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Court : Mumbai Nagpur

Decided On : Jan-29-2013

Judge : M.L. Tahaliyani

Appeal No. : Criminal Writ Petition No.599 of 2012

Appellant : Bharat

Respondent : State of Maharashtra and Another

Judgement :

Oral Judgment:

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Rule. Rule returnable forthwith by consent of learned counsel for the parties.

3. The petitioner feels aggrieved by the order passed by the Sub-Divisional Magistrate, Buldana on 21st September, 2012 directing externment of the petitioner for a period of two years from the districts of Buldana, Akola, Washim, Jalna, Parbhani and Aurangabad and dismissal of appeal filed by him before the Government of Maharashtra. The impugned order passed by the Sub-Divisional Magistrate is dated 21st September 2012 and the order passed by the Appellate Authority dismissing the appeal is dated 29th November 2012.

4. Learned Advocate Mr. Sadavarte for the petitioner has submitted that the Sub-Divisional Magistrate in his order has nowhere stated that he himself was satisfied that order under Section 56 was necessary to be passed. Sub-Divisional Police Officer. It is submitted that the order, therefore, suffers from serious infirmity. In view thereof, it is submitted that the petition should have been allowed.

5. The learned Additional Public Prosecutor has stated that there is danger to public order from the activities of the petitioner.

6. My attention was invited to the case registered against the petitioner at Police Station, Amrapur Police Station, District Buldana for the offences punishable under Sections 143, 147, 148, 307 read with Section 149, 353 read with Section 149 and 436 read with Section 149 of the Indian Penal Code and for the offences punishable under Section 135 read with Section 37(1)(a) of the Bombay Police Act. These offences were registered on the complaint made by the Deputy Chief Executive Officer of Zilla Parishad, Buldana. The petitioner along with few others had allegedly entered the office of the Deputy Chief Executive Officer on 16th August 2012 at about 12.45 p.m. and had allegedly attempted to set the office on fire by means of petrol and kerosene.

7. It appears that no other serious offences are registered against the petitioner anywhere in the districts from which he is ordered to be externed.

8. I have gone through the order of Sub Divisional Magistrate. The Sub-Divisional Magistrate has heavily relied upon the report submitted by the Sub-Divisional Police Officer, Buldana. In fact, it appears that the order passed by the Sub-Divisional Magistrate is mainly based on the report submitted by the Sub-Divisional Police Officer, Buldana. The Sub-Divisional Magistrate has also referred the statements recorded by the Sub-Divisional Police Officer during the course of inquiry. The learned Sub-Divisional Magistrate has also referred to the defence taken by the petitioner during the course of inquiry. It is stated in the impugned order that the petitioner could not place anything before the Sub-Divisional Police Officer to rebut the allegations made against him. What is seriously wrong with the order is that the learned Sub-Divisional Magistrate has nowhere stated in his order that he himself was satisfied that the activities of the petitioner were in any manner

prejudicial to the maintenance of public order, as defined under the Maharashtra Prevention of Communal, Anti-social and other Dangerous Activities Act, 1980. It may be stated here that the report of the Sub-Divisional Officer indicated that the activities of the petitioner were prejudicial to the maintenance of law and order. It appears that the learned Sub-Divisional Magistrate failed to understand the difference between 'public order' and law and order'. Moreover, there is no record of subjective satisfaction of the Sub Divisional Magistrate that the activities of the petitioner were likely to be prejudicial to the maintenance of public order. In view thereof, in my considered opinion, the petition must succeed. Hence, I pass the following order:The petition is allowed.

The order passed by the Sub Divisional Magistrate on 21st September, 2012 and the order passed by the Appellate Authority i.e. Secretary, Home Department, Government of Maharashtra on 29th November, 2012 are hereby set aside.

Rule is made absolute in above terms.

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