

Sharad Vs. Sub-divisional Magistrate, Buldana and Another

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SooperKanoon Citation : sooperkanoon.com/1105178

Court : Mumbai Nagpur

Decided On : Dec-18-2012

Judge : M.L. Tahaliyani

Appeal No. : Criminal Writ Petition No.617 of 2012

Appellant : Sharad

Respondent : Sub-divisional Magistrate, Buldana and Another

Judgement :

Oral Judgment:

Rule. Rule returnable forthwith. Heard finally.

2. Heard Mr. N.B. Kalwaghe, learned Advocate for the petitioner and Mr. Nitin Rode, learned APP for respondents. Learned Addl.P.P. Mr. Nitin Rode prays for time to file reply. However, in my considered opinion, reply is not needed inasmuch as the issue raised by learned counsel for the petitioner can be decided on the basis of material available in the impugned order itself.

3. The order impugned by the petitioner in this petition has been passed by the Sub-Divisional Magistrate (SDM) Buldana in exercise of his powers under Section 56 of the Bombay Police Act. It is further stated in the impugned order that the Sub-Divisional Police Officer, Buldana had earlier submitted two proposals dated 17th February, 2009 and 22nd April, 2011. It is stated in the impugned order that

after having gone through the report submitted by the Sub-Divisional Police Officer, the SDM had come to the conclusion that the proposal for externment of the petitioner from eight Districts was necessary to be accepted and, accordingly, the impugned order has been passed.

4. The learned counsel has raised the issue of delay in passing the externment order. It is submitted by Mr Kalwaghe that there were two proposals of February, 2009 and April, 2011 and that two show cause notices were issued to the petitioner in the month of September, 2009 and June, 2011 respectively. It is further submitted by the learned Advocate Mr Kalwaghe that the last alleged illegal activity on the part of the petitioner was of the year 2010 i.e. Crime No.113/2010 u/ss. 147, 148, 324 r/ws. 149 of the Indian Penal Code. It is contended that if the SDM took more than two years to consider the proposal submitted by the Police, the efficacy of the action u/s 56 of the Bombay Police Act is lost. Mr. Kalwaghe has submitted that the proceedings u/s 56 are of preventive nature. If the petitioner was to be externed out of Buldana District to prevent commission of crime, then it was necessary for the Externing Authority to pass order as early as possible. Two years period taken by the Externing Authority and good behaviour and peace maintained by the petitioner during the said period itself is sufficient to declare the order to be illegal and not sustainable. I agree with learned Advocate Mr Kalwaghe that the proceedings u/s 56 are of preventive nature and if preventive action was not taken when it was proposed to be taken, then the whole exercise taken after about two years was only with a view to put an end to the pending file. The SDM /respondent no.1, it appears, has not cared for the personal liberty of the petitioner and without application of mind has passed the order u/s 56 of the Bombay Police Act. Such an order cannot be sustained. As already stated, it was not found necessary to adjourn the present Writ Petition as the impugned order on the face of it does not appear to be sustainable. Hence I pass the following order:

ORDER

The Writ Petition is allowed. The impugned order passed by the SDM on 7th December, 2012 against the petitioner u/s 56 of the Bombay Police Act is quashed and set aside. Writ Petition stands disposed of. Rule made absolute accordingly.

