

Ashraf Vs. The State of Maharashtra and Others

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Court : Mumbai Aurangabad

Decided On : Jul-14-2015

Judge : S.S. Shinde & a.I.S. Cheema

Appeal No. : Criminal Writ Petition No. 604 of 2015

Appellant : Ashraf

Respondent : The State of Maharashtra and Others

Judgement :

S.S. Shinde, J.

1. Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel for the parties.
2. By this Petition under Article 226 of the Constitution of India, the petitioner is praying for quashing and setting aside the order dated 4th April, 2015 passed by Respondent No.2 in Externment Appeal No. 01/2014.
3. The learned counsel appearing for the petitioner confined his arguments only to one ground that, without recording subjective satisfaction and reasons in the externment order, the petitioner is externed from three districts i.e. Ahmednagar, Nashik and Pune. It is submitted that, offences which are registered against the petitioner are in the vicinity of Sangamner Police Station located at Ahmednagar district. It is submitted that, even the alleged prejudicial activities of the petitioner,

as stated in the show-cause notice, are in the vicinity of Sangamner area of Ahmednagar district. Therefore, the learned counsel appearing for the petitioner submits that, the order is excessive, inasmuch as, the petitioner is externed from Nashik and Pune districts.

4. The learned Additional Public Prosecutor relying upon the show-cause notice and reasons recorded in the order of externment passed by the Sub-Divisional Magistrate, Sangamner Division, Sangamner submits that, the externment order is in conformity with the material placed on record and also within fore corners of the provisions of Sections 56 and 59 of the Bombay Police Act, 1951, therefore, this Court may not interfere in the impugned order.

5. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State. We have also perused the original record made available by the learned Additional Public Prosecutor for perusal of this Court, show-cause notice and order impugned in this Petition. Since the Petition is confined only to the ground that, the externment order is excessive, inasmuch as the petitioner's alleged prejudicial activities are in the show-cause notice confined to Sangamner area at Ahmednagar district, however, the petitioner is externed from three districts, we are confining our adjudication to the aforesaid ground alone.

6. Upon careful reading of the original record, show-cause notice and also the impugned order, so far alleged prejudicial activities of the petitioner are concerned, same are described in Sangamner area at Ahmednagar district, there is no discussion or subjective satisfaction disclosed in the impugned order, why the externment of the petitioner from Nashik and Pune districts is necessary. Upon careful reading of the show-cause notice and also the impugned order, it appears that, the offences registered against the petitioner are at Sangamner Police Station located at Ahmednagar district. Therefore, it is crystal clear that, the Sub-Divisional Magistrate, Sangamner Division, Sangamner and the Divisional Commissioner, Nashik Division, Nashik have not assigned any reasons or recorded the subjective satisfaction about the externment of the petitioner from Nashik and Pune districts.

7. The point raised in this Petition is no longer res integra and covered by the exposition of this Court in the case of **Nisar @ Nigro Bashir Ahmed Khan V/s Dy. Commissioner of Police and ors** reported in **2013(3) Bom.C.R.(Cri.) 566**. The paragraph nos. 9 to 11 of the said judgment read as under:-

9. The point raised by the learned Counsel for the Petitioner that the externment order is excessive, in as much as, the alleged activities against the Petitioner, which are alleged in the show cause notice are confined to the jurisdiction of the Shivaji Nagar Police Station and within the area of Greater Bombay, therefore, externment of the Petitioner from aforesaid other three Districts is excessive, is no more res integra and is covered by the authoritative pronouncements of the Hon'ble Supreme Court as well as by this Court. The Hon'ble Supreme Court in the case of (Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police, State of Maharashtra), reported in 1973 Mh.L.J. 413, in Paragraph 16, held as under:

"16. An excessive order can undoubtedly be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. The decision of the Bombay High Court in (Balu Shivling Dombé v. The Divisional Magistrate, Pandharpur) 1969 Mh.L.J. 387 is an instance in point where an externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case. The activities of the externee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as the districts of Sholapur, Satara and Poona. These areas are far widely removed from the locality in which the externee had committed but two supposedly illegal acts. The exercise of the power was, therefore, arbitrary and excessive, the order having been passed without reference to the purpose of the externment."

10. This Court had also occasion to consider the same point involved in this Petition in the case of Balu Vs. The Divisional Magistrate, Pandharpur, reported in 1969 Mh.L.J. 387, while appreciating the facts involved in that case, this Court held that extending the area of externment not only outside Pandharpur Taluka but to the Districts of Solapur, Pune and Satara is illegal since the alleged activities

against the Petitioner therein, as stated in the show cause notice, were confined to the Pandharpur City. In the case of Punjaji Dagdu Gaikwad Vs. State of Maharashtra and Ors., reported in 2001(Supp.2) Bom.C.R. 611(N.B.): 2001 (3) Mh.L.J. 926, in the facts of that case, this Court held that the Petitioner's area of activities is confined to Buldhana District, but the Petitioner is externed from Buldhana District as well as Districts of Akola, Washim, Jalna, Parbhani and Jalgaon. Order suffered from vice of excessive externment from five Districts in respect of which no data was placed and the entire externment order was in the circumstances liable to be quashed. Yet in another exposition of this Court, in the case of Ganpat @ Ganesh Tanaji Katore Vs. Assistant Commissioner of Police and Ors., reported in 2006 (1) Bom.C.R. (Cri.) 44, in the facts of that case, this Court held that the alleged activities of the Petitioner therein are restricted to particular District. Therefore, an externment order of the respective Petitioners from other District except Greater Bombay and adjoining Districts of Thane is excessive.

11. In the background of aforesaid discussion and upon perusal of facts of this case, when the crimes registered against the Petitioner are confined to Shivaji Nagar Police Station within the limits of Greater Bombay, by impugned order, the Petitioner is externed from Greater Bombay, New Bombay, Thane and Raigad Districts for two years.?

8. Once this Court has reached to the conclusion that, the externment order is excessive, same deserves to be quashed in its entirety.

9. At this stage, learned Additional Public Prosecutor, however, contended that the entire order of externment was not liable to be struck down merely because it covered areas which were excessive than what was justified. In the case of **Umar Mohamed Malbari Vs. K.P. Gaikwad, Dy. Commissioner of Police and anr. (1988 Mh.L.J. 1034)**, while considering the similar argument advanced by the learned Additional Public Prosecutor, the Division Bench of this Court in para 8 held thus:-

8. Shri. Khothari, the learned Public Prosecutor however, contended that the entire order of externment was not liable to be struck down merely because it covered

areas which were excessive than what was justified. This would be a case where appropriate areas of externment can be substituted with the areas contemplated in the impugned order of externment. In our judgment, there is no merit in the aforesaid contention of Shri. Kothari. The High Court, when it issues the high prerogative writ of certiorari, it directs the judicial Tribunal against which it is acting to transmit its record to the Court and if necessary to quash the order which the Tribunal has passed. It must not be forgotten that in issuing the writ this Court is not acting as a Court of appeal. It is exercising supervisory powers conferred upon it, and those powers are exercised by means of issuing high prerogative writs. But the power and jurisdiction of the Court is limited and the same cannot extend to the powers of an Appellate Court. This Court is only concerned with the question as to whether the Tribunal exercising judicial or quasi judicial functions has or has not acted without jurisdiction or whether in the exercise of jurisdiction it has acted in excess of jurisdiction. If it has acted in excess of jurisdiction, then the jurisdiction of this Court is to quash the order passed in excess of jurisdiction. There the power of the High Court stops. It has no power to go further and to correct an excessive order passed by the authority concerned. Mohamed Usman V. Labour Appellate Tribunal, LIV Bom.L.R. at page 513?.

10. In the light of discussion in foregoing paragraphs, we pass the following order:-

ORDER

(i) The order dated 4th April, 2015 passed by Respondent No.2 in Externment Appeal No. 01/2014 is hereby quashed and set aside.

(ii) Rule is, accordingly, made absolute in that behalf.

(iii) Parties are directed to act upon an authenticated copy of this order.

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