

**The High Court of Madhya Pradesh Bench at Indore**

Case Number	<b>W.P.No.402/2022</b>
Parties Name	Lacchu @ Laxman Vs. State of MP and Ors
Date of Judgment	<b>02/03/22</b>
Bench	<b><u>Single Bench:</u></b> Justice Vijay Kumar Shukla
Judgment delivered by	Justice Vijay Kumar Shukla
Whether approved for reporting	YES
Name of counsel for parties	Shri Pankaj Ajmera, learned counsel for the petitioner. Shri Manish Nair, learned counsel for the respondent/state.
Law laid down	Externment order- Validity of report of Superintendent of Police that the accused is involved in criminal activities and many crimes are registered against him – District Magistrate has not recorded his satisfaction that witnesses are not willing to come forward to give evidence in public due to apprehension of their safety – Most of cases are stale – sufficient material has to be there for passing externment order since fundamental right of freedom is involved.
Significant paragraph numbers	13-18

With the consent of the learned counsel for the parties, the matter is finally heard.

**ORDER**  
**02/03/2022**

The present petition is filed under article 226 of the Constitution of India, wherein the legality and validity of the order dated 20.07.2021 passed by the District Magistrate, Badwani under section 5 of MP Rajya Suraksha Adhiniyam, 1990

(hereinafter referred to as 'the act,1990') externing the petitioner from the boundaries of District Badwani and contiguous District i.e. Dhar, Jhabua, Alirajpur, Khandwa, Khargone, Bhuranpur and Indore for a period of one year. The petitioner has also challenged the order dated 22.12.2021 passed by the Commissioner, Indore dismissing the appeal under section 9 of the Act, 1990.

2. The facts adumbrated in nutshell are that on the basis of a report submitted by the Superintendent of Police, Badwani to the District Magistrate, Badwani to the effect that the petitioner is involved in criminal activities since 1992 and he has spread his terror to the local public the proceedings under the Act, 1990 were initiated by the respondent no.2 District Magistrate, Badwani. It is further alleged that the petitioner is involved in criminal activities and there are about 21 cases registered against him, which have been mentioned in the impugned order. On the basis of the said report, a show cause notice was issued to the petitioner initiating the proceedings under the Act, 1990. Despite serviced of notice, the petitioner did not appear before the respondent no.2 and he was proceeded ex-parte. The respondent no.2 on the basis of report of respondent no.3 and the material passed the impugned order of externment.

3. Learned counsel for the petitioner while assailing the order of externment submitted that in the report of the Superintendent of Police, the old and stale cases have been mentioned in the said list. It is further submitted that out of 21 cases, only four cases are said to be pending against him. The aforesaid cases are at serial no.13,15,17 and 21. The cases at serial no.13 relates to offence under section 353,341,352 of the IPC and the offence at serial no.15 and 17 relates to the offence under section 188 of the

IPC. The case at serial no.21 relates to the offence under section 379 of the IPC. The cases are old and stale. It is further submitted that the offence which are said to be registered in the year 2000 and 2001 are only in nature of preventive action taken by the police.

4. Learned counsel for the petitioner further submits that the order of externment has been passed without compliance of provision of section 5-B of the Act, 1990. It is argued that the District Magistrate has not recorded his satisfaction that the witnesses are not willing to come forward to give evidence in public due to apprehension of their safety and therefore, the order of externment is bad in law. In support of his submission, he places reliance of the judgment of Division Bench in the case of *Ashok Kumar Patel Vs. State of MP and Ors reported in 2009 (4) MPLJ 434* and also the judgment passed by the co-ordinate bench in the case of *Meena Sonkar Vs. State of MP and Ors reported in 2017 (2) MPLJ 565* and in the case of *Jahangeer Alvi Vs State of MP and Ors reported in 2017 (3) MPLJ 667* and also the judgment in the case of *Istfaq Mohammad Vs. State of MP and Ors reported in 2018 (3) MPLJ 349*.

5. Per contra, learned counsel for the respondent/state denied the submissions of the learned counsel for the petitioner and submitted that the externment order and the appellate order passed on the basis of material available against the petitioner. He relied on the report of the Superintendent of Police.

6. Before advertng to the contentions of the counsel for the petitioner as discussed earlier and examining them on the anvil of the law prevailing in the field of externment, it is apt to refer the provisions of the Adhinyam, 1990. Section 5 of the Act under

which the order of externment has been passed is quoted hereinbelow:-

"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, 4 XVI, or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abetment 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 any 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.”

7. A plain reading of Section 5 (b) of the Act quoted above, would show that for passing an order of externment against a person, two conditions must be satisfied:-

- (i) There are reasonable grounds for believing that a person is engaged or is about to be engaged in 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 or in the abetment of any such offence; and
- (ii) 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.

8. At this stage, I think it condign to survey the authorities on the legal issues canvassed on behalf of the petitioner.

9. Division Bench of this Court in the case of *Ashok Kumar Patel vs. State of M.P. & others, 2009(4) MPLJ 434* after considering Section 5 of the Act held thus:

”8. The expression is engaged or is about to be engaged" in the commission of 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 or in the abetment of any such offence, shows that the commission of the offence or the abetment of such offence by the person must have a very close proximity to the date on which the order is proposed to be passed under Section 5(b) of the Act of 1990. Hence, if a person was engaged in the commission of offence or in abetment of an offence of the type mentioned in

section 5 (b), several years or several months back, there cannot be any reasonable ground for believing that the person is engaged or is about to be engaged in the commission of such offence.”

10. In the case of *Ramgopal Ragjhuwanshi vs. State of M.P. and others, 2014(4) MPLJ 654* this Court after considering the earlier judgments in respect of Section 5 of the Act held that the order of externment cannot be passed on the basis of old and stale cases. A co-ordinate Bench of this Court at Indore in the case of *Bhim @ Vipul vs. Home Department, (W.P. No.4329/2015, decided on 14-09-2015)* has also considered the judgments rendered in the cases of **Ashok Kumar** (supra) and **Ramgopal Ragjhuwanshi** (supra) and held that the expression “engaged or is to be engaged” used in Section 5(b)(i) shows that commission of offence or the abetment of such offence by the person must have close proximity to the date on which the order is proposed to be passed under Section 5(b) of the Act. 12. In the case of *Sanju @ Sanjay Ben Vs. State of M.P. and others, 2005 (4) MPHT 102* while considering the provisions of the Adhiniyam, 1990, the court held that the provision is not punitive in its nature and a person cannot be externed for his past acts. Although past activities of a person may afford a guide as to his behaviour in future, they must be reviewed in the context of the time when the order is proposed to be made. The past activities must be related to the situation existing at the moment when the order is to be passed. In the present case from the facts it is noted that the same cases were being repeatedly considered by the authority and on earlier occasions, he found that the same material cannot form a basis for passing an order of externment but by the

impugned order is passed on the basis of most of the same cases which are old and stale which has already been held by this Court in number of cases as discussed above that the old and stale activities cannot be grounds of externment.

11. In the light of the aforesaid authoritative pronouncement of judgments, the contentions of the petitioner have to be examined on the anvil of facts of the present case and the law as discussed above.

12. The respondent no.2 District Magistrate has referred a list of 21 cases against the petitioner from the year 1992 to 2021 which is reproduced hereinabove:-

S.no.	Crime no./offence	Date of incident
1	565/92 u/s 147,148,336,427 IPC	12/08/92
2	600/95 u/s 147,148,336,435 IPC	27/10/95
3	295/98 u/s 302, 307, 143, 147, 148, 149 IPC 25,27 Arms Act	17/10/98
4	401/00 u/s 147, 148, 294, 325, 506 IPC	11/06/00
5	404/00 u/s 25,27 Arms Act	11/09/00
6	447/00 u/s 341, 323,506,307 IPC	13/12/00
7	93/02 u/s 341,147 IPC	18/03/02
8	131/03 u/s 384, 120 IPC	05/05/03
9	267/04 u/s 147, 148, 149, 353, 452, 332, 426, 307, 294, 506 IPC	09/01/04
10	268/04 u/s 341,147 IPC	09/01/04
11	269/04 u/s 147,336,506,452,427 IPC	09/01/04
12	315/04 u/s 13 Gambling Act	11/05/04
13	18/05 u/s 353,341,353 IPC	27/12/04
14	279/05 u/s 13 Gambling Act	12/05/04
15	85/08 u/s 188 IPC	24/03/08
16	93/08 u/s 188 IPC	06/10/08
17	318/08 u/s 188 IPC	19/12/08

18	296/15u/s 13 Gambling Act	19/11/15
19	105/20 u/s 13 Gambling Act	28/03/20
20	595/20 u/s 13 Gambling Act	08/01/20
21	15/21 u/s 379 IPC	24/01/21

13. Upon perusal of the aforesaid cases, it is clear that in the year 2021, one case under section 379 of the IPC has been registered. In the year 2020, two offences under Gambling Act has been registered. In the year 2015, one case under Gambling Act has been registered. Prior to that, in the year 2008, offence under section 188 of the IPC has been registered. The other offences mentioned in the table are of the year 2005, 2004, 2003, 2002, 1998, 1995 and 1992. Thus, the offence in the close proximity is only section 379 of the IPC and Gambling Act. The other cases are old and stale.

14. Apart from that, the report of Superintendent of Police reflects that in the year 2020, preventive action was taken against the petitioner. Out of 21 cases, all cases have already been decided by imposition of fine. Only 4 cases at serial no.13, 115, 17 and 21 are pending.

15. In the instant case, upon perusal of the impugned orders, it is also found that the District Magistrate has only baldly stated the list of the offences registered against the petitioner to reflect that the petitioner is a daring habitual criminal but he did not record any opinion on the basis of the materials that in his opinion witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension as regards to their safety. Hence, in absence of any existence of material to show that witnesses are not coming forward by reason of apprehension to give evidence against the



petitioner in respect of the alleged offences, an 11 order u/s 5 (b) of Adhiniyam, 1990 cannot be passed by the District Magistrate as held in the case of *Ashok Kumar Patel Vs. State of M.P.* by the Division Bench that for a passing an order of externment against the person both the conditions mentioned under section 5 (b) (i) and (ii) have to be satisfied.

16. This Court in the case of *Meena Sonkar vs. State of M.P. and others, 2017(2) MPLJ 565* and also in the case of *Anek alias Anil Nageshwar vs. State of Madhya Pradesh & four others [W.P. No.9297/2017, decided on 8-8-2017]* held as under:

“The second requirement is also necessitated to pass an order of externment that on account of the activities of a person, who is externed, the witnesses amongst public are not coming forth to depose in the criminal cases against him either under apprehension of person or property. But in the order impugned existence of such material is not on record, more so, no such finding has been recorded by the competent authority to record satisfaction. Therefore, the order impugned do not fulfill the second requirement of Section 5(b) of the Adhiniyam.”

17. In the present case there is no satisfaction of the District Magistrate in the impugned order regarding second requirement of Section 5(b) of the Act 1990. He has not recorded his satisfaction on the basis of materials that witnesses are not willing to come forward to give evidence in the public against the petitioner by the 12 reasons of apprehension as regards to their safety. The authority has not discarded the nature of cases, the date of registration of cases and their present status. Most of the cases are old and stale.

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18. Under the provision of Section 5 of the Act, if a detention order has to be passed, there has to be sufficient material for passing the order as fundamental right of freedom of a person is involved. The order passed by the appellate Authority is nothing but repetition of the order passed by the District Magistrate without any application of mind.

19. In the aforesaid circumstances, the impugned order of externment and affirmation thereof in the appeal are unsustainable having been found in violation of the requirements of the Act 1990 and the judgments passed by this Court which have been noted hereinbefore.

20. Accordingly, the writ petition is **allowed**. The impugned orders dated 20.07.2021 passed by the District Magistrate, Badwani and the order dated 22.12.2021 passed by the Commissioner, Indore are quashed.

21. No order as to costs.

(Vijay Kumar Shukla)  
Judge