

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH**Single Bench : Hon'ble Shri Justice Subodh Abhyankar****Writ Petition No.26650-2021**

(Balmukund S/o Ramdevsingh Gautam vs. The District Magistrate & others)

1	Case No.	W.P. No.26650-2021
2	Parties Name	Balmukund S/o Ramdevsingh Gautam vs. The District Magistrate & others
3	Date of Order	20 th of December, 2021
4	Bench constituted of Hon'ble Justice	Single Bench Hon'ble Shri Justice Subodh Abhyankar
5	Order passed by	Hon'ble Shri Justice Subodh Abhyankar
6	Whether approved for reporting	Yes
7	Name of counsel for the parties	Shri A. K. Sethi, Id. Sr. Counsel with Shri Nitin Phadke, learned counsel for the petitioner. Ms. Archana Kher, learned Panel Lawyer for the respondent/State.
8	Law laid down	1. M. P. Rajya Suraksha Adhinyam, 1990-S.8. District Magistrate is not obliged to furnish the copies of all the cases registered against the petitioner and merely mentioning of the crime numbers along with the offences under which those cases have been registered would suffice for the purpose of proceedings under the Adhinyam. It is for the petitioner to demonstrate that either those cases on which the respondents have relied upon have not been registered against him or their outcome was in his favour. Thus, the onus is on the petitioner to rebut the facts relied upon by learned District Magistrate. The decision in the case of Sanjay @ Oondar (supra) has not been referred to and discussed in the latest decision of Bhanu Ojha (supra) of the co-ordinate bench of this court at Gwalior and in such circumstances, with due respect, the subsequent decision of the Co-ordinate Bench at Gwalior has no precedential value, as has been observed by the Full Bench of this court in the case of Jabalpur Bus Operators Association vs. The State of M.P., 2003(4) JCR 325 MP = 2003 (1) JLJ 105. Thus, it is held that the decision rendered by the co-ordinate bench of this court at Gwalior in the case of Bhanu Ojha being per incurium and does not lay down the correct preposition of law as Sanjay @ Oondar (supra) still holds

the field.

2. Copies of the statements of witnesses, who have been examined before learned District Magistrate should be supplied to the petitioner after ensuring that the identity of the witnesses is not revealed for his/her safety, so that the petitioner should have the information on the basis of which the order of externment is proposed to be passed against him. By providing the list of witnesses to the petitioner in an externment proceedings, would again mean jeopardizing the safety of the witnesses and would run contrary to the legislative intent of enacting s.5 of the Adhiniyam.

9 Significant paragraph

8, 10, and 11.

10. Decision referred to:

1. Sanjay @ Oondar vs. State of M.P., 2005 (4), MPLJ, 521 (relied upon)
2. Bhanu Ojha vs. The State of M.P. and others (held *per incuriam*)

O R D E R

Post for

30.12.2021

(Subodh Abhyankar)
Judge

THE HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**SINGLE BENCH :HON'BLE SHRI JUSTICE SUBODH ABHYANKAR, J.****WRIT PETITION NO.26650/2021**

Balmukund S/o Ramdevsingh Gautam
 Aged : 58 years, Occupation : Business
 Resident of Lebad, District Dhar (MP)

Petitioner

Vs.

1. The District Magistrate
 District Dhar
 Collector Office
 Dhar (MP)
2. The Superintendent of Police
 District Dhar
 S.P. Office
 Dhar (MP)

Respondents

Present :-

Shri A. K. Sethi, learned Senior Counsel with Shri Nitin Phadke, learned counsel for the petitioner.

Ms. Archana Kher, learned Dy. A.G. for the respondents - State.

ORDER

(Passed at **Indore on this 30th day of December, 2021**)

The present petition has been filed by the petitioner under Article 226 of the Constitution of India seeking following reliefs :-

“a) A writ in the nature of certiorari/mandamus or any other appropriate writ, order of direction be issued for quashment of the order Annexure-P/1 dated 22.11.2021 and for granting the prayers made by the petitioner in the applications Annexures-P/4, P/5 and P/6.

b) Costs of the petition be awarded to the petitioner from the respondents.

c) Any other relief, as this Hon'ble Court may deem

fit in the facts and circumstances of the the case, be granted to the petitioner.”

2. The grievance of the petitioner is that he has been issued a show cause notice by the District Magistrate, District Dhar under the provisions of the M. P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as “the Adhiniyam”) alleging his continuous involvement in the criminal activities, enumerating as many as 17 offences registered against him.

3. In the aforesaid proceedings, as many as three applications have been filed by the petitioner, viz.,

- a) an application for furnishing all the statements of the witnesses as also the documents on the basis of which the aforesaid show cause notice has been issued and also seeking cross-examination of the witnesses. (Annexure-P/4)and,
- b) An application for cross-examination of the witnesses.(Annexure-P/5).
- c) an application, again for grant of documents and list of witnesses. (Annexure-P/6).

4. Shri Sethi, learned Senior Counsel for the petitioner has submitted that the aforesaid applications have been dismissed by learned District Magistrate vide its order dated 22.11.2021 holding that the respondents are not obliging to share with the petitioner the source of information on the basis of which the aforesaid proceedings have been initiated and thus, the request made by the petitioner has been rejected. In support of his contention, Shri Sethi has also relied upon a decision rendered by the Co-ordinate Bench of this Court at Gwalior in **W.P. No.11645/2021 (Bhanu Ojha vs. The State of M.P. and others)** dated **23.09.2021** wherein, this Court has categorically held that by not having extended the benefit of cross-examination, the order of externment was in utter violation of the principles of natural justice.

5. Ms. Kher, learned Dy. A.G. for the State, on the other hand has opposed the prayer and submitted that no case for any interference is made out as this Court, in the case of **Sanjay @ Oondar vs. State of M.P., 2005 (4), MPLJ, 521**, way-back in the year 2005 has already held that the right of cross-examination is not a vested right in an externment proceedings. It is also submitted that the petitioner has already been given the details of crime numbers

on which the learned District Magistrate is relying upon and as such, he could not seek copies of the aforesaid documents from the respondents.

6. Heard learned counsel for the parties and perused the record.

7. On perusal of the record, this Court finds that learned District Magistrate has issued the notice to the petitioner under Section 8 of the Adhinyam by referring to 17 criminal cases along with their crime numbers and the sections under which they have been registered.

8. This Court is of the considered opinion that learned District Magistrate was not obliged to furnish the copies of all the cases registered against the petitioner and merely mentioning of the crime numbers along with the offences under which those cases have been registered would suffice for the purpose of proceedings under the Adhinyam. This Court is also of the considered opinion that it is for the petitioner to demonstrate that either those cases on which the respondents have relied upon have not been registered against him or their outcome was in his favour. Thus, the onus was on the petitioner to rebut the facts relied upon by learned District Magistrate.

9. So far as the right of the petitioner to cross examine the witnesses is concerned, this Court in the case of **Sanjay @ Oondar (supra)**, in paras-5, 6 and 7 has observed as under:-

“5. After having heard learned counsel for parties at length and going through the material available on record, in the considered opinion of this Court, there is no merit and substance in the writ petition. Perusal of section 5 of the Act reveals that statements of witnesses can be recorded in-camera proceedings if in the opinion of the D.M. those witnesses are unwilling to come forward to give evidence in public against the petitioner. Obviously giving evidence in public; means giving evidence in the open Court of Law. In the present case the D. M. has recorded a finding in this regard and the satisfaction of the D.M. on this account, cannot be scrutinized by this Court as an appellate Court.

6. So far as right to cross-examine witnesses is concerned, in the context of provisions of the Act, the right of hearing cannot be stretched to cross-examine witnesses otherwise the very purpose of the Act to provide security and maintenance of public order, would be defeated. The Act is directed against the anti social and criminal elements in society who have placed

themselves beyond the pale of rule of law.

7. In view of the above, it cannot be said that right of hearing would include right of cross-examining of the witnesses who were examined in camera before passing the order of removal. The right of movement enshrined in Art. 19(1)(d) is subject to the reasonable restriction and is not absolute. The law in this regard is very well settled.

(emphasis supplied)

10. It is apparent that the aforesaid decision in the case of **Sanjay @ Oondar (supra)** has not been referred to and discussed in the latest decision of **Bhanu Ojha (supra)** of the co-ordinate bench of this court at Gwalior and in such circumstances, with due respect, the subsequent decision of the Co-ordinate Bench at Gwalior has no precedential value, as has been observed by the Full Bench of this court in the case of **Jabalpur Bus Operators Association vs. The State of M.P., 2003(4) JCR 325 MP = 2003 (1) JLJ 105**. Thus, it is held that the decision rendered by the co-ordinate bench of this court at Gwalior in the case of **Bhanu Ojha** being *per incuriam* and does not lay down the correct proposition of law as the decision rendered in **Sanjay @ Oondar (supra)** still holds the field.

11. Although, this Court is of the considered opinion that at least copies of the statements of witnesses, who have been examined before learned District Magistrate should be supplied to the petitioner after ensuring that the identity of the witnesses is not revealed for his/her safety, so that the petitioner should also have the information on the basis of which the order of externment is proposed to be passed against him. By providing the list of witnesses to the petitioner in an externment proceedings, would again mean jeopardizing the safety of the witnesses and would run contrary to the legislative intent of enacting s.5 of the Adhiniyam.

12. In such circumstances, the petition being devoid of merits, is hereby **dismissed**. However, liberty is granted to the petitioner to take all the grounds available to him before learned District Magistrate and learned District Magistrate is also directed to pass the order in accordance with law, on the basis of the documents available on record, without being influenced by the order

passed by this Court.

13. This Court in the case of **Sudeep Patel vs. The State of M. P.** passed in **M. P. No.904/2017** on **09.01.2018** has already held that the order of externment has to be passed expeditiously, which is also the sole purpose of the Adhinyam, thus, it is expected of the District Magistrate that he/she would conclude the proceedings expeditiously, in accordance with law and after giving due opportunity of hearing to the petitioner.

14. Resultantly, the present petition stands **dismissed**.

(Subodh Abhyankar)
Judge

gp/krj