

:1: W.P.No.10089/2022

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 20th OF JUNE, 2022

WRIT PETITION No. 10089 of 2022

Between:-

YATINDRA VERMA S/O SHRI NANDALAL VERMA , AGED ABOUT 37 YEARS, OCCUPATION: SOCIAL SERVICE 1472/23, NANDA NAGAR, INDORE (MADHYA PRADESH)

(SENIOR ADVOCATE SHRI R S CHABBRA, APPEARED FOR THE PETITIONER WITH SHRI GURNEET CHAWLA, LEARNED COUNSEL FOR THE PETITIONER).

.....PETITIONER

AND

1. HOME DEPARTMENT PRINCIPAL SECRETARY, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)

2. COMMISSIONER OF POLICE INDORE DIVISION, PALASIA (MADHYA PRADESH)

3. DEPUTY COMMISSIONER OF POLICE ZONE 02, INDORE URBAN (MADHYA PRADESH)

..... RESPONDENTS

(PROXY COUNSEL NITIN SINGH BHATI, APPEARING ON BEHALF OF ADVOCATE GENERAL)

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This petition coming on for orders this day, the court passed the following:

ORDER

The petitioner has filed the petition under Article 226 of the

:2: **W.P.No.10089/2022**

Constitution of India against the impugned order dated 21.4.2022 (Annexure P/6) passed by the respondent No.2/Commissioner of Police, Indore Division, Indore, whereby the petitioner has been externed from the Districts of Indore and adjoining districts viz., Dewas, Dhar, Ujjain and Khargone under the provisions of the M.P. Rajya Suraksha Adhiniyam, 1990 (herein after referred as “**the Act**”).

02. In brief, the facts of the case are that the petitioner is a resident of Indore to whom a show cause notice was issued by the respondent No.2/Commissioner of Police, Indore Division, Indore on 16.3.2022, under Section 8 of the M.P. Rajya Suraksha Adhiniyam, 1990 enumerating 10 cases which were registered against him from 2006 to 2021 and also a prohibitory proceedings initiated against him in the year 2022.

03. The petition has been filed on many grounds including that the petition is maintainable despite availability of alternative remedy; the order has been passed beyond the show cause notice, the order is in respect of other districts also only on account of their geographical proximity with Indore, old and stale cases have also been considered.

04. The reply has still not been filed by the State after many opportunity and the counsel for the State has again sought time to file reply. The prayer is denied and the petition is heard finally on the basis of the documents filed on record.

05. Counsel for the respondent, however, has opposed the petition and has submitted that the petition itself is premature on account of availability of the statutory remedy of appeal provided u/s.9 of the Act and otherwise also no illegality has been committed by the Commissioner of Police in passing the impugned order.

06. Heard the counsel for the parties and perused the record.

07. So far as the question of availability of remedy of appeal is concerned, this court is of the considered opinion that the petitioner ought to have approached the appellate authority to ventilate his grievance but taking note of the fact that the ground regarding the exercise of excessive jurisdiction has also been raised, to decide the said issue finally, this court is passing the order on merits of the case instead of relegating the same to the appellate authority.

08. So far as the ground that the order has been passed beyond the scope of show cause notice is concerned, on perusal of the record, it is found that the show cause notice dated 16.3.2022, under Section 5(a)(b) of the Act refers to 10 criminal cases registered against the petitioner and one prohibitory proceedings dated 31.1.2022. The relevant para of the same reads as under:-

“उक्त कथन व पुलिस प्रतिवेदन से प्रथम दृष्टया समाधान होता है कि अनावेदक क्षेत्र में लगातार मारपीट, लडाईं झगडा, गाली गलौच, जान से मारने

:4: **W.P.No.10089/2022**

की धमकी देना, धोखाधड़ी, अवैध हथियार, धारा 144 का उल्लंघन जैसे अपराधों को घटित कर आम जनता को भयभीत करता चला आ रहा है। अनावेदक के डर, आतंक के कारण लोग थाने में रिपोर्ट लिखाने से डरते हैं तथा खुले न्यायालय में गवाही देने में तत्पर नहीं रहते।”

Details of the prior offences registered against the Petitioner as mentioned in the show cause notice are reproduced hereunder :-

Sr. No.	Police Station	Crime No.	Section	Challan	Criminal Case No.	Court	Order
1.	Pardeshipura	381/12.09.06	341/294/323/34 IPC	329/17.09.2006	35818/25.09.2006	JMFC	Pending
2.	Pardeshipura	334/12.07.2007	324, 294 IPC	287/15.07.2007	22741/20.07.2007	JMFC	Pending
3.	Pardeshipura	104/17.02.08	294/427/506/34 IPC	177/08.05.2008	11430/13.05.2008	JMFC	Pending
4.	Pardeshipura	494/12.12.10	452/294/427/506/336/34	439/14.09.2011	22557/10.11.2011	JMFC	Pending 07.04.22
5.	Pardeshipura	482/29.11.11	341/324/294/506/34 IPC	434/15.12.11	28556/27.12.11	JMFC	Pending 26.03.22
6.	Pardeshipura	726/29.10.13	188 IPC	667/21.12.2013	2493/31.01.2014	JMFC	Pending 07.03.22
7.	Pardeshipura	25/15.01.17	25 Arms Act	36/22.02.2017	16387/28.03.17	JMFC	Pending 27.07.22
8.	Pardeshipura	898/14.12.19	279/337 IPC	775/24.12.2019	11315/24.12.2019	JMFC	Pending 14.10.22
9.	Pardeshipura	436/2020	188 IPC	346/30.06.2021	Challan is yet to be filed	Challan is yet to be filed	Challan is yet to be filed
10.	Rajendra Nagar	386/08.05.202	420, 188 IPC	366/03.07.202	4160/05.07.202	JMFC	Pending 14.03.22

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09. Counsel for the petitioner has submitted that in the impugned order it is mentioned that the petitioner has pressurized the witnesses to entered into compromise in the matters which fact does not find placed in the show cause notice. In support of his submission on this ground, Shri R.S.Chhabra, learned Senior counsel for the petitioner has relied upon the decisions of the Apex Court in the case of **SACI Allied Products Ltd. Vs. Commissioner of Central Excise, Meerut** reported as **(2005) 7 SCC 159** and the decisions rendered by this Court in the cases of **Manish @ Dal Vishwakarma vs. State of M.P.** reported as **2009(2) MPLJ 658,hamsul Hassan @ Balli vs. State of M.P.** in **W.P. No.1794/2004.**

10. In the considered opinion of this court, the import of the show cause notice vis-à-vis the impugned order passed by the Commissioner of Police can very well be construed from the finding recorded in the impugned order, the relevant para of the same reads as under:-

अनावेदक के विरुद्ध पंजीबद्ध अपराधों के फरियादीगण/स्वतंत्र गवाहों के कथन कैमराबद्ध रूप से अंकित किये गये, जिन्होंने अनावेदक की आपराधिक गतिविधियों, शराब पीकर मारपीट करना, आते-जाते लडकियों को छेड़ना, हथियार लेकर खुले में घुमना, प्रकरण न्यायालय विचारण के दौरान राजीनामा के लिये दबाव बनाना, गालीगलोच, जान से मारने की धमकी देना, क्षेत्र में व्याप्त डर व भय आदि घटनाओं की अपने कथनों में पुष्टि की गई है। अनावेदक द्वारा प्रस्तुत न्यायालय निर्णय की प्रतियों से भी स्पष्ट होता है कि उसे राजीनामा के आधार पर दोषमुक्त किया गया है।

अनावेदक के विरुद्ध पंजीबद्ध अधिकांश प्रकरण लोक शांति भंग व सामाजिक जनजीवन को प्रभावित करने वाले हैं। पुलिस द्वारा की गई उपरोक्त कार्यवाहियां स्पष्टतः अनावेदक का दुष्चरित्र व आपराधिक गतिविधियों को प्रदर्शित करता है। पुलिस द्वारा प्रस्तुत अभिलेख पर उपलब्ध सामग्री के आधार इस बात से इंकार नहीं किया जा सकता कि यदि अनावेदक पर निष्कासन आदेश नहीं किया गया तो वह साक्षियों को डराधमका कर तथा अपने आपराधिक चरित्र का लाभ लेते हुए निश्चित ही शेष साक्षियों को राजीनामा हेतु बाध्य कर सकता है, जिसका समर्थन निराकृत प्रकरणों के निर्णयों से स्पष्ट होता है।

Thus, there is no incongruity in the show cause notice and the impugned order.

11. So far as the other grounds are concerned, since they involve questions of law, it would be apt to decide these issues here only to settle the same finally.

12. So far as the externment of the petitioner in respect of the other adjoining districts is concerned, as the petitioner is a resident of Indore and he has been externed from the local limits of not only Indore but also from the Districts of Dewas, Dhar, Ujjain and Khargone, reliance is placed upon the decisions rendered by the Division Bench of the Bombay High Court in the case of **Balu Shivling Dombe vs. The Divisional Magistrate, Pandharpur and another affirmed in Pandharinath Shridhar Rangnekar reported as 1968 SCC Online Bom 20; Pandharinath Shridhar Rangnekar vs. Dy. Commissioner of Police, the State of Maharashtra reported as (1973) 1 SCC 372 and Ganpat @ Ganesh Tanaji Katare vs. Assistant Commissioner**

of Police and others reported as 2006 (1) Mh. L.

13. So far as the powers of removal of a person from an area is concerned, reference may be had to the provisions of Section 5 of the Act, which reads as under:

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; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abatement of any such offence, and when in the opinion of the District Magistrate witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property; or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant;

the District Magistrate may, by an order in writing duly served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant-

(a) so as to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease; or

(b) to remove himself outside the district or my part thereof or such area and **any district or districts or any part thereof, contiguous thereto by such route within such time as the District Magistrate may specify and not to enter or return to the said district or part thereof or such area and such contiguous districts, or part thereof, as the case may be, from which he was directed to remove himself.**"

(emphasis applied)

14. A bare perusal of the aforesaid provision clearly reveals that the

:8: W.P.No.10089/2022

powers are with the district magistrate to remove person from a particular area/district or districts. The aforesaid provision is in pari materia with the Bombay Police Act, 1951 under which the order has been passed by the Bombay High Court in the case of Ganpat (supra), relying upon the decision rendered by the Division Bench in the case of Balu Shivling Dombe vs. The Divisional Magistrate Pandharpur and another, reported as 1968 SCC OnLine Bom 20: AIR 1969 Bom 351, the relevant para 11 of the judgment (Balu) reads as under:-

“There is a third ground why the impugned order requires to be set aside. Supposing that the two grounds mentioned in Cls. 2(h) and 2(i) of the notice permit the externment of the petitioner, it is difficult to understand why the Divisional Magistrate extended the order to the three revenue districts of Sholapur, Poona and Satara. Section 56 authorizes the externment of a person outside the area within the local limits of the jurisdiction of the authority making the order as “such area and any district or districts, or any part thereof, contiguous thereto.” These words, however, cannot be so interpreted as to enable the authority to extend the area of externment without reference to the purpose of the externment. In a sense, the whole State of Maharashtra is contiguous to any area within that State. If the authority concerned is not to have an arbitrary and unguided discretion in deciding the area of externment it must follow that the area must be so chosen as to meet the situation created by the movements or acts of the person to be externed. Such an interpretation is also necessary in order that Section 56 may be in conformity with Article 19(5) of the Constitution referred to above. The restriction placed by Section 56 on the fundamental rights guaranteed by Article 19(1)(d) and (e) of the Constitution cannot be held to be a reasonable restriction, unless the area of externment is restricted to the requirement created by the movements or acts of the person to be externed. The allegation contained in the notice in the present case was that the illegal acts of the petitioner had led to an atmosphere of danger and alarm “in Pandharpur city and the surrounding area.” The two illegal acts on which the Divisional Magistrate

relied were confined to Pandharpur city. No reasons have been given or suggested by the Divisional Magistrate for extending the area, not only outside the Pandharpur taluka, but to the district of Sholapur, and the districts of Poona and Satara as well. in the result, the petition is allowed and the impugned orders of the Divisional Magistrate dated 17th February, 1968 and of the State Government dated 20th June, 1968 are set aside. The petitioner's costs will be paid by the second respondent, the State of Maharashtra.”

(emphasis applied)

15. The similar analogy has also been adopted in the subsequent judgments. With due respect to the learned judges of the Bombay High Court, this court is unable to agree with the observations/findings recorded in the aforementioned decisions in respect of exercise of excessive jurisdiction exercised by the District Magistrate in externing the petitioner even from the adjoining districts apart from the district in which he is a resident of, or in which he operates. This court is of the considered opinion that if a person is externed only from the local limits of the area in which he is operating or for that purpose the limits of the district in which he is operating, he can certainly carry out his activities from the borders adjoining his area of operation/districts and can have access to all his resources from just across the border specially when the high speed vehicular connectivity is also available at his disposal. Thus, it would be virtually impossible for the authority to control his activities/movements carried out from the adjoining districts, outside the district in which he operates or reside. The fundamental rights enshrined in the Constitution are not absolute and are amenable to reasonable restrictions which is also the sole purpose of the Act. Hence, it is held that no illegality has been committed by the

Commissioner of Police to extern the petitioner from the adjoining districts of Indore as well.

16. So far as the old and stale cases are concerned, it is found that the petitioner is involved in criminal activities since the year 2006 to 2021 and except 2009, 2012, 2014, 2015, 2016 and 2018, in the years 2006, 2007, 2008, 2010, 2011, 2013, 2014, 2017, 2019, 2020 and 2021 he was consistent in committing the offences as in all these years one or the other offences have been committed by the petitioner and as such it is apparent that he has the propensity of committing offences, and it cannot be said that the old cases committed by the petitioner have lost their relevance.

17. Another ground raised by the petitioner is that he has been proceeded against under Section 110 of Cr.P.C. which is a complete Code in itself and if the respondents were of the opinion that immediate action against the petitioner is required to be taken then recourse ought to have taken under Section 122 of the Cr.P.C. Thus instead of taking recourse to Section 122 of the Cr.P.C. rather than passing of the order of externment. For the consideration, this Court does not agree with the aforesaid contention as well for the reason that if such an argument is accepted then it would frustrate the entire purpose of the Act, as in every case, where there are criminal cases registered against a person it can be argued that the matter is still pending in the trial court in which he has already been granted bail. Thus, even if Section 122 of the Cr.P.C. can be resorted to, in case of violation of conditions as enumerated in Section 117 of the Cr.P.C. there are relevance for the

purposes of externment order.

18. So far as the ground raised in respect of the non-mentioning of the status of criminal cases registered against the petitioner is concerned, this Court is of the opinion that it is hardly relevant for the purposes of externment.

19. Thus, it is held that the decisions relied upon by the learned counsel for the petitioner are not applicable in the present case.

20. Resultantly, the petition being devoid of merits, is hereby **dismissed**

(Subodh Abhyankar)
JUDGE

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