

Prashant Vs. State of Maharashtra and Others

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Court : Mumbai Nagpur

Decided On : Feb-04-2013

Judge : M.L. Tahaliyani

Appeal No. : Criminal Writ Petition No.520 of 2012

Appellant : Prashant

Respondent : State of Maharashtra and Others

Judgement :

Oral Judgment:

Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for both the parties. Heard G.N.Khanzode, learned counsel for the petitioner and Mr. S.S.Doiphode, learned Addl. P.P. for respondents 1 to 3.

2. The externment order dated 30th August, 2012 passed by respondent no.2 directing the petitioner to remove himself from the territorial jurisdiction of Bhandara, Chandrapur and Gadchiroli Districts within two days from receipt of the impugned order, has been challenged in the present Writ Petition. It is submitted by learned counsel for the petitioner that the externment order is mainly based on the pendency of prohibition cases against the petitioner. The petitioner had eleven prohibition cases on the date of proposal received from the police by respondent no.2. It is stated in the impugned order that during the period between April, 2011 and September, 2011 when the matter was under consideration of respondent

no.2, the petitioner had committed another five offences under the Prohibition Act.

3. Learned counsel for the petitioner has submitted that the powers under Section 56(1) of the Bombay Police Act cannot be exercised on the ground of pendency of cases under the Prohibition Act. He has relied upon the judgment of this Court in the matter of Ashok Kashianth Kale vs. Shri Ravindra Jadhav and another reported in 1983 (2) Bom.C.R. 763. The relevant portion of the judgment is at paragraph 3 which runs as under:-

"3. We have already observed as to under what circumstances an externment order can be passed under section 56(a) or 56(b). A mere reading of the relevant provisions of section 56 would show that the convictions under the Bombay Prohibition Act or the pending criminal cases under that Act would not be relevant while taking a decision as to whether the petitioner's case would fall under section 56(a) or 56(b). Shri Chitnis, therefore, contended that here is an order which is based on irrelevant data or irrelevant matter and that on that count the order should be set aside. He drew our attention to an unreported decision of this Court (Coram :Tarkunde and Shah, JJ.) in Special Criminal Application No.511 of 1982 decided on 23rd January, 1963). In that case, one of the allegations made against the externees was that he indulged in the commission of offences under the Bombay Prohibition Act. The Division Bench held that the conviction or pending criminal cases under the Bombay Prohibition Act would undoubtedly be foreign to section 56. In view of this the petition succeeds and hence, we pass the following order : The rule is made absolute by quashing the impugned externment order dated 12.4.1983 (Exh. 'E') to the petition."

4. Learned Addl. P.P. Mr Doiphode has not been able to tell the Court as to how the provisions of Section 56 will be attracted in the present case.

5. Apart from this, what is important to be noted is that the proposal was submitted by the police to the respondent no.2 on 24th February, 2011 and show-cause notice was issued on 16th December, 2011. The impugned order has been passed on 30th August, 2012. It can be seen that the respondent no.2 did not bother to issue show-cause notice for about ten months. It also can be seen that respondent no.2 waited for about eight months to pass the impugned order. As

such, there is an inordinate delay in taking action on the police report. The delay, by itself, has frustrated the purpose of proposal submitted by the police. The order passed after about 18 months of the proposal cannot be sustained. For the above stated reasons, the Petition deserves to be allowed and the impugned order needs to be quashed.

ORDER

The Writ Petition is allowed. The impugned order dated 30th August, 2012 directing the petitioner to remove himself from the territorial limits of Bhandara, Chandrapur and Gadchiroli Districts are hereby quashed.

Rule is made absolute accordingly.

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