed by Respondent No. 1. Hence, this writ petition.

3. Learned counsel appearing for the petitioner submits that the judgment and order dated 23.03.2021 passed by Divisional Commissioner Konkan Division, in Criminal Appeal No. 21/2021 is bad in law and contrary to the principles of natural justice. The lower appellate court has not considered the fact that the show cause notice does not disclose the alleged offences committed by the petitioner. She submits that the appellate authority has erred in extening the petitioner from two district i.e. Panvel and Thane without assigning any reasons. It is submitted that specific material against the petitioner is not mentioned in the show cause notice and therefore, on that count the order passed by Respondent No. 1 is legally unsustainable. It is further submitted that the there is no live link between the alleged commission of offences by the

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petitioner and passing of externment order by the Respondent-authority. As such, there is no material against the petitioner and hence the externment order passed by the respondent-authority is unsustainable in law and deserves to be quashed and set aside.

4. Learned counsel for the petitioner placed reliance on judgments in the case of Pandharinath Shreedhar Rangekar Vs. The Deputy Commissioner of Police¹, Silva Gora Silve Ayaner Arjun Vs. Nawaz Bajaj Deputy Commissioner of Police², Panjaji Dagdu Gaikwad Vs. State of Maharashtra³ and Dhananjay Manohar Sapkal Vs. State of Maharashtra & Ors⁴.

5. Mr. Yagnik, the learned APP appearing for Respondent-State invites our attention to the externment order passed by the respondent-authority and also the reasons assigned while dismissing the appeal filed by the petitioner and submits that the detail reasons are assigned by both the authorities. Both the authorities have concurrently held that the petitioner deserves to be extened from two districts. It is submitted that number of offences are registered against the petitioner by different persons. The

1 1972 EQ (SC) 570

2 2006 EQ (Bom) 0-1580

3 2001 EQ (Bom) 2624

4 2005 2 MH.L.J. 384.

petitioner is in the habit of assaulting common citizens by using sharp weapons residing in Kharghar area, so also he is involved in extortion of money from citizens residing within the jurisdiction of Kharghar Police Station. It is submitted that the in-camera statements of witness "A" and "B" were recorded by the concerned police officer. The said statements would clearly demonstrate the activities of the petitioner. Therefore, learned APP submits that the petition may be dismissed.

6. We have given careful consideration to the rival submissions. With the able assistance of learned counsel for the petitioner and learned APP for State, we have perused the pleadings and grounds taken in the petition, annexures thereto and the original record in relation to the extermnt proceeding initiated against the petitioner.

We have carefully perused the contents of shows cause notice and we find that, though it is cursorily mentioned about recording statement of witnesses "A" and "B", however, the gist of general nature of allegations and when such incindets had taken place has not been mentioned. It is true that it is not necessary to mention particulars about the witnesses which would expose their identity, nevertheless, gist of general nature of allegations against

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the petitioner in said statements should have been mentioned, so that the petitioner would have been in a position to effectively reply to the said notice.

7. We have carefully perused the offences mentioned in the show cause notice, so also in the impugned orders passed by the respondent-authorities. It is true that those offences would fall under chapter XII, XVI and XVII, however, it appears that C.R. No. 459/2018 registered with Kharghar Police Station for the offences punishable under Section 392, 504, 506 read with 34 of IPC, is originated from the dispute between informant and the petitioner. In other offences the investigating officer can proceed with the investigation and may take appropriate decision in accordance with law either to file chargesheet or summary.

8. Upon perusal of reasons assigned by the respondent-authorities it is difficult to accept the contention of the respondents that there is live link between the initiation of extenment proceedings and registration of offences against the petitioner. We have carefully perused the reasons assigned by the respondent-authorities and we find that there is no specific discussion about what witness "A" and "B" have stated. The extening authority has

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not specifically recorded the findings that the witnesses are unwilling to come forward in public to give evidence against the petitioner by reason of apprehension to safety of their part, persona and property. Merely because number of offences are registered against the petitioner is no ground to extern the petitioner from two districts, without assigning any specific reasons why the extermntion of the petitioner is necessary from the adjoining district. It appears that all the offences are registered within the jurisdiction of Kharghar Police Station. Merely, because number of offences are registered against the petitioner, and therefore, extermntion of the petitioner is warranted from two districts cannot be accepted in absence of compliance of mandate of relevant provisions of Maharashtra Police Act. As already observed, in the show cause notice issued to the petitioner, merely, it is mentioned that in-camera statements of witness "A" and "B" are recorded, but there is no gist of general nature of allegations made against the petitioner or at least on which date said offences have been committed by the petitioner.

9. As a result valuable right of the petitioner to effectively reply to the said notice has been affected. Secondly, externinng authority did not elaborately refer to the contents of the statements

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of witnesses "A" and "B", recorded in-camera. In order to legally sustain the order of externment under Section 56 of Maharashtra Police Act, 1951, it is necessary to record specific findings that the witnesses are unwilling to come forward in public to give evidence against the petitioner by reason of apprehension to safety of their part, persona and property.

10. This Court (Coram:-R.A. Jahagirdar and P.V. Nirgudkar, JJ.) in the case of **Yashwant Damodar Patil Vs. Hemant Karkare, Deputy Commissioner of Police, Thane & Anr**⁵, relying upon the judgment of Hon'ble Supreme Court in the case of **Pandharinath Shridhar Vs. Deputy Commissioner of Police**⁶, in paragraphs 9 and 11 held thus:-

"9. We have already, after examining the provisions of section 56(1) of the Bombay Police Act, held that in every case of acts involved on the part of the proposed externee, where an order of externment is proposed to be passed, it is necessary that the officer concerned must be satisfied that witnesses are not willing to come forward to give evidence against him. Notice of such satisfaction must also necessarily be given to the proposed externee under section 59 of the Bombay Police Act. In the present case, though notice of the fact that witnesses are not coming forward to give

5 1989 Mh.L.J. 1111

6 AIR 1973 SC 630

evidence against the proposed exterrne has been given in so far as the ground mentioned in the first part of clause (b) of section 56(1) is concerned, no such notice has been given in so far as the ground mentioned in the second part of section 56(1)(b) is concerned. In other words, when the authority proceeded to give notice to the proposed exterrne on the ground that he is engaged in the commission of offences punishable under Chapter XVI of the Indian Penal Code, he failed to mention also that the witnesses are not coming forward to give evidence against him.

11. Before parting with this judgment, it would not be inappropriate to mention a couple of facts which we have noticed while dealing with orders of exterrnment passed by the authorities in this part of Maharashtra and especially by the authorities in Thane District. While giving notice under section 59 of the Act, the clear distinction between clause (a) and the first part of clause (b) of section 56(1) is not always borne in mind. Vague words mentioning that the petitioner is involved in the activities causing alarm or danger and also in acts of violence, etc., are freely used. Though the law does not require the authorities under the Bombay Police Act to give the details of the activities of the proposed exterrne, it is still necessary, as required by section 59 of the Act, to give to the proposed exterrne information about the general nature of the material allegation against him. What the general nature of the material allegation against the proposed exterrne is has been explained by the Supreme Court in Pandharinath Shridhar Vs.

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Deputy Commissioner of Police, AIR 1973 SC 630. Some of the orders of externment have been set aside on the ground that the allegations against the proposed externee mentioned in the notices are too vague to enable the proposed externee to represent against the proposed orders of externment. It may also be noted that very often the period during which the prejudicial activities of the proposed externee are committed is also not mentioned. In our opinion, this is absolutely necessary because without the notice of the period with reference to which action is proposed to be taken, the proposed externee obviously cannot defend himself properly."

[Emphasis supplied]

11. In an externment proceedings initiated against any person it is necessary to scrupulously follow the procedure and mandate of said sections. Once the person is externed, his fundamental right to stay at the place of his choice or to move from one place to another gets curtailed.

12. Learned counsel for the petitioner during the course of hearing submitted that the wife of the petitioner is illiterate and children are dependent upon the petitioner. The said ground in the facts of the present case cannot be overlooked.

13. In view of discussion in foregoing paragraphs, we are of the opinion that the impugned order of externment cannot be legally sustained and the writ petition deserves to be allowed. Accordingly, the writ petition is allowed.

14. The impugned order of externment dated 23rd March, 2021 passed by Divisinal Commissioner Konkan Division in Criminal Appeal No. 21/2021 is quashed and set aside.

15. Rule is made absolute to above extent.

16. The writ petition stands disposed of.

17. It is made clear that this order is passed in the peculiar facts and circumstances of this case and the petitioner will not be able to derive any benefit out of it in other proceedings initiated against him including trials arising out of the offences registered against the petitioner.

18. Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)