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Court : Mumbai Aurangabad

Decided On : Jun-13-2013

Judge : T.V. Nalawade

Appeal No. : Criminal Revision Application No.99 of 2013 With Criminal Application No.2665 of 2013

Appellant : Gopal

Respondent : State of Maharashtra and Others

Judgement :

The revision is filed to challenge the order made by the Sub-Divisional Magistrate, Jalna and the decision of the State Government in appeal filed against the said order.

2. Both the sides are heard.

3. The Sub-Divisional Magistrate, Jalna started proceedings for externment of the Petitioner after receiving the report from the Sadar Bazar, Police Station, Jalna. Police had reported that atleast ten criminal cases were pending against the Petitioner and they were for the offence punishable under Sections 341, 384, 353, 387, 326, 342, 149, 294, 506 etc. of the Indian Penal Code and also for the offence punishable under Section 4 read with 25 of the Arms Act. Police had reported that the people are afraid of the Petitioner, he was extracting money from the people and nobody was ready to come forward to give statement against him.

Request was made to pass externment order against the Petitioner in respect of the Districts Jalna, Beed, Aurangabad, Parbhani and Buldhana for a period of two years.

4. The Sub-Divisional Magistrate issued show cause notice and mentioned all the aforesaid contentions made by the Police. After appearance of the Petitioner and after hearing him, the Sub-Divisional Magistrate passed the externment order to keep the Petitioner out of the aforesaid five districts. The Sub-Divisional Magistrate believed that ten crimes were registered against the Petitioner as mentioned by the Police in the report. In the appeal, the State Government considered the submissions made for the Petitioner. It is observed that six cases mentioned in the police report are registered, though four cases are wrongly mentioned by the Police. Some specific instance like kidnapping offence registered against the Petitioner is also considered. The Authority has held that the Petitioner needs to be kept out of the adjacent districts also and so aforesaid order came to be confirmed.

5. Learned counsel for the Petitioner has taken this Court through some documents to show that there was no application of mind. Crime No.145 of 2008 registered in Sadar Bazar Police Station was not registered against the Petitioner, but crime of the same number was registered in other police station like Kadim Police Station against the Petitioner. Reply filed by the State shows that the cases mentioned at Serial No.7 to 10 were not filed against the Petitioners and they were inadvertently mentioned in the report by the Police. The record shows that in one notice only, six cases were mentioned by Sub-Divisional Magistrate, but at the time of passing of the order, the Sub-Divisional Magistrate held that ten cases were registered against the Petitioner.

6. The report and the order show that only the circumstance that some cases are registered against the Petitioner in Police Stations like Kadim, Sadar Bazar from Jalna is there, which can be used against the Petitioner. There is no record to show that some statements of witnesses are recorded to show that they are afraid of the Petitioner and the Petitioner has been extracting money from the public in general. For the Petitioner, copy of the application given by the prosecutrix from

the kidnapping case came to be produced. She has given statement that due to force of her father, she had given false report against the Petitioner.

7. The record and the reasons given by the Authority do not show any circumstance for which, the Petitioner is to be kept out of other four districts. The learned counsel for the Petitioner relied on some reported case. In the case reported in (2011 ALL MR (Cri) 941 Bombay High Court (Mohd. Najib Mohd. Aslam @ Sheru Kashmiri Vs. State of Maharashtra and Ors.), this High Court has considered the observations made by this Court in the case reported in 1988 Mh.L.J. 1034 (Umar Mohamed Malbari Vs. K.P. Gaikwad, Dy. Commissioner of Police, and another). These cases show that mere geographical proximity is not a ground to extend the order of externment to another district or part of the district. If there is no ground for passing such order, then it can be said that the externment order suffers from vice of being excessive. It is observed that when there is such order, the entire order needs to be set aside and the externment order cannot be set aside in part. In the present matter also, this Court holds that the order suffers from vice of being excessive. Further the reasoning given for passing the externment order is not convincing and the circumstances show that there was no application of mind at all.

8. In view of these circumstances, this Court holds that the petition deserves to be allowed.

9. In the result, the revision is allowed. The order of Sub-Divisional Magistrate, Jalna and the order of the State Government made in the Externment Appeal No.36 of 2013 are hereby quashed and set aside.

10. Pending Criminal Application No.2665 of 2013 does not survive and the same stands disposed of.

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