

- : 1 :-

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 13th OF MAY, 2022

WRIT APPEAL No. 81 of 2022

Between:-

1. THE STATE OF MADHYA PRADESH COLLECTOR/DISTRICT
MAGISTRATE MOTI TABELA (MADHYA PRADESH)
2. SUPERINTENDENT OF POLICE (EAST) HOME DEPARTMENT
INDORE (MADHYA PRADESH)
- STATE OF M.P. THR PRINCIPAL SECRETARY HOME
3. DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)

.....APPELLANTS

(BY SHRI PUSHYAMITRA BHARGAV, ADDL. ADVOCATE GENERAL)

AND

RAJU @ PUSHPENDRA BHADORIYA S/O UDAY SINGH , AGED
ABOUT 44 YEARS, OCCUPATION: SOCIAL SERVICE 97/2,
MARUTI NAGAR (MADHYA PRADESH)

.....RESPONDENT

*(BY SHRI RAVINDRA S. CHHABRA, SENIOR COUNSEL WITH SHRI
MUDIT MAHESHWARI, COUNSEL)*

*The defect pointed out by the registry be removed during
the course of the day.*

This appeal is coming on for admission this day,

JUSTICE VIVEK RUSIA passed the following:

ORDER

This appeal is filed under Section 2(1) of the Madhya
Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal)

Adhiniyam, 2005 by the appellants/State against the order dated 24.11.2021 passed in W.P.No. 21686/2021 whereby the writ Court has set aside the order of externment dated 17.09.2021 passed by the Collector/District Magistrate, Indore in the exercise of power under Section 5(a) of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as the 'Adhiniyam').

The facts of the case in nut shall are as under:-

1 On an application sent by the Superintendent of Police, Indore, the District Magistrate has registered a case under Section 5 of the Adhiniyam, 1990 and issued a show-cause notice to the respondent (petitioner in WP No. 21686/2021) on 29.04.2021 for an appearance on 17.05.2021.

2 On 17.05.2021, the counsel engaged by the respondent appeared along with Vakalatnama. Learned counsel moved an application seeking condonation of non-appearance of the respondent and on which a next date was fixed on 20.05.2021. On the said date, the presiding officer was on leave and the matter was taken up on 21.05.2021. On the said date also, the counsel appeared without the respondent and sought time to file a reply. The time was given, and the matter was fixed on 01.06.2021. On the said date also, the respondent did not appear and on his behalf, his counsel appeared along with the reply and the matter was fixed for arguments on 14.06.2021. On 14.06.2021 also, only an advocate appeared, the respondent did not appear, learned DM heard the final arguments, the learned counsel of the respondent submitted Written arguments and the case was closed for order.

3 Thereafter, the final order was passed on 17.09.2021 under Section 5(A) of the Adhiniyam, 1990 externing the respondent for

a period of 6 months. Instead of challenging the aforesaid order by way of an appeal under Section 9 of the Adhiniyam of 1990, the respondent approached this Court by way of a writ petition under Article 226 of the Constitution mainly on the ground that he was not given any effective opportunity of hearing by the District Magistrate before passing the final order. It is further submitted that the respondent could not produce the certified copies of the criminal cases wherein he had been acquitted by the competent courts, therefore, the order is bad in law and liable to be set aside by the High Court without relegating him to the appellate forum. The appellant/State Government filed the reply justifying the impugned action that ample opportunity of hearing was given to the respondent but he did not file any document hence the learned authority had no option but to pass the final order. It is further submitted that the respondent is having statutory remedy of appeal under Section 9 of the Adhiniyam of 1990 and all the grounds are liable to be considered by the appellate authority.

4 After hearing learned counsel for the parties, the writ Court has set aside the impugned order of externment of the respondent mainly on the grounds that by not providing sufficient time to produce the orders of acquittal in the cases in which the respondent was already acquitted, the principles of natural justice have been clearly violated and in such peculiar circumstances, even if the respondent has not availed the remedy of appeal, this Court is of the considered opinion that this petition under Article 226 of the Constitution of India is maintainable.

Hence this writ appeal before this the Division Bench

5 We have heard the learned Additional Advocate General for the appellant State and Shri R S Chhabra learned senior advocate

for the respondent and perused the record.

For the ready reference section 5(a) of Adhinyam under which the respondent has been externed for 6 months is reproduced below:-

'5. Removal of persons about to commit offence.-Whenever it appears to the District Magistrate-

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property;'

6 Under Section 5 of the Adhinyam of 1990, the order is liable to be passed if the movement or act of any person is causing or may cause danger to a person or property. The scope of Section 5(b) of the Adhinyam is different from the scope under Section 5(a). Under Section 5(a), the movement or act of any person is liable to be restricted at that point of time when he is causing or calculated to cause alarm, danger or harm to any person or property. The proceedings initiated under Section 5(a) of the Adhinyam are liable to be concluded as early as possible unlike the regular civil suit or criminal trial proceed. A person who is appearing in person or through an advocate is not expected to seek adjournments repeatedly for filling reply or documents.

7 It is clear from the order sheets available on the records that the respondent did not appear on any single date before the learned authority and every time his counsel appeared with an application seeking exemption from appearance. Thrice, the learned authority allowed the application and granted time for appearance. The respondent filed a reply on 01.06.2021 and thereafter the case was fixed for final arguments on 14.06.2021. At the time of the final arguments also, the respondent was not present. The authority (District Magistrate) heard the arguments,

took the written submission on record and closed the case for orders. The respondent ought to have filed the certified copies of the orders of acquittals along with the reply. There is no application on record seeking time to file the documents by him. Hence sufficient opportunities were given to the respondent for defending himself and it cannot be said that the learned authority is DM did not follow the principle of natural justice.

8 Shri Chhabra learned senior advocate has emphasized that after closing the case no date was given for pronouncing the final verdict in the matter hence the respondent was under impression that he would file the judgments of his acquittal on the next date of hearing to be given later on. Although, at the end of the order sheet dated 14.06.20121, the word '*peshi tarikh*' (पेशी तारीख) is written and thereafter final order has been passed on 17.09.2021. Once, the reply and written arguments have been filed and after arguments, the Court has closed the case then there is no need to give any fixed date for filling documents. It is the prerogative of the Court to pronounce/deliver the judgment on any date. Even no date is given for pronouncing the judgment/ final order that would not vitiate the proceedings. Therefore, as per the ordersheets, ample opportunities were given to the respondent to defend his case. Even otherwise, a criminal case and acquittal have a bearing when the proceedings are under Section 5(B) of the Adhiniyam, 1990 but for the passing order under section 5(a) the requirement and scope of consideration are very limited.

9 Therefore, sufficient opportunities were given to the respondent to appear and defend his case, but he chose to appear through counsel. We do not find any illegality in the order of externment dated 17.09.2021 and the order passed by the Writ

Court to that effect is hereby set aside. So far as by-passing the statutory remedy is concerned, once we have held that there is no violation of principles of natural justice, the petitioner ought to have preferred an appeal under Section 9 of the Adhiniyam, before approaching the Writ Court. In view of the above discussion, the impugned order passed by the writ court is hereby set aside.

10 As we held above the proceedings under Section 5(a) of the Adhiniyam, 1990 are liable to be drawn and concluded expeditiously. After the lapse of so many months, it cannot be said that now the After expiry of more than 7 months the respondent is causing or about to cause alarm, danger or harm to any person or property. Instead of sending him to undergo the remaining period of externment we hereby reduced the period from the 6 months to the period already undergone by him.

In view of the aforesaid, this appeal stands **partly allowed** and **disposed of**.

(VIVEK RUSIA)
JUDGE

(AMAR NATH KESHARWANI)
JUDGE

Vidya/-